

**PART I - TERMS OF SUPPLY FOR GOODS AND SERVICES**  
**THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 10**  
**1 DEFINITIONS, INTERPRETATION AND GENERAL**

1.1 These terms and conditions shall apply to the supply of Goods and/or Services by the Company to a Customer.

1.2 In these Terms:

(a) **'Business Day'** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business

(b) **'Company'** means Total Project Management Group Ltd;

(c) **'Customer'** means the individual, firm, company or other party with whom the Company contracts;

(d) **'Consents'** means any and all permissions, consents, conditions, restrictions, approvals, notices, and licences of the local authority or any third party necessary for and relevant to the performance and completion of the Services;

(e) **'Contract'** the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Terms;

(f) **'Contract Specification'** the description or specification of the Services provided in writing by the Company to the Customer;

(g) **'Goods'** any goods or other deliverables supplied to the Customer by the Company;

(h) **'International Supply Contract'** means such a contract as is described in section 26(3) of the Unfair Contract Terms Act 1977;

(i) **'Manufacturer's Warranties'** the warranties given by any third-party manufacturer in relation to Goods supplied by the Company;

(j) **'Order'** the Customer's order for the supply of Goods and/or Services as set out in the Customer's purchase order;

(k) **'Qualifying Goods'** means supply of Goods and any associated Services by the Company, where the relevant Goods have been designed and manufactured by the Company:

(l) **'Services'** the services, including the supply of any associated Goods, supplied by the Company to the Customer as set out in the Contract Specification;

(m) **'Site'** means the location where the Services are to be performed or Goods supplied as set out in the Contract Specification;

(n) **'Site Standards'** means the required standards, access requirements and facilities to be made available at the Site for use by the Company and which are set out in the Contract Specification;

(o) **'Terms'** means the terms of sale set out or referred to in the Company's acknowledgment of Order;

(p) **'Third Party Specification'** has the meaning given in clause 3;

(q) **'Warranty Period'** means the period commencing on completion of the supply of the Qualifying Goods and concluding (as applicable) on a date:

(i) 3 months from the supply date in the case of

rectifiers and capacitors;

(ii) 18 months from the supply date in the case of switchgear;

(iii) 24 months from the supply date in the case of capacitors; and

(iv) 12 months from the supply date in the case of any other Qualifying Goods; and

(r) **'Working Hours'** means 8.00am to 4.30pm, excluding Saturdays, Sundays, and Bank Holidays.

1.3 The headings in these Terms are for convenience only and are not for the purpose of interpretation.

1.4 Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.5 Failure by the Company to enforce strict compliance with these Terms by the Customer will not constitute a waiver of any of the provisions of these Terms.

1.6 References to clauses are to clauses of these Terms, unless stated otherwise.

**2 CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS**

2.1 No Order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such Order is accepted in writing by the Company. Any contract made between the Company and the Customer shall be subject to these Terms and, save as set out in these Terms, no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them. Any such term representation on contract will bind the Company only if in writing and signed by a director of the Company.

2.2 Unless otherwise agreed in writing by the Company (which shall include anything contained in any quotation delivered by the Company to the Customer) these Terms shall apply to the exclusion of any terms stipulated or referred to by the Customer in its Order (whether by written purchase order or otherwise) or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.

2.3 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate and that the Customer gives the Company any necessary information relating to the Goods and Services within a sufficient

time to enable the Company duly to perform its obligations in connection with this Contract.

2.4 Where the Company has not given a written acknowledgment of Order, these Terms will nonetheless apply to the Contract provided that the Customer has had prior notice of them.

2.5 Where the Customer does not formally accept a quotation from the Company but the Customer continues to instruct the Company to supply the goods or services, the Customer's continued instructions will be deemed to be acceptance of these Terms.

2.6 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or website are produced for the sole purpose of giving an approximate idea of the goods and services described in them. They shall not form part of the contract or have any contractual force.

2.7 The Company reserves the right to correct any clerical or typographical error made by its employees (whether in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued) at any time without any liability on the part of the Company.

2.8 For the avoidance of doubt, except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms shall be effective unless it is agreed in writing and signed by a director of the Company.

2.9 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

### **3 SPECIFICATION, INSTRUCTION OR DESIGN**

3.1 The Contract shall include only such Goods and Services as described in the Contract Specification or the Order (if subsequently accepted by the Company in accordance with clause 2.1). Unless specifically agreed in writing, all drawings dimensions and weights submitted by the Company shall be taken to be approximate and shall not form part of the Contract Specification. The Company reserves the right to make any changes in the Specification which are required for the Goods or Services to conform with any applicable statutory or regulatory or safety requirements or any other changes which the Company may reasonably require, provided such changes do not substantially affect the quality or performance of the Goods.

3.2 If Services are supplied in accordance with a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer ("**Third Party Specification**") then:

(a) the suitability and accuracy of that Third Party Specification will be the Customer's responsibility;

(b) the Company reserves the right to amend any such Third Party Specification if required by any applicable statutory or regulatory requirements;

(c) the Customer will indemnify the Company against all infringement or alleged infringement of any third party's intellectual property rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country in connection with such Third Party Specification; and  
(d) the Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the goods being made or the services being provided to such Third Party Specification.

(e) the Customer undertakes to ensure that all necessary permissions or consents (including those of third parties) are obtained in order to permit the Company to supply Services in accordance with the relevant Third Party Specification.

(f) Clauses 3.2 shall survive termination of the Contract.

### **4 CUSTOMER'S REPRESENTATIONS**

4.1 The Customer shall provide the Company with adequate instructions and accurate information regarding the Goods and/or Services it wishes to purchase from the Company. If the Company suffers any delay caused by the Customer' inadequate instructions or inaccurate information, or delay caused by the Customer's failure to give the Company adequate instructions or accurate information, the supply of Goods and/or Services shall be extended for such period as the Company may reasonably require.

4.2 Where the Contract requires the provision of Goods and/or Services at the Customer's premises, the Customer hereby grants a licence to the Company, its employees and subcontractors (together with appropriate transport) to enter upon the Customer's premises for the purpose of supplying the Goods and/or Services. Except where otherwise stated in the Specification or agreed in writing, the Customer shall provide the Company at the Customer's own cost and expense with a suitable water and power supply, toilet and washing facilities and storage space on Site at such times and in such a manner as the Company will from time to time require. The Customer shall ensure that its premises and all plant and equipment which is used by the Company's employees or sub-contractors or with which they may come into contact or to which they may be exposed complies with the Health and Safety at Work Act 1974, all relevant statutory provisions (as defined in that Act) and all other obligations imposed by statute and common law relating to health and safety and will indemnify the Company against any loss, damage or expense in respect of any failure by the Customer to comply with its obligations.

### **5 QUOTATIONS AND PRICES**

5.1 A quotation by the Company is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before acceptance of the Order by the Company in accordance with clause 2.1.

5.2 Unless otherwise expressly agreed in writing, the price set out in an Order has been calculated on condition that the Services are capable of being performed to an agreed programme with uninterrupted access to the Site during the Working Hours and that the Site conforms to the required Site Standards. In the event the Customer requires performance of the Services outside Working Hours or the Site does not conform to the Site Standards, any additional costs or expenses incurred by the Company (including but not restricted to the supply of any necessary services, waiting and travelling time) shall be paid by the Customer to the Company within 30 days of the date of the Company's invoice or demand for payment.

5.3 Any Goods and Services requested in addition to those identified in the Contract Specification will be chargeable for in addition to the price stated in the Contract as will the costs of all tests, alterations, additions and all other work undertaken at the request of the Customer but not identified in the Contract Specification. Those additional costs will be calculated by the Company having regard to the rates and prices set out in its quotation or in the Specification or as otherwise agreed with the Customer and will be paid for by the Customer within 30 days from the date of the Company's invoice or demand for payment.

5.4 Unless otherwise agreed in writing, the Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing, working on or supplying any goods or services (including, but not limited to, any such increase arising from any error or inadequacy or change to any Third Party Specification any delay caused by any instructions of the Customer or a third party or failure of the Customer or third party's failure to give the Company adequate or accurate information or instructions or any change in labour costs, taxes or insurance premiums) and such increased prices ruling at the date of supply of Goods and/or Services by the Company shall be substituted for the previous contract price.

5.5 All prices are quoted are exclusive of VAT and the Customer shall pay any and all taxes, duties and other governmental charges payable in respect of the Goods and/or Services.

## **6 DELIVERY OF GOODS**

6.1 Where the Company supplies Goods as part of the Services, then in all such Contracts unless otherwise specified in writing by the Company in the Contract Specification, the Company shall deliver the Goods to the location set out in the agreed Order or to such other location as the parties may agree at any time after the Company notifies the Customer that the Goods are ready.

6.2 If the contract requires the Customer to take delivery of the Goods at the Company's premises or such other location as may be specified by the Company then:  
(a) for the purposes of this sub-clause 'the Goods' shall

mean the whole or any instalment of the Goods and 'the collection date' shall mean the date on which the Goods are or will be ready for delivery; and  
(b) the Company shall notify the Customer of the collection date and the Customer shall take delivery of the Goods within 5 days of the collection date.

6.3 If the Customer shall for any reason fail to take or accept delivery of the Goods on the agreed date or dates, delays in doing so or fails to provide a delivery address pursuant to an Order then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract, without prejudice to any other rights of the Company (whether under these Standard Terms or otherwise):  
(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Customer that the Goods were ready; and  
(b) the Company shall be entitled to make an additional charge in respect of any delay caused by such failure and for any costs incurred as a result of repeated delivery necessitated by such failure.

