

# General Terms and Conditions of Procurement of Services

## 1. Definitions and Interpretation

1.1 In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:

**'Acceptance'** means acceptance of the Works (or part thereof) by Buyer in accordance with conditions and **'Accept'** shall be construed accordingly.

**'Buyer'** means the buyer as identified by name in the Contract.

**'Conditions'** means these General Terms and Conditions of Procurement of Services.

**'Contract'** means the Purchase Order, the Conditions, the contract and any attachments thereto including without limitation drawings, Specifications any special Conditions and other documents.

**'Equipment'** means any and all items ordered under the Contract or required for the purpose of the Works.

**'Expiration Date'** means twelve (12) months after the date the Equipment/Materials is put in operation, but in no event later than eighteen (18) months after Acceptance in accordance with condition 8.

**'Force Majeure'** means in relation to either party circumstances beyond its reasonable control including, but not limited to: employment disputes (not including those involving its own employees or the employees of sub-contractors); fire, accidents or explosions; power shortages; governmental action or inaction, where the other party has been given notice of such circumstances no later than 5 working days from it taking effect, subject to condition 24.5.

**'Law'** includes any law, statute, proclamation, byelaw, directive, decision, regulation, code of conduct, rule of court or delegated or subordinate legislation or other instrument having the force of law and **'Laws'** shall have the corresponding meaning.

**'Maintenance Period'** means the period commencing on the date of Acceptance and ending on the Expiration Date.

**'Materials'** means the materials ordered under the Contract or required for the purpose of the Works.

**'Price'** means the price of the Works as specified in the Contract.

**'Purchase Order'** means the Purchase Order issued by the Buyer to the Supplier in respect of the Works.

**'Supplier'** means the supplier as identified by name in the Contract.

**'Site'** means the lands and other places as to which access shall be procured by Buyer for the purposes of the Contract, on, under, in or through which the Works are to be executed and any other lands or places to which access shall be procured by Buyer, for the purposes of the Contract other than merely for access to the Site.

**'Specification'** shall have the meaning set out in condition 2

**'Variation'** means a modification to, omission from, or addition to the scope of work, which is approved and confirmed in writing by Buyer to Seller documented in an amendment to the Contract and **'Vary'** shall have a corresponding meaning.

**'Warranty Period'** means in relation to Equipment/Materials the period up to the Expiration Date.

**'Works'** means all work to be done and things of every kind to be supplied by the Supplier under the Contract.

1.2 In case of conflict between the documents forming the Contract, Supplier shall inform the Buyer of such conflict and the order of precedence in resolving such conflict shall be as follows:

- a) the contract document;
- b) the Purchase Order;
- c) any special conditions;
- d) the Conditions; then
- e) any other documents forming part of the Contract.

1.3 These Conditions shall prevail over any custom, practice or course of dealing.

1.4 Any general or printed conditions submitted or referred to in Supplier's tender or invoices shall not form part of the Contract unless expressly incorporated into the Contract in writing as special conditions.

1.5 Buyer shall not be liable for or in respect of any order not placed by Buyer's authorised representative and acknowledged by the Supplier in the manner prescribed in the Contract.

## 2. Specification/ Technical Information

2.1 Any specification, measurements, drawings, technical and other documentation and all other items which are identified by Buyer as comprising part of the specification for the Works (all such items collectively known as the "Specification" whether initially provided by the Buyer or the Supplier at the Buyer's direction at any time) supplied by Buyer to Seller shall be used by Supplier solely in connection with the delivery and/or fulfilment of Works for/to

Buyer. All copyright and other intellectual property rights in such specifications, measurements, drawings and documentation shall remain vested in Buyer, and Supplier shall have no rights or interest in them other than as a bare licensee and solely for the purposes contemplated by the Contract.

2.2 Buyer shall have the full and free right to use all specifications, drawings, technical and other documentation and other items, which are provided by Supplier to Buyer under or in connection with the Contract. Buyer's review or approval of such specifications, drawings, technical and other documentation and other items shall not relieve Supplier of any of its responsibilities hereunder.

2.3 The Works will comply in all respects with the Specification, including without limitation in relation to all technical requirements, dimensions, time periods, commissioning and testing requirements and any special instructions made known to Supplier and in relation to the description, quality and quantity.

### **3 Changes to scope of supply**

Without invalidating the Contract, Buyer shall have the right at any time to make changes in the Works and in the Specifications, drawings, technical and other documentation and /or any other requirement, to issue additional instructions, to request Supplier to perform additional works or to retract any requirements under the Contract and Supplier shall comply with any such request. Any adjustment in the Price, the delivery time or any other provision resulting from such change, addition or deduction shall be agreed upon between Buyer and Supplier in writing and as from the date of written agreement, shall constitute a Variation.

### **4 Code Approvals**

Where any Law requires approval of drawings and/or Specifications or tests by any competent authority the Supplier promptly at its own cost shall obtain such approvals, perform such tests and supply any and all certificates and documents that are required in relation to such approvals.

### **5 Subcontracting**

5.1 No part of Supplier's duties may be performed by any subcontractor, agent or representative without the express prior written consent of Buyer, not to be unreasonably withheld.

5.2 Supplier shall be responsible for all acts and/or omissions of all its subcontractors, agents and representatives. Supplier shall in no event be relieved from the responsibility to perform the Works in accordance with the Contract.

5.3 Supplier shall procure that all subcontractors, agents and representatives are contractually bound in all material respects under the same terms as the Contract.