6.4 Should the Company be delayed in or prevented from delivering the Goods due to a failure of the Company's (or its sub-contractor's) computerised business or due to any cause beyond the reasonable control of the Company, the Company shall be at liberty to terminate the Order placed by the Customer without incurring any liability for any loss or damage arising from such termination (but without prejudice in any such case to rights accrued to the Company in respect of deliveries already made).

6.5 While the Company will use its reasonable endeavours to deliver the Goods by any date or within any period agreed upon, such dates and periods are estimates only, given in good faith, and the Company will not be liable for any failure to deliver by or within such a period nor shall delays in the delivery of an Order entitle the Customer to refuse to take delivery of an Order. Time for delivery shall not be of the essence of the Contract. The Company shall be entitled to defer delivery until any monies due from the Customer have been received.

6.6 Subject to any agreement in writing by the Company, the risk in the Goods which the Company agrees to supply shall pass to the Customer on the date such Goods are delivered or made available for collection (as the case may be). Title in the Goods shall pass when the Customer pays for the Goods in accordance with clause 8.

6.7 Unless specifically stated in the Contract Specification, the price of the Goods is exclusive of the costs and charges of inspection, packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

6.8 If the Contract is an International Supply Contract and the parties have expressly agreed in writing to adopt Incoterms for delivery, it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between the Incoterms and any express term of the Contract (including these Terms) the latter shall prevail.

6.9 The Customer acknowledges that Goods for delivery outside of the United Kingdom may be subject to United Kingdom export controls as well as import controls at their destination. The Customer will be responsible for ensuring that all necessary clearances and licences are obtained prior to the dispatch dates for the Goods to be supplied and for obtaining all necessary documentation and lodging the same with the Company prior to despatch of the Goods.

## **7 SUPPLY OF THE SERVICES**

7.1 The Company shall provide the Goods and/or Services to the Customer in accordance with the Contract Specification in all material respects.

7.2 The Company shall use reasonable endeavours to meet any performance dates for the Services specified and agreed in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the services. The Company shall be entitled to defer provision of the services until any monies due from the Customer have been received.

7.3 The Company shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the quality of the Goods and/or Services, and the Company shall notify the Customer in any such event.

7.4 The Company shall provide the Goods and/or Services using reasonable skill and care.

7.5 If the Customer shall for any reason prevent (or allow any other person to prevent) the Company (or its subcontractors) from supplying the Goods and/or Services (or any part thereof) on the agreed date or dates except where such prevention is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract, without prejudice to any other rights of the Company whether under these Terms or otherwise, the Company shall be entitled to make an additional charge in respect of any costs incurred as a result of repeated provision of the Services necessitated by that failure.

7.6 The Customer shall provide all sufficient and accurate information requested by the Company in a timely fashion to enable the proper supply of the Goods and/or Services by the Company so as not to delay or disrupt the Company in performing its obligations under the Contract. The Company shall be entitled to rely on the accuracy and sufficiency of all information provided to it by the Customer, and to make assumptions on the basis

of such information, when supplying the Goods and supply of Services.

7.7 The Customer is responsible for ensuring that the Site complies with the Site Standards at the time of delivery of the Goods and performance of the supply of Services.

7.8 Except where otherwise stated in the Contract Specification, the Customer must obtain at its own cost all Consents required to enable the Company to carry out and complete the supply Goods and/or Services and the Customer must comply with any conditions contained in the Consents relating to the Goods and the supply of Services or the Site.

7.9 The Customer agrees to have due regard to all information supplied by the Company relating to the use of the Goods necessary to ensure the Goods will be safe and do not pose a risk to the health and/or safety of any person at all times when the Goods are being set, used, cleaned or maintained by any person.

7.10 The Customer agrees to indemnify the Company in respect of any and all claims, losses, costs, and expenses suffered or incurred by the Company arising from any act, omission or default of the Customer (including any breach by the Customer of any of its obligations under this Contract).

## **8 PAYMENT**

8.1 Subject to clause 8.2, payment to the Company shall be made by the Customer in full in Pounds Sterling before any Services are rendered (or, when applicable, before any Goods are delivered). Once payment has been received in full, the Company shall provide an estimated date for the commencement of the supply of the Services (or where applicable, an estimated delivery date for dispatch of the Goods). The parties hereby agree that the Company's obligations under these Terms are wholly conditional upon such payment being made.

8.2 The Company may in its sole discretion, designate to the Customer approved credit terms and in any such case (unless otherwise specified in writing by the Company) the Customer shall pay each invoice submitted by the Company:

- (a) within 30 days of the date of the invoice notwithstanding that property to the goods has not passed to the Customer; and
- (b) in full, in pounds sterling and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.

8.3 In the event of the provision of the Services taking longer than one (1) month to complete, the Company reserves the right to render interim accounts on a monthly basis (which are payable on the same terms as set out in clauses 8.2 (a) and 8.2(b)).

8.4 Time of payment shall be of the essence of the contract. Without prejudice to any other rights it may have the Company reserved the right to charge interest

at Bank of Scotland base rate plus 4% or at the rate specified from time to time under the provisions of Late Payment of Commercial Debts (Interest) Act 1988 (whichever is the higher) on all overdue accounts and for the purposes of clauses 9 and 12 the full purchase price for the Goods and/or Services shall include all interest payable hereunder.

8.5 The Customer shall not in any circumstances be entitled to withhold payment for monies due whether as a means of setting of monies owed to it by the Company or otherwise. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer

8.6 The Customer shall pay to the Company an amount equal to any costs and expenses incurred (on a full indemnity basis) by the Company in recovering from the Customer any monies due and payable by the Customer to the Company and for the purposes of clauses 9 and 12 the full purchase price of the Goods and/or Services shall include all costs and expenses payable hereunder.

#### **9 FAILURE TO PAY, CANCELLATION OR DEFERMENT**

9.1 For the purposes of this clause 9 “an Intervening Event” shall be any of the following:

- (a) failure by the Customer to make any payment when it becomes due;
- (b) breach by the Customer of any of the Terms of the Contract;
- (c) the Customer’s proposal for or entry into any composition or arrangement with creditors;
- (d) the presentation against the Customer of any petition for a bankruptcy order, administration order, winding-up order or similar process;
- (e) the appointment of an administrative receiver or receiver in respect of the business of any part of the assets of the Customer;
- (f) the Company forming the reasonable opinion that the Customer has become or is likely in the immediate future to become unable to pay his, her or its debts (adopting, in the case of a company, the definition of that term set out in section 123 of the Insolvency Act 1986); and
- (g) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(b) (inclusive).

9.2 If there shall be an Intervening Event, the Company may within a reasonable time thereafter, defer or cancel any further provision of Services, stop any Goods in transit and treat the Contract as determined but without prejudice to its rights to the full purchase price for Services rendered or Goods supplied (which shall

become immediately due) and damages for any loss suffered in consequence of such determination.

9.3 Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting in the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and signed by a director of the Company.

9.4 Any costs or expenses incurred by the Company due to suspension or deferment of any Order by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery of any goods or the performance of any services will be payable by the Customer forthwith on demand.

9.5 Without prejudice to the Company’s other rights under this Clause 10, the Company shall be entitled to suspend the Contract for a period of up to sixty days in the event an Intervening Event occurs. If the period of suspension reaches sixty days the Company shall either end the suspension or terminate the Contract.

#### **10 LIMITATION OF LIABILITY**

10.1 Nothing in these Terms shall limit or exclude the Company’s liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;

10.2 Subject to Clause 10.1:

- (a) the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, goodwill or business opportunity or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Company shall bear no liability or any responsibility

for any loss, or damage of any nature due to or arising for any cause beyond its reasonable control

- (c) the Company’s total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall in no circumstances exceed price paid for the Goods and/or Services under the agreed Order.

10.3 Any and all liability of the Company under or in connection with this Contract shall cease with the expiry of the Warranty Period specified in Clause 11.2.

10.4 The limitations and exclusions of liability applying to the contractor under this Contract shall likewise apply to the Company’s directors, personnel, sub-contractors and sub suppliers of any tier and their personnel.

#### **11 WARRANTY**

11.1 In relation to Goods that are not Qualifying Goods the Company shall as far as it is able pass on to the Customer the benefits of any Manufacturer's Warranties

11.2 In relation to Qualifying Goods only and subject always to Clauses 11.3 and 11.4, the Company warrants that on completion of the supply of the Qualifying Goods and for the Warranty Period the Qualifying Goods shall be free from material defects in materials and workmanship. The Company shall at its sole discretion repair or replace or pay reasonable costs for the repair or replacement of the defective Qualifying Goods which the Company's examination confirms are defective in accordance with this Clause 11.

11.3 The parties acknowledge and agree that:

- (a) the Customer shall make a full inspection of the Qualifying Goods upon completion
- (b) the Customer shall notify the Company with a written notice containing full particulars of any defects and the circumstances in which defects occurred, within 14 days of delivery in the case of defects apparent upon inspection and in the case of defects not so apparent provide such notification within a reasonable time of discovery (in any event within the Warranty Period); and
- (c) the Customer shall return the defective Goods to the Company or its authorised service depot (as directed by the Company) and pay all transportation charges, duties and taxes associated with return and subsequent redelivery of the Goods to the Customer; or
- (d) if, at the Company's election, the Company arranged for a technician to visit the Customer's installation to repair or replace the defective Qualifying Goods, the Customer shall bear the expense of all transportation charged for the technician and his equipment, including any applicable duties and taxes, accommodation and living expenses and normal charges for the technician's time while travelling (save that the Customer shall not be liable for any charge in respect of the technician's time on site actually engaged in carrying out the repair or replacement of such defective Qualifying Goods).
- (e) the Customer shall provide the Company with working access to examine the Qualifying Goods without costs to the Company; and
- (f) the Customer shall take all appropriate steps to mitigate damage caused by the defective Qualifying Goods; and
- (g) the Customer shall provide the Company with adequate time and opportunity in which to repair or replace any part of the defective Qualifying Goods; and

11.4 The Company shall not be liable for the defective Qualifying Goods if:

- (a) the defect arises because the Customer failed to follow the Company's oral or written instructions as to use or maintenance of the Qualifying Goods or (if there are none) good trade practice;
- (b) the defect arises as a result of the Company following any Third Party Specification;
- (c) the Customer or a third party alters or repairs the product of the Qualifying Goods;
- (d) the defect is due to circumstances which existed before the transfer of risk occurred and is not as a result of fair wear and tear,

- (e) the product of the Qualifying Goods have been subjected to improper use, accident or improper maintenance by the Customer or a third party;
- (f) the Customer prevents the Company from remedying the defect.

(g) such Goods are not Qualifying Goods, in which instance, the Company's only obligation shall be to, insofar as it is able, to pass on the benefit of the Manufacturer's Warranty in accordance with clause 11.1.

11.5 The repair or replacement of defective goods during the Warranty Period in accordance with Clause 11.2 shall not as regards to such goods extend the period of warranty therein provided.

11.6 The Customer's remedies under this clause shall be in place and to the exclusion of any other remedy to the Customer in relation to the defects (including latent defects) in the Services and any Goods including damage arising therefrom (whether the claims are based in contract, tort, negligence, indemnity or any other legal theory whatsoever). Any and all other warranties, terms and conditions, express or implied which may have otherwise applied in relation to such matter are excluded to the extent allowed under law.

11.7 Where the Company repairs or re-supplies Qualifying Goods in accordance with the foregoing provisions of this Clause 11 or otherwise, any time specified for delivery shall be extended for such period as the Company may reasonably require.

## 12 RETENTION OF TITLE

12.1 Save in the case of any circumstances where the parties expressly agree in writing to adopt incoterms in an International Supply Contract, and subject to any agreement in writing by the Company, the risk in Goods shall pass to the Customer on the relevant Delivery Date.

12.2 The following provisions shall, subject to clause 12.3 apply to all Contracts and to all Goods which under the Contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliances by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice limit or extinguish the Company's rights under this clause.

- (a) Upon delivery of the Goods the Customer shall hold the Goods solely as bailee for the Company and the Goods shall remain the property of the Company until such time as the Customer shall have paid to the Company and the Company shall have cleared funds for the full purchase price of all Goods, whether under the Contract or otherwise. Until this time the Company shall be entitled to recover the Goods or any part thereof and, for the purpose of exercising such rights, the Customer hereby grants a licence to the Company, its employees and agents (together with appropriate transport) to enter upon the Customer's premises and any other location where the Goods are situated and remove the Goods.

(b) The Customer is hereby licensed to agree to sell on the Goods on condition that the Customer shall inform its customer of the provisions of sub-clauses 12.2(a). The Customer acts as the Company's bailee in respect of any such sale and shall immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 8 remit to the Company the full purchase price of the Goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

(c) The Customer shall maintain an appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to the Customer. In the event of any loss or damage occurring while the Goods remain the property of the Company, the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

(d) The licences granted under this clause 12.2 shall be terminable forthwith at any time upon notice by the Company to the Customer.

12.3 Where the parties expressly agree in writing to adopt incoterms for an International Supply Contract, property in the Goods shall pass to the Customer in accordance with the provision of the relevant incoterm

### **13 INTELLECTUAL PROPERTY**

Unless otherwise agreed in writing by the Company any and all intellectual property rights in the Services, any Goods and in any tooling and in any drawings of other documentation supplied or produced by the Company shall vest in and remain vested in the Company, the Customer agrees to execute any documents the Company deems necessary to give effect to this clause. All drawings, plans, specifications and method statements and related documents are to be returned to the Company immediately on written request. The Customer is not permitted to use (except for the purposes set out in the Contract Specification or Order) or make copies of such documents without having first obtained the consent of the Company in writing.

### **14 TOOLING**

All tooling purchased or produced by the Company for the Contract shall be and remain the property of the Company unless otherwise agreed in writing, notwithstanding that the Customer may have made payment or part payment therefor.

### **15 CONFIDENTIALITY**

The Customer agrees that it and its employees and agents will keep confidential all drawings and designs supplied by the Company and will not use, copy or reproduce the same save as specifically authorised by the Company in writing.

### **16 TEST AND MARKING**

16.1 If the Company agrees to carry out any tests, certification or marking shall be provided in respect of the Goods it shall be entitled to charge therefor.

16.2 The Customer shall pay to the Company an amount equal to any costs payable to third parties in respect of any tests, independent design review or report carried out by that third party in respect of the goods at the request of the Customer together with an administration fee (equal to 10% of the third party costs) in respect of the Company procuring the same.

16.3 If the Company agrees that any tests shall be carried out in the presence of the Customer or his representative the Company shall notify the Customer of the date from which it is or will be ready to carry out such tests. The Customer undertakes that he or his representative will, by prior appointment, attend at the premises where the goods are situated within 3 days after such date for the purpose of witnessing such tests and agrees that in default of such attendance the Company may proceed with the tests in his absence and he shall be bound by the results thereof.

### **17 USE AND SAFE HANDLING**

The Customer warrants that it will pass on to all third parties to whom it may supply the goods or any of them all information as to the use and safe handling of such goods as may have been provided to the Customer by the Company.

### **18 LAW AND JURISDICTION**

The proper law of all Contracts shall be English law which shall govern in all respects the construction and effect of such Contracts and of these Terms. The Customer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English Courts.

### **19 FORCE MAJEURE**

19.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A 'Force Majeure Event' means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

19.2 Where the Company is delayed due to a Force Majeure Event in accordance with this Clause 20 any time specified for delivery of the goods or performance of the services shall be extended for such period as the Company may reasonably require.

#### **20 ASSIGNMENT**

20.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

21.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### **21 NOTICES**

21.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax.

21.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the registered address of the parties; if sent by prepaid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

21.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **22 SEVERANCE**

22.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

22.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **23 WAIVER**

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### **24 THIRD PARTIES**

A person who is not a party to the Contract shall not have any rights to enforce its terms save that the Contract shall be for the benefit and enforceable by any parent undertaking of the Company and any subsidiary undertaking of the Company or of any such parent undertaking.

**PART II – TERMS OF EQUIPMENT HIRE**  
**THE CUSTOMER’S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 12**  
**1 DEFINITIONS AND INTERPRETATION**

1.1 These terms and conditions shall apply to the hire of Equipment and provision of any ancillary Services by the Company to a Customer.

1.2 In these Hire Terms:

- (a) **‘Business Day’** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- (b) **‘Commencement Date’** the date that the Customer takes Delivery of the Equipment;
- (c) **‘Company’** means Total Project Management Group Ltd;
- (d) **‘Customer’** means the individual, firm, company or other party with whom the Company contracts;
- (e) **‘Delivery’** the transfer of physical possession of the Equipment to the Customer at the Site(s);
- (f) **‘Equipment’** the items of equipment specified in the Company’s confirmation of the Customer’s Order and/or (where applicable) the Specification;
- (g) **‘Hire Period’** the period of hire as set out in clause 5 of the Agreement;
- (h) **‘Hire Terms’** means these hire terms set out or referred to in the Company’s acknowledgment of Order
- (i) **‘Minimum Hire Period’** a period of two (2) weeks from the Commencement Date or such other period as shall be specified the Company’s confirmation of the Customer’s Order and/or (where applicable) the Specification;
- (j) **‘Normal Business Hours’** 8.00 am to 4.00 pm GMT on a Business Day;
- (k) **‘Services’** any services that are provided by the Company to the Customer that are ancillary to the hire of the Equipment as shall be specified the Company’s confirmation of the Customer’s Order and/or (where applicable) the Specification
- (l) **‘Site(s)’** the location(s) where the Equipment shall be delivered and located as specified in the Company’s confirmation of the Customer’s Order and/or (where applicable) the Specification;
- (m) **‘Specification’** the description or specification of the Equipment and any Services provided in writing by the Company to the Customer;
- (n) **‘Order’** the Customer’s order for the Hire of Equipment as set out in the Customer’s purchase order;
- (o) **‘Rental Payments’** the payments made by or on behalf of Customer for hire of the Equipment;
- (p) **‘Total Loss’** the Equipment is, in the Company’s reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

1.3 Clause headings shall not affect the interpretation of this Agreement.

1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate

legal personality) and that person’s legal and personal representatives, successors and permitted assigns.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.

1.9 A reference to **writing** or **written** includes faxes but not e-mail.

1.10 References to clauses are to the clauses of this Agreement.

1.11 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

**2 CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS**

2.1 The Order constitutes an offer by the Customer to hire Equipment in accordance with these Hire Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate and that the Customer gives the Company any necessary information relating to the Equipment and Services within a sufficient time to enable the Company duly to perform its obligations in connection with this Agreement.