5.4 Notwithstanding any rights Buyer may otherwise have at Law, in the case of a defect or delay which arises from the failure of a supplier or sub-contractor to perform to their obligations (such failure not being due to any error or omission on the part of Supplier in the performance of the Works) Supplier shall without cost to Buyer use its best endeavours to secure the full performance of the supplier's or sub-contractor's obligations for repair, replacement or otherwise to the satisfaction of Buyer.

### **6 Expediting Inspection and Testing**

6.1 Buyer may conduct or procure such examination of the Works as it deems necessary. Such tests, inspections or examinations shall be carried out in accordance with the Contract or as otherwise agreed from time to time in writing between Buyer and Supplier.

6.2 The Supplier shall give Buyer at least ten (10) working days prior written notification of readiness of any Works or part thereof for inspection or testing in accordance with the provisions of the Contract.

6.3 Buyer or its nominee shall upon any reasonable request and/or at all reasonable times have access to Supplier or any subcontractor's premises to:

- i) monitor the progress of the Works
- ii) inspect and/or
- iii) to test the Works at any stage,

and to reject any part thereof that does not in Buyer's reasonable opinion comply with the terms of the Contract.

6.4 If the Works or any part of it does not in Buyer's reasonable opinion conform to the Contract those Works or parts thereof shall be re-performed by Supplier at the earliest possible opportunity or corrected at Supplier's expense and shall be resubmitted to Buyer for inspection. In relation to any date specified in the Contract for testing, delivery or commissioning, Supplier shall not be allowed an extension of time as a consequence of the replacement or correction of any Works.

6.5 If any portion of the Works has not been carried out to Buyer's satisfaction, such tests shall, if required by Buyer, be repeated within a reasonable time upon the same terms and conditions.

6.6 No inspection, testing or approval of Supplier's drawings or other documents by Buyer or its nominee prior to or during performance of the Works shall be deemed to constitute acceptance by Buyer in part or in whole of the Works or any part thereof, nor shall it relieve Supplier from any of its responsibilities under the Contract.

## **7 Packing and Marking**

Supplier shall in accordance with applicable Laws and with the requirements of carriers, adequately protect, pack and mark any Equipment/Materials for transportation to its final destination and/or prolonged storage.

Each package shall be numbered and labelled with Buyer's Purchase Order number and any marks stipulated in the Contract. An itemised list of the contents shall be fastened in a waterproof covering on the outside of each package. All costs for such protection, packing and marking are included in the Price.

## **8 Acceptance**

8.1 Subject to condition 10, Acceptance of the Works or any part thereof shall occur after full performance in accordance with the Contract, provided that if the Contract provides for a performance or commissioning test or similar, Acceptance of the Works or any part thereof will not occur until such tests have been successfully completed.

8.2 As soon as the Works have been substantially completed and have passed all applicable tests, Buyer shall, upon receiving a written undertaking from Supplier in terms acceptable to Buyer to finish any outstanding work or correct any snagging defects during the Maintenance Period, notify Supplier in writing that it Accepts the Works (or any portion thereof) from the date set out in such notice.

8.3 Acceptance shall not relieve Supplier of any of its responsibilities under the Contract, including without limitation its responsibility to comply with the undertakings set out in condition 2.

8.4 Buyer has the right to refuse Acceptance if the Buyer has not been furnished with the documents referred to or specified in the Contract.

8.5 Quantities of Equipment/Materials delivered in excess of quantities specified in the Contract may be returned at Buyer's absolute discretion and Supplier's expense.

8.6 Time of performance and Acceptance of the Works shall be of the essence. If the Works or any part thereof is not performed and Accepted within the time specified in the Contract, or within a reasonable time for acceptance of such Works if no time is specified, Buyer may without prejudice to Buyer's other rights under the Contract, either:

- (i) refuse to accept such Works and rescind the Contract; and/or
- (ii) charge Supplier for all costs of every character whatsoever that Buyer (acting reasonably) has incurred and/or is likely to incur as a result of, or in any way connected with Supplier's failure to meet any applicable performance and/or acceptance date. Such costs shall become due as a debt due from Supplier to Buyer, which shall be payable by Supplier on demand being made by Buyer;
- (iii) affirm the Contract and receive from Supplier by way of compensation liquidated damages payable at the daily rate set out in the Purchase Order in respect of every day or part of a day when the Works have not been performed and Accepted, provided that Supplier's liability to pay liquidated damages under this condition shall not exceed thirty (30) per cent of the Contract Price.

8.7 If Supplier shall become liable to pay liquidated damages pursuant to condition 8.6(iii) and the quantum of such liquidated damages reaches the cap set out in that condition, Buyer shall be entitled to terminate the Contract forthwith by written notice to Supplier and Supplier shall to the fullest extent permissible by law hold harmless and indemnify Buyer against all costs, expenses, losses, liabilities, demands and claims (including legal costs and expenses on an indemnity basis) suffered or incurred by Buyer as a consequence of Supplier's failure to perform the Contract and the termination thereof by Buyer.

8.8 Supplier shall supply free of charge such certificates of origin of any Equipment or Materials as specified in the Contract or otherwise as required by Buyer or by Law.

## **9 Maintenance Period**

9.1 Supplier shall at its own cost and expense for a period of twelve (12) months from the date of Acceptance maintain the Works in good and proper order, repair and condition, and shall rectify all defects arising from improper or defective goods, materials and/or workmanship and, if practicable, shall fully and properly exercise and enforce any applicable rights or benefits it may have under any third party contract for the benefit of Buyer.

9.2 If Supplier is required to repair and/or replace any portion of the Works pursuant to clause 10.1 or clause 12, the provisions of condition 9.1 shall apply to such portions of the Works so repaired or replaced until the expiration of the later of:

- (i) six months from the date of such repair or replacement; and
- (ii) the Expiration Date.

## **10. Price - Terms of Payment**

10.1 The Price is valid for the full performance of the Works in accordance with the Contract.

10.2 Except as otherwise provided for under these terms and conditions or under the Contract, the Price is firm and not subject to any escalation or adjustment of any kind.

10.3 Supplier will invoice Buyer after Acceptance of the Works or where stage payments have been agreed in the Purchase Order, when the relevant deliverables referable to a stage payment have been performed to Buyer's reasonable satisfaction, or Accepted (as the case may be) as agreed within the Contract. If payment is to be in stages, the Supplier shall invoice amounts based on the agreed milestones as set out in the Contract.

10.4 The Supplier will invoice in accordance with the Buyer's instructions set out in the Contract.

10.5 Subject to the due and punctual performance by the Supplier of its obligations under the Contract invoice(s) will be paid by the Buyer, end of month following month of receipt of a valid invoice from the Supplier. In the event a cash discount is granted the invoice due date will be calculated from the date the invoice is received by Buyer.

10.6 VAT will be shown separately on all invoices as a strictly net extra charge.

## **11. Transfer of Title and Risk**

11.1 Title in any goods, materials and/or equipment supplied as part of the Works shall vest in the Employer when any such goods, materials and/or equipment are affixed to or incorporated into the Process Plant and/or the Works.

11.2 Risk in any goods, Materials and/or Equipment supplied as part of the Works shall transfer to the Buyer:

- (i) in the case of any goods, Materials and/or Equipment where the benefit of a third party guarantee is secured by Supplier for the benefit of Buyer, on the date of such guarantee; and
- (ii) in all other cases, at the end of the Maintenance Period.

## **12. Supplier's Undertakings**

12.1 Supplier hereby agrees as a fundamental term of the Contract that:

- (i) it shall commence the Works with due expedition and in accordance with Buyer's safety procedures and policies as notified to Supplier from time to time;
- (ii) it shall use properly experienced and qualified people in performing the Works;
- (iii) it shall complete the Works in accordance with best industry practice;
- (iv) the Works, Equipment and/or Materials shall be of satisfactory quality, fit for purpose and free from:
  - a) defect in material and workmanship, and
  - b) defect in or due to design (other than any supplied or specified by Buyer); and
- (v) in supplying the Works Supplier shall use all reasonable care and skill to the standard to be expected of an experienced provider of such services and/or goods.

12.2 If the Works, or any part thereof, fails to meet any or all of the foregoing conditions at any time prior to the Expiration Date, then upon Buyer's request, Supplier shall, at its sole expense, promptly and within such a time and in such a manner as to minimise Buyer's production interruption and/or loss of Buyer's facility in which the Works are incorporated, either;

- (i) reperform or correct said Works or part thereof to the extent necessary to causes it to meet the foregoing conditions; or
- (ii) provide and, if originally required under the Contract, install new Equipment/Materials or a new component(s) or part(s) which will meet or cause the Works to meet the forgoing conditions and all other provisions of the Contract applicable to the Works and the components and parts thereof.

In any event the Warranty Period shall be extended by the time it takes, after Supplier receives Buyer's request for corrections for such Works to complete all of the required corrections. All Works, components or parts thereof reperformed, corrected or replaced under this provision shall be subject to the provisions of condition 12.1 as provided by this condition 12 by Supplier, provided that the Expiration Date shall mean twelve (12) months after the date of repair, correction or replacement.

12.3 If Supplier fails to comply with the provisions of condition 12.1, promptly after any such request, or if the Equipment/Materials or any part thereof reveals defects requiring urgent repair or correction, Buyer shall have the right, after notifying Supplier of its intent to do so, to perform or cause to be performed, the work pursuant to item (i) or (ii) of condition 12.2 at Supplier's risk and cost but without prejudice to Buyer's other rights under the Contract. After such work has been carried out, Supplier shall pay Buyer as a debt due to Buyer from Supplier the cost thereof incurred by Buyer within thirty (30) days after receipt of an invoice from Buyer to Supplier in respect thereof.

**12.4 Supplier shall be liable for and indemnify and hold Buyer harmless from and against any and all claims, actions, losses, damages, costs and expenses (including without limitation any costs associated in coordinating, supervising, monitoring and expending any corrective work to be performed by Supplier in accordance with this condition 12, or in any way connected with such corrective work), directly or**

indirectly associated with the reworking or repair, correction and/or replacement of the Works Equipment/Materials, which are asserted against or incurred by Buyer as a result of or in connection with:

(i) Supplier's failure to comply with the Specifications and/or

(ii) Supplier's breach of the conditions contained in the provision of condition 12.1.

12.5 If the Works or any Equipment or Materials are modified or changed pursuant to the provision of condition 12.2, Supplier shall modify or replace spare parts delivered to Buyer at Supplier's sole expense.