2.2 No Order in pursuance of any quotation or otherwise shall be binding on the Company unless and until:

(a) such Order is accepted in writing by the Company when the Company confirms the Order has been accepted by sending an acknowledgement of the Customer’s Order to the email address provided by the Customer: or

(b) if earlier, the Company delivers Equipment to the Site. Any contract made between the Company and the Customer shall be subject to these Hire Terms and save as set out in these Hire Terms no representative or agent of the Company has authority to agree any terms

or make any representations inconsistent with them or to enter into any contract except on the basis of them. Any such term representation on contract will bind the Company only if in writing and signed by a director of the Company.

2.3 A quotation from the Company is not an offer. Quotations are valid for 30 days from issue and subject to revision or withdrawal at any time before acceptance of the Customer's order by the Company

2.4 Unless otherwise agreed in writing by the Company, these Hire Terms shall apply to the exclusion of any terms and conditions stipulated or referred to by the Customer in its order, acknowledgement or acceptance or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.

2.5 Where the Company has not given a written acknowledgment of Order, these Hire Terms will nonetheless apply to the Agreement provided that the Customer has had prior notice of them.

2.6 Where the Customer does not formally accept a quotation from the Company but the Customer continues to instruct the Company to deliver the Equipment to the Site, the Customer's continued instructions will be deemed to be acceptance of these Hire Terms

2.7 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or website are produced for the sole purpose of giving an approximate idea of the goods and services described in them. They shall not form part of the contract or have any contractual force.

2.8 The Company reserves the right to correct any clerical or typographical error made by its employees (whether in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued) at any time without any liability on the part of the Company.

2.9 For the avoidance of doubt, except as set out in these Hire Terms, no variation of the Agreement, including the introduction of any additional terms shall be effective unless it is agreed in writing and signed by a director of the Company.

2.10 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Agreement.

2.11 Any advice or recommendation given by the Company or its employees or agents to the Customer as to the storage, application or use of the Equipment which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk and the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such

unconfirmed representation (unless such representation is made fraudulently).

### 3 SPECIFICATION

3.1 The Agreement shall include only such Equipment as described in the Company's confirmation of the Customer's Order and/or (where applicable) the Specification. Unless specifically agreed in writing, all drawings dimensions and weights submitted by the Company shall be taken to be approximate and shall not form part of the Specification.

3.2 The Company reserves the right to make any changes in the Specification which are required for the hire of the Equipment to conform with any applicable statutory or regulatory or safety requirements or any other changes which the Company may reasonably require, provided such changes do not substantially affect the quality or performance of the Equipment.

3.3 If the Company agrees in writing to hire the Equipment in accordance with any documents or information provided by the Customer ('**Third Party Specification**') then:

- (a) the suitability and accuracy of that Third Party Specification will be the Customer's responsibility;
- (b) the Company reserves the right to amend any such Third Party Specification if required by any applicable statutory or regulatory requirements;
- (c) the Customer will indemnify the Company against all infringement or alleged infringement of any third party's intellectual property rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country in connection with such Third Party Specification;
- (d) the Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the goods being made or the services being provided to such Third Party Specification; and
- (e) the Customer undertakes to ensure that all necessary permissions or consents (including those of third parties) are obtained in order to permit the Company to supply Services in accordance with the relevant Third Party Specification.

3.4 Clauses 3.3 shall survive termination of the Agreement.

### 4 EQUIPMENT HIRE

4.1 The Company shall hire the Equipment to the Customer for use at the Site(s) subject to the terms and conditions of this Agreement.

4.2 The Company shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Customer's quiet possession of the Equipment.

### 5 RENTAL PERIOD

The Hire Period starts on the Commencement Date and shall continue for at least the duration of the Minimum

Hire Period. Following the expiry of the Minimum Hire Period, the Agreement shall continue thereafter, until either party gives to the other party notice to terminate (in accordance with the remainder of this clause). When the Customer wishes to terminate the Agreement after the Minimum Hire Period, they shall do so by contacting the Company's Hire desk and any such termination of the Agreement will be effective from when the Company issue an "off Hire" reference number to the Customer. The Company will issue an "off-hire" reference number within a reasonable time of the Customer's notification but in any event no less than three (3) Business Days from the same.

## **6 RENTAL PAYMENTS**

6.1 The Company shall invoice the Customer for the Rental Payments at the end of every four (4) week period, the first period commencing on the Commencement Date and the Customer shall pay the invoices so submitted in full no later than 28 calendar days after the date of invoice. The Rental Payments shall be paid in British Pound Sterling and shall be made by direct debit or such other payment method as shall be specified in the Company's confirmation of the Customer's Order and/or (where applicable) the Specification.

6.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.

6.3 All payments to be made by either party under this Agreement shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.

6.4 If the Customer fails to pay any Rental Payments or any other sums payable under this Agreement by the due date for payment under this Agreement then, without limiting the Company's rights under clause 13.1, the Customer shall pay interest on such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be paid at the rate of four per cent (4%) per annum above the base rate from time to time of Bank of Scotland.

6.5 Unless otherwise expressly agreed in writing, the Rental Payments have been calculated on basis that any hire services are capable of being performed to an agreed programme with uninterrupted access to the Site during the Normal Business Hours and that the Site conforms to any required standards specified in the Specification. In the event the Customer requires performance of the Services outside Normal Business Hours or the Site does not conform to the standards specified, any additional costs or expenses incurred by the Company (including but not restricted to the supply of any necessary services, waiting and traveling time) shall be paid by the Customer to the Company within 28 calendar days of the date of the Company's invoice or demand for payment.

6.6 All items ordered in addition to those identified in the Specification will be charged for in addition to the Rental Payments as will the costs of all tests, alterations, additions and all other work undertaken at the request of the Customer but not identified in the Specification. Those additional costs will be calculated by the Company having regard to the rates and prices set out in its quotation or in the Specification or as otherwise agreed with the Customer and will be paid for by the Customer within 28 days from the date of the Company's invoice or demand for payment.

## **7 DELIVERY AND INSTALLATION**

7.1 Delivery of the Equipment shall be made by the Company. The Company shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties but the dates and times shall be approximate only and time of delivery shall not be of the essence of the Agreement. Title and risk shall transfer in accordance with clause 8 of this Agreement. The Customer hereby grants a licence to the Company, its employees and sub-contractors (together with appropriate transport) to enter upon the Customer's premises for the purpose of effecting Delivery and, where specified in the Term Sheet, installing the Equipment.

7.2 If the Customer extends or delays the performance of the Services or fails to take delivery of any Equipment at the agreed time or (if no time is agreed) within a reasonable time then the Customer shall indemnify the Company against all loss (including loss of profit), costs (including the cost of storage and all labour and materials used), damages, charges or expense suffered or incurred by the Company as a result of such extension, delay or failure.

7.3 The Customer shall be responsible for the unobstructed access and, unless otherwise agreed in writing, for unloading and loading of the Equipment at the Site, and any personnel supplied by the Company for such unloading and/or loading shall be deemed to be under the direction and control of the Customer. Such personnel shall for all purposes in connection with their employment in the loading and/or unloading shall be regarded as the servants or agents of the Customer who alone shall be responsible for all claims arising in connection with unloading and or loading of the Equipment by, or with the assistance of, such personnel.

7.4 The Customer is deemed to have knowledge of the Site and warrants that the condition of the Site or the place of delivery is suitable for the use of such Equipment. The Customer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Site and the Customer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

7.5 Where specified in the Company's confirmation of the Customer's Order and/or (where applicable) the Specification, the Company shall install the Equipment at the Site(s). The Customer shall procure that a duly authorised representative of the Customer shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Company, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

7.6 To facilitate Delivery and installation, except where otherwise stated in the Specification, the Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and installation to be carried out safely and expeditiously. The Customer shall ensure that its premises and all plant and equipment which is used by the Company's employees or sub-contractors or with which they may come into contact or to which they may be exposed complies with the Health and Safety at Work Act 1974, all relevant statutory provisions (as defined in that Act) and all other obligations imposed by statute and common law relating to health and safety and will indemnify the Company against any loss, damage or expense in respect of any failure by the Customer to comply with its obligations.

7.7 Unless notification in writing to the contrary is received by the Company from the Customer within twenty four hours of the Equipment being delivered and installed at the Site, the Equipment shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Agreement and to the Customer's satisfaction.

## **8 TITLE, RISK AND INSURANCE**

8.1 The Equipment shall at all times remain the property of the Company, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).

8.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Equipment is redelivered to the Company. During the Hire Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

(a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing;

(b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and

(c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Customer.

8.3 All insurance policies procured by the Customer shall be endorsed to provide the Company with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Company's request name the Company on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

8.4 The Customer shall give immediate written notice to the Company in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Customer's possession or use of the Equipment.

8.5 If the Customer fails to effect or maintain any of the insurances required under this Agreement, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

8.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.

## **9 MAINTENANCE**

9.1 When the Equipment is hired which is to be operated without the Company's engineer or operator any breakdown or the unsatisfactory working of any part of the Equipment must be notified immediately to the Company. Any claim for breakdown time will only be considered from the time and date of notification.

9.2 The Customer shall not repair the Equipment or permit the Equipment to be repaired by anyone other than the Company or any agent or contractor authorised by them in writing.