12.6 If the Contract includes a performance condition and provides for a performance test to be conducted in order to establish that the Works or any Equipment or Materials comply with any such performance condition, Supplier agrees as a fundamental term of the Contract that the Work Equipment and Materials shall meet the performance condition continuously during said performance test. Any performance test shall be conducted and completed within the period specified in the Contract and shall not be repeated more than twice. If the Works or any Equipment or Materials fail to meet the performance condition, Supplier shall, at its sole expense, promptly proceed with corrective action as set out in condition 12.2, whereupon a new performance test shall be carried out. If within the specified time or after three performance tests, whichever comes first, the Works or any Equipment or Materials continue to fail to meet the performance condition, Buyer shall have the right to terminate the Contract and to the extent possible put the Works or any Equipment or Materials at the Supplier's disposal and risk at the place where it is located at that time, whereupon Supplier shall promptly remove the same therefrom and refund to Buyer all amounts paid by Buyer under the Contract in respect of such Works Equipment and Materials.

12.7 If the Contract covers more than one unit of Equipment/Materials or set of Works, then the provisions in this condition 12 shall be separately applicable to each such unit or set.

### 13. **LIABILITY**

13.1 Supplier is liable for and shall hold harmless and indemnify Buyer and its employees and agents against any and all claims, liabilities, losses, damages, costs (including costs of defending a claim) and expenses of every nature whatsoever, asserted against or incurred by Buyer as a result of or in connection with Seller's negligence, default, performance or failure to perform in accordance with the Contract.

13.2 For the purposes of this condition 13.2 the following expressions shall have the following meaning:

"**Damage**" shall mean actual physical damage or loss to property, any pecuniary losses and reasonable legal costs (including the cost of defending a claim) resulting therefrom.

"**Injury**" shall mean bodily or mental injury to persons including sickness and disease.

"**Associate Company**" shall mean any subsidiary company or any holding company from time to time as these terms are defined in Section 736 Companies Act 1985 as amended by Section 144 Companies Act 1989.

"**Employer's Liability Insurance**" shall mean insurance required from time to time by Law pursuant to the Employer's Liability (Compulsory Insurance) Act 1969 or any statutory amendment or re-enactment thereof in force from time to time.

"**Plant**" shall mean the equipment, off-site fabrication and assembly, materials and other things of every kind for incorporation or intended for incorporation into the Contract.

"**Process Plant**" shall mean the existing plant where the Works are being constructed, carried out, modified, and/or maintained, including all plant which shall form part of the works.

#### 13.2.1 Damage to the Process Plant and Plant

Supplier shall take full responsibility for and shall make good to the reasonable satisfaction of Buyer any loss and/or damage however caused (including by negligence) which occurs as a result of any act or omission of Supplier in relation to:

13.2.1.1 the Process Plant under maintenance, modification or construction and Plant; and

13.2.1.2 the cost of replacement, rectification or re-design rendered necessary by Supplier's defective goods and/or materials, workmanship or design but only insofar as such costs relates to that part of the Process Plant or Plant which proves defective and not to the cost of making good any other loss or damage resulting therefrom; and

13.2.1.3 damage to Plant during manufacture elsewhere than on Site; and

13.2.1.4 damage to the Process Plant or Plant resulting from deliberate act or neglect to act by Supplier, its servants or agents, in the full awareness of the inevitable result of such act or neglect.

#### 13.2.2 Damage to Property (other than the Process Plant and Plant)

Supplier shall except if and so far as the Contract provides, indemnify and keep Buyer indemnified against all losses and claims which arise out of or in consequence of the Contract, the execution of the Works and the remedying of any defect and against all claims demands proceedings damage costs charges and expenses arising in connection therewith, for:

- 13.2.2.1 loss of or damage to any property (other than the Process Plant or Plant) including for the avoidance of doubt any such property belonging to Petroplus or an Associated Company or Petroplus; and
- 13.2.2.2 damage to constructional plant, personal effects or any other property of Petroplus, any supplier, sub-contractor their servants or agents; and
- 13.2.2.3 liability normally insurable under any Employer's Liability, Public Liability, Motor, Marine or Aviation Policy of Insurance; and
- 13.2.2.4 damage to any property of Petroplus (other than the Process Plant or Plant) resulting from deliberate act or neglect to act by Supplier, its servants or agents, in the full awareness of the inevitable result of such act or neglect.
- 13.3 Condition 13.2 shall be without prejudice to the generality of condition 13.1.

#### **14. LIMITATION OF LIABILITY AND INDEMNITY**

14.1 THIS CONDITION 14 APPLIES (TO THE FULLEST EXTENT PERMISSIBLE BY LAW) TO THE ENTIRE LIABILITY OF BUYER WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION (UNLESS FRAUDULENT), STRICT LIABILITY OR OTHER LEGAL LIABILITY INCLUDING LIABILITY FOR THE ACTS OR DEFAULTS OF ITS EMPLOYEES, AGENTS, SUB-CONTRACTORS OR AFFILIATED COMPANIES.

14.2 NO LIABILITY WHATSOEVER OR HOWEVER ARISING IS ACCEPTED BY BUYER FOR OR IN RESPECT OF LOSS OF PROFITS, WASTED OVERHEADS, SPECIAL INDIRECT OR CONSEQUENTIAL LOSS INCLUDING, BUT NOT LIMITED TO, GOODWILL, CONTRACTS, ANTICIPATED SAVINGS, ANY INCREASED COST OF WORKING OR THIRD PARTY CLAIMS EVEN IF BUYER KNEW OR WAS INFORMED OF THE POSSIBILITY OF THE SAME.