9.3 The Customer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Company due to the Customer's negligence, misdirection or misuse of the Equipment, whether by the Customer or his servants, and for the payment of hire during the period the Equipment is necessarily idle due to such breakdown, loss or damage. The Customer is responsible for the cost of spares and/or repairs due to theft, loss or vandalism of the Equipment.

9.4 Without prejudice to the generality of clause 9.3, the Company shall have no responsibility or liability for any stoppages or other failure or unavailability of the Equipment other than for any failure or unavailability that arises as a direct result of the Company's negligence. Without prejudice to the generality of the foregoing sentence, the Company shall not have any responsibility or liability for any failure or unavailability of the Equipment that arises as a result of causes outside the Company's control, including bad weather or ground conditions nor shall the Company be responsible for the cost or expense of recovering any Plant from soft ground.

## 10 CUSTOMER'S RESPONSIBILITIES

10.1 The Customer shall during the term of this Agreement:

- (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed within the manufacturer's rated capacity, and operated in a proper manner in accordance with any operating instructions provided by the Company or the manufacturer;
- (b) take such steps (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (c) subject always to clause 9.2 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (including replacing any parts or carrying out any remedial work that is expressly directed by the Company or any agent or contractor authorised by them in writing);
- (d) obtain at its own cost all consents required to enable the Company to carry out and complete the hire of the Equipment and the Customer must comply with any conditions contained in the Consents relating to the Equipment Hire and the supply of Services or the Site
- (e) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Company;
- (f) take all reasonable steps to acquainted with the state and condition of the Equipment and the keep the Company fully informed of all material matters relating to the Equipment. If such Equipment is continued in use in an unsafe or unsatisfactory state or environment, the Customer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom;
- (g) keep the Equipment at all times at the Site(s) and shall not move or attempt to move any part of the Equipment to any other location without the Company's prior written consent;
- (h) permit the Company or its duly authorised representatives, agents or insurers to inspect, test, repair or replace the Equipment at all reasonable times and for such purpose to enter upon the Site(s) or any premises at which the Equipment may be located, and

shall grant reasonable access and facilities for such inspection. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Company immediately upon installation;

- (i) provide all sufficient and accurate information requested by the Company in a timely fashion to enable the proper performance of the hire of the Equipment by the Company so as not to delay or disrupt the Company in performing its obligations under the Agreement. The Company shall be entitled to rely on the accuracy and sufficiency of all information provided to it by the Customer, and to make assumptions on the basis of such information, when hiring the Equipment;
- (j) maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Company, together with such additional information as the Company may reasonably require;
- (k) not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (l) not without the prior written consent of the Company, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal;
- (m) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that the Company may enter such land or building and recover the Equipment both during the term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Company of any rights such person may have or acquire in the Equipment and a right for the Company to enter onto such land or building to remove the Equipment;
- (n) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Company and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (o) not use the Equipment for any unlawful purpose;
- (p) to the extent that the Equipment is involved in any accident resulting in injury to persons or damage to

property, immediate notification must be given by the Customer to the Company by telephone and confirmed in writing to the Owner no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Customer is not bound to fully indemnify the Company, no admission of liability, offer, promise of payment or indemnity shall be made by the Customer without the Owner's prior written permission;

(q) ensure that at all times the Equipment remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;

(r) deliver up the Equipment at the end of the Hire Period or on earlier termination of this Agreement at such address as the Company requires, or if necessary allow the Company or its representatives access to the Site(s) or any premises where the Equipment is located for the purpose of removing the Equipment; and  
(s) not do or permit to be done anything which could invalidate the insurances referred to in *clause 8*.

10.2 The Customer acknowledges that the Company shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this Agreement.

## **11 WARRANTY**

11.1 Subject always to Clauses 11.3 and 11.4, the Company warrants that on completion of the supply of the Equipment and for the duration of the Hire Period (**Warranty Period**) the Equipment shall be free from material defects in materials and workmanship. The Company shall at its sole discretion repair or replace or pay reasonable costs for the repair or replacement of the defective Equipment which the Company's examination confirms are defective in accordance with this Clause 11.3.

11.2 The parties acknowledge and agree that:

(a) the Customer shall make a full inspection of the Equipment upon completion of delivery

(b) the Customer shall notify the Company with a written notice containing full particulars of any defects and the circumstances in which defects occurred, within twenty four (24) hours of delivery or installation in the case of defects apparent upon inspection and in the case of defects not so apparent provide such notification within a reasonable time of discovery (in any event within the Warranty Period); and

(c) the Customer shall provide the Company with working access to examine the Equipment without costs to the Company; and

(d) the Customer shall take all appropriate steps to mitigate damage caused by the defective Equipment; and

(e) the Customer shall provide the Company with adequate time and opportunity in which to repair or replace any part of the defective Equipment; and  
11.3 The Company shall not be liable for the defective Equipment if:

(a) the defect arises because the Customer failed to follow the Company's oral or written instructions as to use or maintenance of the Equipment or (if there are none) good trade practice;

(b) the defect arises as a result of the Company following any Third Party Specification;

(c) the Customer or a third party alters or repairs the Equipment;

(d) the defect is due to circumstances which existed before the transfer of risk occurred and is not as a result of fair wear and tear,

(e) the Equipment has been subjected to improper use, accident or improper maintenance by the Customer or a third party;

(f) the Customer prevents the Company from remedying the defect.

11.4 The repair or replacement of defective goods during the Warranty Period in accordance with Clause 11.1 shall not as regards to such goods extend the period of warranty therein provided.

11.5 The Customer's remedies under this clause shall be in place and to the exclusion of any other remedy to the Customer in relation to the defects (including latent defects) in Equipment including damage arising therefrom (whether the claims are based in contract, tort, negligence, indemnity or any other legal theory whatsoever). Any and all other warranties, terms and conditions, express or implied which may have otherwise applied in relation to such matter are excluded to the extent allowed under law.

11.6 Where the Company repairs or re-supplies the Equipment in accordance with the foregoing provisions of this Clause 11.1 or otherwise, any time specified for delivery shall be extended for such period as the Company may reasonably require.

## **12 LIABILITY AND INDEMNITY**

12.1 The Company shall have no liability or any responsibility for any loss, or damage of any nature due to or arising from any cause beyond its reasonable control. Without prejudice to clause 12.2, the Company's maximum aggregate liability for breach of this Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the lesser of:

(a) a sum equal to £5,000 or;

(b) a sum equal to the Rental Payments paid or due and payable to the Company under this Agreement (in the period of three (3) months prior to the first event giving rise to the claim or in the first three (3) months of the

Agreement if the event giving rise to the claim occurs in the first three (3) months.

12.2 Nothing in this Agreement shall exclude or in any way limit:

- (a) either party's liability for death or personal injury caused by its own negligence;
- (b) either party's liability for fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded by law.

12.3 This Agreement sets forth the full extent of the Company's obligations and liabilities in respect of the Equipment and its hiring. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Company except as specifically stated in this Agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this Agreement, whether by statute, common law or otherwise, is expressly excluded.

12.4 Without prejudice to clause 12.2, nothing in this Agreement shall make the Company liable under this Agreement for any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of business; or
- (d) indirect or consequential loss or damage, in each case, however caused, even if foreseeable.

12.5 The Customer is responsible for choosing the Equipment and for making sure that it is fit and suitable for its needs. The Company does not, therefore, provide any advice, assurance or representation about the Equipment, its quality or suitability for the Customer's needs. Nor does this Agreement include any guarantees or warranties about the quality or suitability of the Equipment. The Company will not be liable to the Customer for any conditions, warranties, terms, representations or liabilities in respect of the Equipment.

12.6 Without prejudice to the other indemnities granted by the Customer in favour of the Company under this Agreement, the Customer will indemnify the Company against:

- (a) all loss, actions, claims, demands, proceedings (whether criminal or civil), costs, legal expenses (on a full indemnity basis), insurance premiums and calls, liabilities, judgements, damages or other sanctions whenever arising, directly or indirectly from the Customer's failure or alleged failure to perform its obligations under this Agreement;
- (b) any loss, injury or damage suffered by any person (including without limitation the Company) because of the presence or use of the Equipment;
- (c) the Company exercising any right in respect of the Equipment, its ownership, or its hiring.

### 13 TERMINATION

13.1 The Company may, without prejudice to any other right or remedy which may be available to it, terminate this Agreement immediately by written notice to the Customer if:

- (a) the Customer defaults in any of its payment obligations;
- (b) the Customer commits a material breach of this Agreement which breach is irremediable, or which breach (if remediable) is not remedied within ten (10) Business Days after the service of written notice from the Company requiring it to do so;
- (c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer; or
- (g) the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- (i) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days; or
- (j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(c) to clause 13.1(i) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business
- (l) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- (m) the Customer, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- (n) the Customer breaches the terms of any other Agreement it has with the Company.