14.3 LIABILITY FOR LOSS OR DAMAGE TO PHYSICAL PROPERTY OF THE SUPPLIER CAUSED BY NEGLIGENCE OF BUYER SHALL NOT EXCEED £1,000,000 IN RESPECT OF ANY ONE EVENT OR CONNECTED SERIES OF EVENTS OR £5,000,000 IN AGGREGATE AMOUNT UNDER THE CONTRACT

14.4 EXCEPT AS STATED ABOVE THE ENTIRE LIABILITY OF BUYER FOR UNREMEDIED ACTS OR DEFAULTS SHALL NOT EXCEED THE CONTRACT PRICE OR £25,000WHICHEVER IS THE GREATER PLUS THE RETURN OF THE PRICE PAID IN RESPECT OF THE WORKS IN QUESTION.

14.5 NO PROVISION IN THE CONTRACT LIMITS OR EXCLUDES LIABILITY FOR DEATH OR PERSONAL INJURY WHERE IT IS NOT LAWFUL TO DO SO.

14.6 NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY, SUPPLIER SHALL INDEMNIFY BUYER AGAINST ANY LOSS OR DAMAGE TO ITS PROPERTY OR THAT OF ITS AGENTS AND AGAINST ALL LIABILITY ARISING OUT OF ANY ACTIONS, CLAIMS, DEMANDS OR PROCEEDINGS BROUGHT BY ANY EMPLOYEE, AGENT OR INVITEE OF BUYER OR BY ANY THIRD PARTY ON ACCOUNT OF DEATH OR PERSONAL INJURY AND/OR DAMAGE TO PROPERTY OR EQUIPMENT OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH ANY DELIVERIES MADE OR WORKS UNDERTAKEN BY OR ON BEHALF OF SUPPLIER HEREUNDER, TO THE EXTENT THAT THE SAME SHALL EITHER DIRECTLY OR INDIRECTLY BE CAUSED BY, OR AS A CONSEQUENCE OF, ANY FAILURE BY THE SUPPLIER TO COMPLY WITH ITS OBLIGATIONS HEREUNDER OR AT LAW, INCLUDING NEGLIGENCE, NOTWITHSTANDING ANY NEGLIGENCE OR BREACH OF STATUTORY OR OTHER DUTY OF BUYER, ITS EMPLOYEES OR AGENTS.

#### **15. Insurance**

15.1 Supplier shall have and maintain in force and shall require any supplier or sub-contractor to have and maintain in force the following Insurances which shall extend to indemnify Buyer against any claim for which Supplier, any on Site supplier or sub-contractor may be legally liable under or in connection with the Contract or any related contract:

15.1.1 Employers Liability Insurance providing a total indemnity of not less than £5 million (£5,000,000); and

15.1.2 Public Liability (Third Party) Insurance for such sum and range of cover as Supplier deems appropriate but for an indemnity of not less than £5 million (£5,000,000) for any one accident; and

15.1.3 All risk insurance to include, without limitation, constructional plant, motor vehicles, personal effects or any other property of Supplier, any sub-contractor, on-site supplier or sub-contractor to its full value against loss or damage up to an indemnity limit of £5 million (£5,000,000) for any one event.

15.2 Seller shall within 5 days of a request by Buyer furnish Buyer with evidence reasonably satisfactory to Buyer that such insurances have been effected and are valid and subsisting.

15.3 Supplier shall provide all facilities, assistance and advice requested by Buyer or Buyer's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of Supplier's performance or non-performance of the Contract.

15.4 Supplier shall obtain from its insurers a waiver of all rights of subrogation against Buyer and its subsidiary and holding companies which shall be endorsed upon all such policies of insurance.

## **16. Loan of Buyer's Plant and Equipment**

16.1 The inclusion of this condition does not imply that Buyer assumes any obligations to provide "loaned plant", which means plant or equipment owned by Buyer and used by or on behalf of Supplier by agreement of both parties in connection with operations under the Contract.

16.2 Where loaned plant is operated by a servant of Buyer:

16.2.1 The operator shall not become the servant of Supplier but shall carry out with loaned plant such work as the operator may be directed to do by Supplier.

16.2.2 Supplier shall be liable for any damage to loaned plant caused by misdirection or misuse of it and loss resulting from negligence or the part of Supplier, its servants or agents.

16.3 Where loaned plant is operated by a servant of Supplier or a subcontractor, the Supplier shall be liable for all damage to loaned plant unless it can show that it was caused by a defect present therein at the commencement of the loan and it shall be liable for any loss (including loss by theft) of loaned plant.

16.4 Buyer shall have the right to withdraw loaned plant at any time and shall be under no liability to Supplier in connection with Buyer failing to make available to Seller loaned plant at any time.

## **17. HS & E Information**

Supplier shall provide appropriate health, safety and environmental information and guidance to ensure that Buyer is properly informed about the safe use, handling and disposal of all Equipment/Materials. Such information shall include but not be limited to a Safety Data Sheet, a shipping label, warnings about any hazards associated with the Equipment/Materials that are known to Supplier, and appropriate storage, disposal, handling, loading, unloading and processing brochures and/or bulletins. This information shall be supplied to each specific 'assignment to' Buyer and subcontractor location prior to the first time the Equipment/Materials are shipped to each said location(s) and again to each said location(s) whenever the information is updated.