13.2 The Customer may end the Minimum Hire Period early subject to it giving the Company written notice and subject to:

- (a) the Customer facilitating the Company repossessing the Equipment in accordance with clause 14.1(a);
- (b) the Customer paying the amounts set out at clauses 14.1(b) and 14.2;

13.3 This Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

#### **14 EFFECT OF TERMINATION**

14.1 Upon termination of this Agreement, however caused:

- (a) the Company's consent to the Customer's possession of the Equipment shall terminate and the Company may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site(s) or any premises at which the Equipment is located; and
- (b) without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Company on demand:
  - (i) all Rental Payments due up to the date of termination and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 6.4. For the avoidance of doubt, if the date of termination of the Agreement occurs part way through a four (4) week period, the Company shall pay the applicable proportion of the Rental Payments for that four (4) week period on a *pro rata temporis* basis;
  - (ii) any costs and expenses incurred by the Company in recovering the Equipment and/or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and remarketing costs);
  - (iii) any costs and expenses incurred by the Company in remedying any damage to the Equipment caused by the Customer's default (normal wear and tear excepted) Any such damage will be notified to the Customer by the Company within ten (10) Business Days of recovery of the Equipment.
- (c) the Customer's obligations under clause 10 shall continue until the Equipment is returned to the Company.

14.2 Upon termination of this Agreement pursuant to clause 13.1 or pursuant to clause 13.2, without prejudice to any other rights or remedies of the Company, the Customer shall pay to the Company on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Agreement had continued from the date of such demand to the end of the Minimum Hire Period, less such discount as the company shall reasonably apply to such sums (in its discretion) to account for accelerated payment.

14.3 The sums payable pursuant to clause 14.2 shall be agreed compensation for the Company's loss and shall be payable in addition to the sums payable pursuant to clause 14.1(b). The Company and the Customer confirm that any sums calculable and payable pursuant to clause 14.2 represent a genuine preestimate of the Company's loss and not a penalty.

14.4 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

#### **15 FORCE MAJEURE**

15.1 Neither party shall be liable to the other, or be deemed to be in breach of this Agreement, by reason of any delay in performing, or failure to perform, any of its obligations under this Agreement if the delay or failure was beyond that party's reasonable control (including without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, warlike hostilities or threat of war, terrorist activities, accidental or malicious damage and any prohibition or restriction by any government or other legal authority which affects this Agreement and which is not in force on the date of this Agreement).

15.2 A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out in clause 15.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.

15.3 This clause 15.1 shall cease to apply when such circumstances have ceased to have effect on the performance of this Agreement and the party affected shall give notice to the other party that the circumstances have ceased.

15.4 If any circumstance relied on by either party for the purposes of this clause 15.1 continues for more than one month, the other party shall be entitled to terminate this Agreement by giving one month's notice.

#### **16 GENERAL**

16.1 This Agreement (and any document referred to in it) constitutes the whole Agreement between the parties and supersedes all previous Agreements between the parties relating to its subject matter.

16.2 Each party acknowledges that, in entering into this Agreement (and any document referred to in it), it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud

16.3 Any general description contained in the Company's catalogues or other advertising material or otherwise or on the Company's website shall not form a representation or be part of the contract.

16.4 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.5 Unless otherwise agreed in writing by the Company any and all intellectual property rights in the Equipment and in any tooling and in any drawings of other documentation supplied or produced by the Company (whether as part of the Specification or otherwise) shall vest in and remain vested in the Company, the Customer agrees to execute any documents the Company deems necessary to give effect to this clause 16.5. All drawings, plans, specifications and method statements and related documents are to be returned to the Company immediately on request. The Customer is not permitted to use such documents for any purpose other than as expressly envisaged by this Agreement and is not permitted to make copies of such documents without having first obtained the consent of the Company in writing.

16.6 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.7 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

16.8 The Company may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement. The Company may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

16.9 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge or deal in any other similar manner with this Agreement or its rights or any part of them under this Agreement, subcontract any or all of its obligations under this Agreement, or purport to do any of the same.

16.10 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

16.11 The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this Agreement.

16.12 No failure or delay by the Company to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.13 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

16.14 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement

16.15 Except as expressly provided, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, nor authorise a party to make or enter into any commitments for or on behalf of the other party

16.16 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

16.17 Where the Customer is a partnership, all obligations expressed to be given or entered into by the Customer or resulting from the execution of or breach of the provisions of this shall be deemed to be given undertaken or entered into by them jointly and severally.

## **17 CONFIDENTIALITY**

17.1 Each party undertakes that it shall not at any time during this Agreement and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or companies of the other party, except as provided by clause 17.2 and 17.3.

17.2 Each party may disclose the other party's confidential information:

- (a) to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 17; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

17.3 The Company may disclose confidential information to any member of the group of companies to which it belongs.

17.4 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

## **18 NOTICES**

18.1 Any notice or other communication to be given under this Agreement shall be in writing and in the English language and may be delivered by hand or sent by pre-paid post (by airmail post if to an address outside the country of posting) or fax to:

a) in the case of the Company, to Total Project Management Group Ltd 7/ A1 Dalhousie Business Park, Carrington Road, Bonnyrigg, EH19 3HY;  
b) in the case of the Customer, to the address and fax specified in the Company's confirmation of the Customer's Order and/or (where applicable) the Specification, or (such other address as a party shall notify to the other from time to time and in each case, marked for the attention of the Managing Director in relation to the Company and Managing Director in relation to the Customer.

18.2 Any notice or document shall be deemed served (a) if delivered by hand, at the time of delivery unless delivered after 5.00 pm GMT in which case they shall be given on the next Business Day (b) if posted, two Business Days after posting (five Business Days if sent by airmail post) and (c) if sent by fax, at the time of transmission printed on the transmission confirmation sheet provided that an error free transmission report has been received by the sender and if the time of transmission is after 5.00 pm GMT on a Business Day or at any time on a day that is not a Business Day the notice shall be deemed to have been received at 9.00 am GMT on the next Business Day.

18.3 In proving the service of any notice it will be sufficient to prove, in the case of a letter, that such

letter was properly addressed, stamped and placed in the post and, in the case of a fax, that such fax was duly dispatched to a current fax number of the addressee.

18.4 Neither party may use email as a valid means of serving on the other party any (a) notice of breach of this Agreement; and (b) legal or court document including the service, delivery or notification of any claim form, notice, order, judgement of other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

## **19 GOVERNING LAW AND JURISDICTION**

19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

19.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**PART III – TERMS AND CONDITIONS OF SUPPLY OF MAINTENANCE SERVICES**  
**THE CUSTOMER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 9**  
**1 DEFINITIONS AND INTERPRETATION**

1.1 These terms and conditions shall apply to the supply of Maintenance Services by the Company to a Customer.

1.2 In these Maintenance Terms:

- (a) **'Additional Services'** any Corrective Maintenance and/or any Excluded Maintenance performed by the Company under this Agreement;
- (b) **'Additional Services Fees'** the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates;
- (c) **'Additional Service Rates'** the rates set out in box 8, as those rates are amended from time to time in accordance with the terms of this Agreement;
- (d) **'Business Day'** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- (e) **'Charges'** together the Maintenance Fees, the Additional Services Fees and the Payment Fee;
- (f) **'Commencement Date'** means the date that the Company is to commence supplying the Maintenance Services specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification;
- (g) **'Company'** means Total Project Management Group Ltd;
- (h) **'Confidential Information'** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Maintenance Services, who need to know the confidential information in question (**Representatives**) to the other party and that party's Representatives in connection with this Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure;
- (i) **'Corrective Maintenance'** means:
  - (i) making any adjustments to the Maintained Equipment; and
  - (ii) replacing any parts or components of the Maintained Equipment,in each case, as required to restore the Maintained Equipment to Good Working Order, in accordance with clause 2.3.
- (j) **'Customer'** means the individual, firm, company or other party with whom the Company contracts;
- (k) **'Excluded Cause'** means:
  - (i) a defect in the manufacturer's design of the Maintained Equipment;
  - (ii) faulty materials or workmanship in the manufacture of the Maintained Equipment;
  - (iii) use of the Maintained Equipment with computer equipment hardware or materials not supplied or approved in writing by the Company;
  - (iv) any maintenance, alteration, modification or adjustment performed by persons other than the Company or its employees or agents unless approved by the Company in accordance with clause 5.1(h);
  - (v) the Customer or a third party moving the Maintained Equipment;
  - (vi) the use of the Maintained Equipment in breach of any of the provisions of the Agreement under which the Maintained Equipment was supplied;
  - (vii) a failure, interruption, disruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
  - (viii) accumulation of dirt or ingress of foreign substances within the equipment or corrosion of component parts;
  - (ix) a defect or damage caused by hazards such as fire, flood storm (or similar), spillage or leakage of chemicals or other harmful substances onto the Maintained Equipment;
  - (x) a defect or damage caused by vermin insect infestations or similar;
  - (xi) a defect or damage to software or hardware caused by a computer virus, denial of service attack or similar malicious cyberattack;
  - (xii) defects or damage which relate to a source external to the Maintained Equipment; or
  - (xiii) the neglect or misuse of the Maintained Equipment.
- (l) **'Excluded Maintenance'** any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes;
- (m) **'Good Working Order'** the Maintained Equipment operates in accordance with the Operating Manuals.
- (n) **'Initial Term'** the initial term of this Agreement, as specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification;
- (o) **'Location'** means the location(s) specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification;
- (p) **'Location Standards'** means the required standards, access requirements and facilities to be made available at the Location to enable the Company to provide the Maintenance Services and which are set out in the Specification
- (q) **'Maintenance Services'** Corrective Maintenance and Preventative Maintenance of the Maintained Equipment;

- (r) **'Maintained Equipment'** the equipment specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification;
- (s) **'Maintenance Terms'** means these maintenance terms set out or referred to in the Company's acknowledgment of Order
- (t) **'Normal Business Hours'** 8.00 am to 5.00 pm GMT on a Monday to Thursday (Business Days) and 8.00 am to 4.00 pm GMT on a Friday (Business Days);
- (u) **'Order'** the Customer's order for the Maintenance Services as set out in the Customer's purchase order
- (v) **'Operating Manuals'** all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment;
- (w) **'Payment Fee'** has the meaning given in clause 7.6;
- (x) **'Payment Frequency'** means the billing due dates specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification;
- (y) **'Preventative Maintenance'** means:
  - (i) testing that the Maintained Equipment is functional; and
  - (ii) making any adjustments as may be required to ensure the Maintained Equipment remains in Good Working Order, in accordance with clause 2.2.
- (z) **'Renewal Period'** the successive 12 month period after the Initial Term for which this Agreement is renewed the initial term of this Agreement, or such other period as may be specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification;
- (aa) **'Response Time'** means the initial response time for a request for maintenance services specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification;
- (bb) **'Specification'** the description or specification of the Maintenance Services provided in writing by the Company to the Customer
- (cc) **'Standard Maintenance Fees'** the fees payable by the Customer for the provision of Preventative Maintenance as specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification as these fees are varied from time to time in accordance with the terms of this Agreement; and
- (dd) **'Term'** the Initial Period together with all Renewal Periods.