## **18. Occupational Health and Safety**

18.1 Supplier agrees as a fundamental term of the Contract that the Works and all Equipment/Materials shall in all aspects conform to all Laws applicable relating to occupational safety, health and hygiene and that it shall carry out the Works with proper regard to the safety of all persons; and

18.2 Supplier agrees as a fundamental term of the Contract that Supplier shall at all times in connection with the performance of the Contract:

(i) comply with all applicable Laws;

(ii) comply with all site specific rules and instructions which are given to Supplier by Buyer

(iii) use Equipment/Materials that meet recognised industry safety standards; and

(iv) provide authorised representatives of Buyer access to their work area(s) at all reasonable times to inspect the performance of the Works.

18.3 In relation to the performance of the Contract, Supplier shall at all material times have all relevant accreditations as required by Law or by Buyer. Failure by Supplier to have or maintain any such accreditations shall constitute a material breach of the terms of the Contract.

18.4 Buyer shall have the right to require the removal of any person brought to the Site by Supplier who has:

18.4.1 failed to comply with any rules or instructions which are given to Supplier by Buyer, or

18.4.2 in the opinion of Buyer misconducted themselves or been negligent or incompetent, or

18.4.3 prejudiced Buyer's health and/or safety rules & regulations and any such person shall not again be employed upon the Site without express written prior permission of Buyer.

18.5 Supplier shall be responsible for the suitability and safety of the constructional plant used by it and no constructional plant shall be used which may be unsuitable, unsafe or liable to cause damage or injury. Without lessening the responsibility of Supplier with regard to such constructional plant if in Buyer's opinion it is unsuitable, unsafe or liable to cause damage or injury, it shall not be used on the Works and it shall be replaced with the minimum of delay at Supplier's cost.

16.6 Supplier shall not permit any person to visit the Site whose presence is not necessary for the performance of the Works without the prior written consent of the Buyer.

## **19. Site Responsibilities**

19.1 Supplier is deemed to have understood the nature and extent of the Works and to have visited the Site and shall make no claim founded on any failure to have done so. Buyer shall, on request of Supplier, procure and/or grant such access as may be reasonable for this purpose.

19.2 The Works shall commence upon notice being given by Buyer and Buyer from time to time thereafter shall provide access to so much of the Site as is necessary for the performance of the Works, but such access shall not be exclusive to Supplier and it shall, as directed by Buyer, co-operate fully with all others working at and/or on the Site including, without limitation, Buyer, its servants, agents and representatives to and afford them all reasonable facilities so to do.

19.3 Supplier shall make no delivery nor commence work on Site before advising details thereof to and obtaining the consent of Buyer.

19.4 No work shall be covered or hidden until approved by Buyer and such approval shall not be unreasonably delayed.

19.5 Explosives shall not be used without the prior written consent of Buyer.

19.6 Burning shall not be carried out without the prior written consent of the Buyer.

19.7 All goods and/or Materials delivered to the Site shall be clearly marked with Supplier's name together with such other markings as may be required by Buyer. These references shall also appear on all consignment and/or delivery notes. Supplier shall be responsible for receiving and off-loading all such deliveries to the Site, for storage as directed by Buyer, other than those arising in relation to any other contractor employed by Buyer.

19.8 Supplier shall remove and dispose of in accordance with all applicable law all rubbish promptly as the Works proceed unless otherwise instructed by Buyer.

19.9 On the completion of the Works Supplier shall remove from the Site all constructional plant, accommodation, rubbish and temporary works of every kind, and leave the Site and the Works in a clean and tidy condition to the satisfaction of Buyer.

## **20. Extraordinary Traffic**

20.1 Supplier shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being subjected to extraordinary traffic within the meaning of any Act of Parliament or other Statutory Instrument and any statutory modification or re-enactment thereof by any traffic of Supplier or its subcontractors. In particular Supplier shall select routes and use vehicles and restrict and distribute loads so that any such extraordinary traffic arising from the mobilisation/demobilisation, or the carrying out of the Works or part thereof, or constructional plant to and from the Site shall be limited as far as is reasonably possible and so that no unnecessary damage may be caused to such highways and bridges.

20.2 Unless otherwise provided for in the Contract, Supplier shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any highways communicating with the Site to facilitate the mobilisation/demobilisation, or the carrying out of the Works or any part thereof, or constructional plant, arising out of or necessary for the execution of the Works, and Supplier shall indemnify Buyer against all claims for damage to any highway or bridge caused by such movement including, without limitation, such claims as may be made by any competent authority directly against Buyer pursuant to any Act of Parliament or other statutory instrument and any statutory modification or re-enactment thereof.

20.3 If, notwithstanding clause 20.1 any damage shall occur to any bridge or highway arising from the mobilisation/demobilisation, or the carrying out of the Works or any part thereof or the movement of any constructional plant, Supplier shall notify Buyer as soon as it becomes aware of such damage or receives any notification of a claim.

## **21. Supplier's Superintendence**

21.1 Supplier shall ensure that it always has a competent supervisor on the Site and any instruction given to him or her shall be deemed to have been given to Supplier.

## **22. Suspension of the Works**

Supplier shall suspend the whole of the Works or any part thereof if instructed to do so in writing by Buyer on 5 days' notice from Buyer. Any reasonable additional cost proved by Supplier to have arisen from such suspension shall be reimbursed by Buyer.

## **23. Payments to Site Labour**

23.1 Supplier and its subcontractors (if any) unless otherwise notified shall pay their respective employees on the Site the rates of wages, and observe hours and conditions of working recognised by the national agreements for the industries or trades applicable to Supplier's work.

23.2 In the absence of such agreements or notified instructions, Supplier and its subcontractors (if any) shall observe rates and conditions approved in advance in writing by Buyer.

23.3 Bonus and other payments outside those defined in clause 23.1 shall only be made in accordance with principles agreed in advance in writing with Buyer.



23.4 The normal working week (including overtime) shall be that agreed with Buyer as recorded in the Contract.

23.5 Upon Buyer approving the arrangements covered in clauses 23.2, 23.3 and 23.4 Supplier and its subcontractors (if any) shall not thereafter introduce or commence to negotiate any changes to those arrangements without the written consent of Buyer. Notice shall be given to Buyer of any changes in national agreements referred to in clause 23.1 affecting those arrangements.

#### **24. Force Majeure**

24.1 Neither party shall be liable to the other for default or delay caused by Force Majeure.

24.2 If Supplier should be delayed in the completion of the performance of its obligations under the Contract by reason of any Force Majeure, the time within which the Works are to be carried out shall be extended by the period of such delay provided that Supplier has used all reasonable endeavours to mitigate the severity of the Force Majeure. No extra payment shall be made by Buyer to Supplier for any expenses incurred by Supplier by reason of any such delay over and above those provided in the Contract .

24.3 Shortage of labour, material or utilities, or delays by subcontractors, shall not by themselves constitute Force Majeure unless they are caused by circumstances, which are Force Majeure circumstances within the meaning of this condition.

24.4 Costs arising from Force Majeure circumstances shall be borne by the party incurring such costs.

24.5 No delay on the part of any official authorities will be considered as a case of Force Majeure.

#### **25. Confidentiality**

25.1 As used herein, 'Confidential Information' shall mean and encompass any and all information, know-how and data, whether technical or non-technical, which is disclosed in any way, or by any means disclosed by either party to the other in the course of, as a result of, or in connection with the Contract, whether or not specifically marked confidential.

25.2 Except as otherwise agreed in writing by the other party, each party shall keep confidential and prevent the disclosure to or use by others of Confidential Information, except on a confidential basis to such of its employees, suppliers and subcontractors who need such Confidential Information in order to enable that party to properly perform the Contract and who sign confidentiality agreements obliging them at least to the same extent as that party is obliged under this provision, and each party shall not use or permit to be used Confidential Information for any purpose other than for the effective performance of its obligations under the Contract.

25.3 Supplier shall not mention Buyer's name in connection with the Contract, disclose the existence of the Contract or any material matter therein or take photographs on the Site without Buyer's prior written consent.

#### **26. Intellectual Property**

26.1 Supplier shall hold harmless and indemnify Buyer from and against claims, damages, judgments, expenses and loss (including legal costs and the cost of defending any claim on a full indemnity basis) arising from infringement or alleged infringement of any patent, copyright or trademark, by any unit of Work or Equipment/Materials (or any part thereof) and/or arising from the use by Buyer of the Work or Equipment/Materials, and Supplier shall defend and settle at its sole expense any action or proceeding brought against the Buyer or Buyer's customer for such infringement, provided that Supplier is notified in writing of the commencement of such action or proceeding and provided further that Buyer shall not settle or compromise any such action or proceeding without the prior written consent of Supplier.

26.2 The provisions of 26.1 shall not apply to any infringement caused by Specifications furnished by Buyer.

26.3 If Supplier or its employees or agents creates any intellectual property pursuant to a commission from Buyer (whether to fulfil their obligations under a Contract or otherwise), any intellectual property rights created shall vest absolutely in Buyer and Supplier shall do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may be required from time to time by Buyer in order to give full effect to this condition.

26.4 The property, copyright, design rights and other intellectual property rights in specifications, plans, drawings, patterns or designs supplied by Buyer to Supplier in connection with the Contract shall vest in and remain with Buyer. The Supplier is licensed to make, at its own expense, only such number of copies as may be required for the purposes of the Contract. All such copies shall be handed over to Buyer on demand.

#### **27. Termination for Convenience**

Buyer may at any time terminate the Contract in whole or in part, whether or not Supplier is in default, by giving 10 days' written notice to Supplier. Buyer and Supplier shall negotiate an equitable amount to be paid by Buyer to Supplier to compensate Supplier for the demonstrable actual costs incurred by Supplier as a result of Buyer's termination under this provision.

## **28. Termination for Default**

28.1 If Supplier should be or become financially insolvent, make a general assignment for the benefit of creditors, have any proceeding brought seeking the appointment of an administrative receiver or similar officer of the court with respect to Supplier's business, disregard Laws, ordinances, governmental rules or regulations or instructions from Buyer which are consistent with the Contract as evidenced by written notices from Buyer to Supplier, or should fail to perform or fulfil, at the time and/or in the manner herein provided, any obligation or condition required to be performed or fulfilled by Supplier hereunder, including failure to supply the quality or quantity desired and failure to keep the specified delivery time, and such failure is not excused under the Force Majeure provision or is not remedied as soon as practicable but in any event within fifteen (15) days after Supplier's receipt of written notice from Buyer specifying such failure, Buyer shall have the right to terminate the Contract in whole or in part (in its absolute discretion), with immediate effect, by written notification given at any time after such event. If Buyer gives such notice to Supplier it shall be lawful for Buyer its employees or agents to enter the premises where Works are situated and take possession of the same and any materials the property in which has passed to or is vested in Buyer.