1.3 Clause headings shall not affect the interpretation of this Agreement.

1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to writing or written includes faxes but not e-mail.

1.11 References to clauses are to the clauses of this Agreement.

1.12 Any words following the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS**

2.1 The Order constitutes an offer by the Customer to purchase Maintenance Services in accordance with these Maintenance Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate and that the Customer gives the Company any necessary information relating to the Maintenance Services within a sufficient time to enable the Company duly to perform its obligations in connection with this Agreement.

2.2 No Order in pursuance of any quotation or otherwise shall be binding on the Company unless and until:

- (a) such Order is accepted in writing by the Company when the Company confirms the Order has been accepted by sending an acknowledgement of the Customer's Order to the email address provided by the Customer: or
- (b) if earlier, the Company commences the supply of Maintenance Services.

Any contract made between the Company and the Customer shall be subject to these Maintenance Terms and save as set out in these Maintenance Terms no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them. Any such term representation on contract will bind the Company only if in writing and signed by a director of the Company.

2.3 A quotation from the Company is not an offer. Quotations are valid for 30 days from issue and subject to revision or withdrawal at any time before acceptance of the Customer's order by the Company

2.4 Unless otherwise agreed in writing by the Company, these Maintenance Terms shall apply to the exclusion of any terms and conditions stipulated or referred to by the Customer in its order, acknowledgement or acceptance or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.

2.5 Where the Company has not given a written acknowledgment of Order, these Maintenance Terms will nonetheless apply to the Agreement provided that the Customer has had prior notice of them.

2.6 Where the Customer does not formally accept a quotation from the Company but the Customer continues to instruct the Company to provide Maintenance Services, the Customer's continued instructions will be deemed to be acceptance of these Maintenance Terms

2.7 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or website are produced for the sole purpose of giving an approximate idea of the goods and services described in them. They shall not form part of the contract or have any contractual force.

2.8 The Company reserves the right to correct any clerical or typographical error made by its employees (whether in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued) at any time without any liability on the part of the Company.

2.9 For the avoidance of doubt, except as set out in these Maintenance Terms, no variation of the Agreement, including the introduction of any additional terms shall be effective unless it is agreed in writing and signed by a director of the Company.

2.10 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Agreement.

### **3 MAINTENANCE SERVICES**

3.1 During the Term, the Company shall provide the Customer with the Maintenance Services for the Maintained Equipment at the Location.

3.2 The Supplier shall attend at the Location during Normal Business Hours at a frequency as is specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification to perform Preventative Maintenance of the Maintained Equipment.

3.3 The Customer may contact a member of Company's technical team on a 24/7/365 basis by calling such number as may be notified by the Company to the Customer from time to time for such purposes, and the Company shall use reasonable endeavours to resolve such issue.

3.4 On the Customer informing the Company that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Company shall:

(a) use all reasonable endeavours to attend at the Location within the relevant Response Time

(b) use all reasonable endeavours to perform Corrective Maintenance of the Maintained Equipment as soon as reasonably practicable

3.5 Corrective Maintenance shall be charged at the Additional Services Rates for each of the Company's personnel reasonably required to attend the Location. Any additional charges shall be calculated from when the personnel commence travelling to the Location until they conclude travelling back from the the Location.

3.6 In performing the Maintenance Services, the Company shall use all reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order while in attendance at the Location. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours (in the case of Corrective Maintenance and Preventative Maintenance), the Company shall either arrange for a further visit to the Location within Normal Business Hours to complete the repair, or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site.

3.7 While the Company will use its reasonable endeavours to respond to maintenance requests within the timescales specified in clauses 3.3 and 3.4, any timescales or specified by the Company's representatives are estimates only, given in good faith, and the Company will not be liable for any failure to respond within such timescales. Time for response shall not be of the essence of the Agreement.

3.8 The Company shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.

#### **4 REPLACEMENTS AND SPARE PARTS**

4.1 In performing Preventative Maintenance and the Additional Services (including Corrective Maintenance), the Company shall use all reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. Where the individual spare parts required are made available free of charge under the terms of a warranty given by any third-party manufacturer, the Company shall not charge the Customer for the spare parts but the Company shall otherwise charge the Customer for any spare parts required.

4.2 All spare parts and/or replacements provided by the Company to the Customer shall become part of the Maintained Equipment and the property of the Customer. The Company will assign to the Customer, such right and title as it may have in any spare parts and/or replacements provided and fitted by the Company. All parts and components removed from the Maintained Equipment by the Company in the course of performing the Preventative Maintenance, Corrective Maintenance and/or the Additional Services shall no longer constitute part of the Maintained Equipment and will be the property of the Company. The Customer will assign to the Company, with full title guarantee and free from all third-party rights, all parts and components removed from the Maintained Equipment by the Company in accordance with this clause 4.2.

#### **5 CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall:

- (a) ensure that the Location complies with the Location Standards at all times during the term of this Agreement;
- (b) ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Agreement under which the Maintained Equipment was supplied, permit only trained and competent personnel to use it and follow any operating instructions as the Company may give from time to time;
- (c) notify the Company promptly if the Maintained Equipment is discovered to be operating incorrectly;
- (d) at all reasonable times permit full and free access to the Location and to the Maintained Equipment to the Company, its employees, contractors and agents, and provide them with adequate and safe working space, access to any documentation, software media and any telecommunications facilities as are reasonably required to enable the Company to perform the Maintenance Services and the Additional Services while at the Location;
- (e) without prejudice of the generality of clause 4(c), to give the Company as much advance notice as practicably possible of any dates that it requires the Company to perform Preventative Maintenance;
- (f) ensure any housekeeping and first line maintenance that the Customer is permitted to undertake is detailed in the maintenance log provided for that purpose and provide the Company with any information that is reasonably requested in the performance of the Maintenance Services and the Additional Services;
- (g) take any steps reasonably necessary to ensure the safety of the Company's personnel when attending the Location;
- (h) save for any housekeeping and first line maintenance that the Customer is expressly permitted to undertake, not allow any person other than the Company to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of the Company;
- (i) not move the Maintained Equipment from the Location without the prior written approval of the Company (approval not to be unreasonably withheld or delayed);
- (j) store any reserve equipment only in conditions approved by the Company, and make this equipment available for periodic maintenance, as with all other Maintained Equipment;
- (k) maintain and make available to the Company at the Location any spare parts at no cost to the Company. In the event that such spare parts are not held by the Customer and consequently not available to the Company, its employees, contractors and agents in execution of the Maintenance Services, then the Company shall not be responsible for any delays or expenses that arise therefrom, and
- (l) only use supplies or materials supplied or approved by the Company (approval not to be unreasonably withheld or delayed).

5.2 The Customer agrees to indemnify the Company in respect of any and all claims, losses, costs, and expenses suffered or incurred by the Company arising from any act, omission or default of the Customer (including any breach by the Customer of any of its obligations under this Agreement).

#### **6 EXCLUDED MAINTENANCE**

6.1 The Company is not obliged to perform any Excluded Maintenance.

6.2 Where the Company is performing or has performed the Maintenance Services in circumstances where it is established that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, the Company may charge, and the Customer shall pay, the Additional Services Fees in respect of that work

## **7 CHARGES**

7.1 For the performance of Preventative Maintenance, the Customer shall pay to the Company the Standard Maintenance Fees.

7.2 For the performance of any Additional Services (including Corrective Maintenance), the Customer shall pay to the Company the Additional Services Fees.

7.3 The Standard Maintenance Fees shall be due and payable in full to the Company on the Payment Frequency in advance, within 30 days of receipt of a valid invoice from the Company. Any Additional Services Fees shall be due and payable within 30 days of receipt of a valid invoice from the Company. Any charges for spare parts recoverable in accordance with clause 4.1 shall be due within 30 days of receipt of a valid invoice from the Company.

7.4 The Standard Maintenance Fees and the Additional Services Fees have been calculated on the basis of the Company providing Maintenance Services for the Maintained Equipment at the Location as at the Effective Date within Normal Business Hours. If the Maintained Equipment is materially altered, adjusted, modified or moved (whether or not with the approval of the Company and without prejudice to the rights and remedies of the Company in the event of any unauthorised alterations, adjustments, modification or movement) the Company reserves the right to vary the Standard Maintenance Fees and the Additional Services Fees.