28.2 If Buyer has reason to believe that Supplier will not be able to perform or fulfil, at any time and/or in the manner herein provided, any obligation or condition required to be performed or fulfilled by Supplier hereunder, including failure to supply the quality or quantity desired or failure to keep the specified delivery time and such failure is not excused under the Force Majeure provision and Supplier either disagrees with or remains silent about Buyer's contention, Buyer shall have the right to appoint, at its sole option, an independent expert suitably qualified in Buyer's opinion to determine the matter in dispute to assess whether or not Buyer's contention is correct. If the event that the Buyer's contention is confirmed in writing by said independent expert, then Buyer shall have the right to terminate the Contract in whole or in part (in its absolute discretion), with immediate effect, by written notification to Supplier given at any time after such event, in which case Supplier shall pay the costs and expenses related to the independent expert's audit.

28.3 If the independent expert confirms in writing to Buyer that Supplier will be able to meet all its obligations in the manner and within the time as required under the Contract, then the costs and expenses related to the independent expert's audit will be borne by Buyer.

28.4 In the event of Buyer's termination under this provision, Supplier will not be entitled to receive from Buyer any payment and Supplier shall refund to Buyer all amounts previously paid by Buyer to Supplier under the Contract. Supplier shall furthermore indemnify Buyer against all claims, liabilities, losses, damages and expenses of every nature incurred by Buyer as a result of Supplier's default.

28.5 If a delay caused by Force Majeure persists for a period of 4 weeks or more, the party not directly affected by the Force Majeure may, by notice in writing, terminate the Contract with immediate effect, and no liability shall by reason of such termination attach to either party save in respect of any rights which have accrued up to that date other than in respect of the Force Majeure.

## **29. Assignment**

29.1 Supplier may not assign or otherwise transfer all or any of its rights and obligations under the Contract to any third party without the prior written consent of Buyer.

29.2 Supplier will notify Buyer by registered mail thirty (30) days in advance:

- (i) should it wish to make any change to its legal identity or status;
- (ii) in the event of any proposed change of control of Supplier;
- (iii) should it make any voluntary arrangement with its creditors;
- (iv) should it be declared bankrupt;
- (v) should it be subject to an administration order or go into liquidation (other than for the purpose of amalgamation or reconstruction);
- (vi) should an encumbrancer take possession;
- (vii) should a receiver be appointed over any of the property or assets of the Supplier; or
- (viii) should the Supplier cease or threaten to cease to carry on business.

29.3 Buyer may assign or otherwise transfer all or any of its rights and obligations under the Contract to any third party without the consent of Supplier.

## **30. Dispute Resolution**

30.1 If any dispute or difference between Buyer and Supplier arises in connection with the Contract, the parties shall attempt to resolve such dispute or difference in good faith.

30.2 If the parties are unable to resolve such dispute or difference within 21 days of initial discussions between the parties taking place, the matter shall be referred to senior representatives of each of the parties to the dispute who

have the authority to settle the dispute who shall, within 14 days of a written request from one party to the other, meet in an effort to resolve such dispute or difference and subject to condition 30.3 the parties shall not have recourse to legal proceedings.

30.3 Unless otherwise stated, if the dispute or difference is not resolved in accordance with condition 30.1 above or it is resolved by the parties or, as the case may be, the prohibition on referring the dispute to legal proceedings under 30.2 shall cease.

### **31. Remedies**

The rights and remedies of Buyer (including indemnifications payable by Supplier) set out in the Contract are in addition to and shall not be exclusive of or prejudicial to any other rights or remedies of Buyer at Law or in equity on account of Supplier's failure to perform its obligations under the Contract or otherwise.

### **32. Representations**

Supplier represents to Buyer and shall ensure that:

- a) the Works and all related Equipment/Materials will operate consistently, predictably and accurately, without interruption or manual intervention, and in accordance with all the requirements of the Contract, including without limitation all Specifications and/or functionality and performance requirements, during each such time period, and the transitions between them, in relation to dates it encounters or processes;
- b) all date recognition and processing by the Equipment/Materials will include the four-digit year format and will correctly recognise and process the date of February 29 and any related data, during leap-year; and
- c) all date sorting by the Equipment/Materials that includes a 'year category' shall be done based on the four-digit year format.

### **33. No Disclaimers**

The warranties set out above shall not be subject to any disclaimer or exclusion or limitation of Supplier's liability under the Contract.

### **34. General**

34.1 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing, and sent to the other party at its registered office or principal place of business or such other address as may at the relevant time have been duly notified to the party giving the notice by hand or pre-paid first class post and such notice shall be deemed to have been served an actual receipt (if delivered by hand) or 48 hours after posting (if sent by pre paid first class post).

34.2 No variation to the Contract shall be binding unless agreed in writing between Buyer and Supplier.

34.3 No waiver by Buyer of any breach of any term and/or Condition by Supplier shall be deemed to be a waiver of any subsequent breach of the same or any other term and/or Condition.

34.4 Buyer may offset any amount owing to it from Supplier (either under the Contract or any other contract between the parties) against any amount owed to Supplier by Buyer.

34.5 If any Condition is held by a competent authority to be invalid or unenforceable in whole or in part, the remaining Conditions and the part of the Condition not so affected shall continue in force.

34.6 A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce a term of this Contract but this shall not affect any right or remedy of a third party which exists or may exist apart from that Act.

34.7 The Contract shall be governed by the Laws of England and Supplier submits exclusively to the jurisdiction of the English Courts.