7.5 The Standard Maintenance Fees have been calculated on the basis of the Company providing Preventative Maintenance for the Maintained Equipment over the prescribed number of visits specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification during Normal Business Hours. If the Customer requires Preventative Maintenance to be carried out outside Normal Business Hours (or requires more visits than is specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification) the Company may (but is not obliged) to perform the Preventative Maintenance so requested but the Company reserves the right to vary the Standard Maintenance Fees.

7.6 In the event that the Customer designates "Quarterly" or "Annually" as the Payment Frequency, the Company may, at its sole discretion, require payment of an additional fee (**Payment Fee**) in such amount and frequency as the Company may elect by giving not less than one month written notice to the Customer.

7.7 If the Customer fails to make any payment due to the Company under this Agreement by the due date for payment then, without limiting the Company's remedies under clause 12, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Bank of Scotland from time to time. Such interest shall accrue on a daily basis until actual payment of the overdue amount, whether or before or after judgement. The Customer shall pay the interest together with the overdue amount.

7.8 All Charges are exclusive of VAT or any other applicable sales tax, duties, charges, levies and other impositions which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

7.9 All Charges are quoted are exclusive of spare parts and the Customer shall pay any and all spare parts at the Company's price list then in force.

7.10 The Company may, at any time after the Initial Term, increase the Standard Maintenance Fees by giving to the Customer not less than one month written notice, provided that the increases shall be no more frequent than once in any 12-month period.

7.11 Company may, increase the Additional Services Rates by giving to the Customer not less than one month written notice.

## **8 COMPANY WARRANTIES**

8.1 The Company warrants to the Customer that:

(a) the Maintenance Services and the Additional Services shall be performed:

(i) by an appropriate number of experienced personnel; and

(ii) using all reasonable skill and care;

(b) the Company has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this Agreement.

8.2 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including fitness for purpose and suitability) are hereby excluded to the extent permitted by law.

## **9 LIABILITY**

9.1 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence; or
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

9.2 Subject always to clause 9.1, neither party shall be liable whether in contract, tort (including for negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, revenue, or goodwill;
- (b) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.

9.3 Subject always to clause 9.1, the Company's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to shall in no circumstances exceed the lesser of:

- (a) a sum equal to £5,000 or;
- (b) a sum equal to the Charges paid or due and payable to the Company under this Agreement (in the period of three (3) months prior to the first event giving rise to the claim or in the first three (3) months of the Agreement if the event giving rise to the claim occurs in the first three (3) months

## **10 INSURANCE**

10.1 During the Initial Term and any Renewal Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing;
- (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
- (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Customer.

10.2 All insurance policies procured by the Customer shall be endorsed to provide the Company with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Company's request name the Company on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

## **11 CONFIDENTIALITY**

11.1 Each party undertakes that it shall not at any time during this Agreement and for a period of five years after termination of this Agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or companies of the other party, except as provided by clause 11.2 and 11.3.

11.2 Each party may disclose the other party's confidential information:

- (a) to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

11.3 The Company may disclose confidential information to any member of the group of companies to which it belongs.

11.4 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

## **12 DURATION AND TERMINATION**

12.1 This Agreement shall commence on the Commencement Date and shall remain in force, unless terminated earlier in accordance with clause 12.2, for the Initial Term. The Term of the Agreement shall automatically be extended for a Renewal Period at the end of the Initial Term and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Period or the relevant Renewal Period, to terminate this Agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.

12.2 Without affecting any other rights that it may be entitled to, either party may give notice in writing to the other terminating this Agreement immediately if:

- (a) the other party commits a breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 Business Days of being notified in writing to do so; or
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or is the subject of a bankruptcy petition or order or (being a partnership) has any partner to whom any of the foregoing apply; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (e) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(b) to clause 12.2(d) (inclusive); or
- (f) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

12.3 Without affecting any other rights that it may be entitled to, the Company may give notice in writing to the Customer terminating this Agreement immediately if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- (c) the Customer, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- (d) the Customer breaches the terms of any other agreement it has with the Company.

12.4 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

12.5 Without limiting its other rights or remedies, the Company may suspend provision of the Maintenance Services under the Agreement or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 12.2 or clause 12.3, or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment. The Company shall have no liability to the Customer for any loss it may suffer during such period of suspension (such as any losses that arise as a result of the failure of the Maintained Equipment during the period of suspension).

12.6 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

### **13 EFFECT OF TERMINATION**

13.1 On termination of this Agreement for any reason, each party shall as soon as reasonably practicable:

- (a) return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs, or other information and materials provided to it by the other party or data for the purposes of this Agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information.
- (b) return all of the other party's equipment and materials (including, for the avoidance of doubt, any Maintained Equipment which may be owned by the Company, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping;
- (c) the Customer shall immediately pay any outstanding amounts owed to the Company pursuant to this Agreement
- (d) When termination of this Agreement arises as a result of any breach by the Customer of clause 12.2 or 12.3, then, in addition to any outstanding amounts payable in respect of clause 13.1(c), the Customer shall be obliged to pay to the Company by way of compensation, the rest of the Charges the Customer would have paid over the whole Initial Term, or, where the term has continued pursuant to clause 12.1, any applicable Renewal Period less such compounded discount as the Company shall reasonably apply to reflect any cost savings arising from the accelerated payment for early termination.

13.2 The Company and the Customer confirm that any sums calculable and payable pursuant to clause 13.1(d) represent a genuine pre-estimate of the Company's loss.

13.3 Regardless of its obligations in this clause 13, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under clause 13.1(a), it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. Clause 10 shall continue to apply to any retained documents and materials, subject to this clause 13.

#### **14 FORCE MAJEURE**

14.1 Neither party shall be liable to the other, or be deemed to be in breach of this Agreement, by reason of any delay in performing, or failure to perform, any of its obligations under this Agreement if the delay or failure was beyond that party's reasonable control (including without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, warlike hostilities or threat of war, terrorist activities, accidental or malicious damage and any prohibition or restriction by any government or other legal authority which affects this Agreement and which is not in force on the date of this Agreement).

14.2 A party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out in clause 15.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.

14.3 This clause 15.1 shall cease to apply when such circumstances have ceased to have effect on the performance of this Agreement and the party affected shall give notice to the other party that the circumstances have ceased.

14.4 If any circumstance relied on by either party for the purposes of this clause 15.1 continues for more than six months, the other party shall be entitled to terminate this Agreement by giving one month's notice.

#### **15 GENERAL**

15.1 This Agreement (and any document referred to in it) constitutes the whole Agreement between the parties and supersedes all previous Agreements between the parties relating to its subject matter.

15.2 Unless otherwise agreed in writing by the Company (which shall include anything contained in any quotation delivered by the Company to the Customer) this Agreement shall apply to the exclusion of any terms and conditions stipulated or referred to by the Customer in his order (whether by written purchase order or otherwise) or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.

15.3 Each party acknowledges that, in entering into this Agreement (and any document referred to in it), it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud

15.4 Subject to clause 7.9, no amendment or variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.5 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.6 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

15.7 The Company may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement. The Company may sub-contract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

15.8 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge or deal in any other similar manner with this Agreement or its rights or any part of them under this Agreement, sub-contract any or all of its obligations under this Agreement, or purport to do any of the same.

15.9 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person

15.10 The parties declare that they each have the right, power and authority and have taken all action necessary to execute and deliver and to exercise their rights and perform their obligations under this Agreement.

15.11 No failure or delay by the Company to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.12 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

15.13 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement

15.14 Except as expressly provided, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, nor authorise a party to make or enter into any commitments for or on behalf of the other party

15.15 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

## **16 NOTICES**

16.1 Any notice or other communication to be given under this Agreement shall be in writing and in the English language and may be delivered by hand or sent by pre-paid post (by airmail post if to an address outside the country of posting) or fax to:

(a) in the case of the Company, to Total Project Management Group Ltd, 7 / A1 Dalhousie Business Park, Carrington Road, Bonnyrigg, EH19 3HY; and

(b) in the case of the Customer, to the addresses specified the Company's confirmation of the Customer's Order and/or (where applicable) the Specification, or (such other address as a party shall notify to the other from time to time and in each case, marked for the attention of the Managing Director in relation to the Company and Managing Director in relation to the Customer.

16.2 Any notice or document shall be deemed served (a) if delivered by hand, at the time of delivery unless delivered after 5.00 pm GMT in which case they shall be given on the next Business Day (b) if posted, two Business Days after posting (five Business Days if sent by airmail post) and (c) if sent by fax, at the time of transmission printed on the transmission confirmation sheet provided that an error free transmission report has been received by the sender and if the time of transmission is after 5.00 pm GMT on a Business Day or at any time on a day that is not a Business Day the notice shall be deemed to have been received at 9.00 am GMT on the next Business Day.

16.3 In proving the service of any notice it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of a fax, that such fax was duly dispatched to a current fax number of the addressee.

16.4 Neither party may use email as a valid means of serving on the other party any (a) notice of breach of this Agreement; and (b) legal or court document including the service, delivery or notification of any claim form, notice, order, judgement of other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

## **17 GOVERNING LAW AND JURISDICTION**

17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims) shall be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).