

Terms and Conditions

1 Definitions

- 1.1 Affiliate means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
- 1.2 Applicable Laws means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;
- 1.3 Bribery Laws means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption;
- 1.4 Business Day means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
- 1.5 Company means the Company and/or its agents, Affiliate and/or concessionaires and permitted assignees and successors at and premises, repair yards, brokerage or other facilities;
- 1.6 Confidential Information means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
- 1.7 Contract means this agreement between the Company and the Customer for the sale and purchase of the Deliverables incorporating these Terms and Conditions and the Order and including all its schedules, attachments, annexures and statements of work shall have the meaning given in applicable Data Protection Laws from time to time;
- 1.8 Control has the meaning given to it in section 1124 of the Corporation Tax Act 2010 and Controls, Controlled and under common Control shall be construed accordingly;
- 1.9 Controller shall have the meaning given in applicable Data Protection Laws from time to time;
- 1.10 Customer means the person, persons or Company to whom the Company's order form is addressed or any other person or company purchasing Goods or procuring the Services from the Company and (where the context permits) the permitted servants or agent of such persons or companies;
- 1.11 Data Protection Laws means; (i) the GDPR; (ii) the Data Protection Act 2018; (iii) any laws which implement or supplement any such laws; and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
- 1.12 Data Subject shall have the meaning in applicable Data Protection Laws from time to time;
- 1.13 Deliverables means the Goods or Services or both as the case may be;
- 1.14 Documentation means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables;
- 1.15 GDPR: means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);
- 1.16 Goods means all goods (including accessories, spare parts and documentation) and any other physical material supplied by or on behalf of the Company and particularised on the Order and to be supplied by the Company to the Customer;
- 1.17 Location means the address or addresses for delivery of the Goods and performance of the Services as particularised in the Order, or such other address or addresses as notified by the Company to the Customer prior to performance;
- 1.18 Order means the Customer's order for the Deliverables in substantially the same form as particularised in the Customer's order form;
- 1.19 Personal Data has the meaning given in the applicable Data Protection Laws from time to time;

- 1.20 Personal Data Breach has the meaning given in the applicable Data Protection Laws from time to time;
- 1.21 Price has the meaning ascribed to it in Clause 7;
- 1.22 Processing has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process, processed, and processes shall be construed accordingly);
- 1.23 Processor has the meaning given to it in applicable Data Protection Laws from time to time;
- 1.24 Protected Data means Personal Data received from or on behalf of the Customer in connection with the performance of the Company's obligations under the Contract;
- 1.25 Services means all services supplied by or on behalf of the Company to the Customer as particularised in the order form or agreed in writing by the parties;
- 1.26 Sub Processor means any agent, subcontractor or other third party (excluding its employees) engaged by the Company for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
- 1.27 Specification means the description or Documentation provided for the Deliverables particularised or referred to in the Contract;
- 1.28 Shipyard means a yacht harbour, marina, moorings or any other facility for berthing a vessel (other than swinging chain moorings); and
- 1.29 Terms and Conditions means the Company's terms and conditions of sale particularised in this document.

2 Interpretation

- 2.1 In these Conditions, unless the context otherwise requires:
 - 2.1.1 a reference to the Contract includes these Terms and Conditions, the Order, and their respective schedules, appendices and annexes (if any);
 - 2.1.2 any clause, schedule or other headings in these Terms and Conditions are included for convenience only and shall have no effect on the interpretation of these Terms and Conditions;
 - 2.1.3 a reference to a 'party' means either the Company or the Customer and includes that party's personal representatives, successors and permitted assigns;
 - 2.1.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
 - 2.1.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
 - 2.1.6 a reference to a gender includes each other gender;
 - 2.1.7 words in the singular include the plural and vice versa;
 - 2.1.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
 - 2.1.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
 - 2.1.10 without prejudice to the provisions of Clause 17, a reference to legislation is a reference to that legislation as in force at the date of the Contract;
 - 2.1.11 a reference to legislation includes all subordinate legislation made as at the date of the Contract; and
 - 2.1.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

3 Application of these Terms and Conditions

- 3.1 Unless expressly agreed by all parties in writing any contract relating to the Deliverables shall be subject to these Terms and Conditions and any applicable Order.
- 3.2 No variation of these Terms and Conditions or to an Order shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Customer and the Company respectively.
- 3.3 The only terms for the provision of the Deliverables shall be those contained expressly in this contract and any statements or representations either written or oral, made by or given prior to the date of this contract are specifically excluded.
- 3.4 Each Order by the Customer to the Company shall be an offer to purchase the Deliverables subject to the Contract including these Conditions.
- 3.5 If the Company is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 3.6 The Company may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
- 3.6.1 the Company's written acceptance of the Order; or
 - 3.6.2 the Company delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 3.7 Rejection by the Company of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 3.8 The Company may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.
- 3.9 The Company reserves the right to change or amend these Terms and Conditions at any time and may provide the Customer with 20 Business Days written notice of such change or amendment.

4 Delivery

- 4.1 The Customer will be available to take delivery of the Goods within 5 Business Days of the Company giving it notice that the Goods are ready for delivery.
- 4.2 The Goods shall be delivered by the Company, or its nominated carrier, to the Location on the date notified to the Customer, unless otherwise agreed between the parties and shall be accepted by the Customer at any time.
- 4.3 The Goods shall be deemed delivered on arrival only of the Goods at the Location by the Company or its nominated carrier (as the case may be).
- 4.4 The Services shall be performed by the Company at the Location on the date(s) specified in the Order or as otherwise agreed in writing with the Company.
- 4.5 The Services shall be deemed delivered by the Company only on completion of the performance of the Services at the Location.
- 4.6 The Company may deliver the Goods or perform the Services in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.7 Any date specified by the Company for delivery of the Deliverables are approximate. Time is not of the essence for performance or delivery of the Deliverables.
- 4.8 The Company shall not be liable for any delay in or failure of performance caused by:
- 4.8.1 the Customer's failure to make the Location available;
 - 4.8.2 the Customer's failure to prepare the Location as required for the Deliverables;
 - 4.8.3 the Customer's failure to provide the Company with adequate information or instructions for performance or delivery or otherwise relating to the Deliverables; or
 - 4.8.4 Force Majeure.

- 4.9 The Company will use reasonable endeavours to deliver the Deliverables in accordance with this Clause. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery of the Deliverables the Company will be deemed not to be in breach of the contract, nor (for the avoidance of doubt) will the Company have any liability to the Customer for direct, indirect, consequential loss, loss of profits (all of which terms include, without limitation, pure economic loss, loss of business, depletion of goodwill and like loss) howsoever caused (included as a result of negligence) by any delay or failure in delivering particularised. Any delay in delivery will not entitle the Customer to cancel the order unless and until the Customer has given 90 days written notice to the Company requiring the delivery to be made and the Company has not fulfilled the delivery within that period.
- 4.10 If the Customer fails to take delivery of any of the Deliverables in accordance with this Clause or to provide any instructions, documents, licences or authorisation required to enable the Deliverables to be delivered on time the Deliverables will be deemed to have been performed or delivered as the case may be and (without prejudice to its other rights) the Company may:
- 4.10.1 store or arrange for storage of the Goods until actual delivery (or subsequent sale to a third party) and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or
 - 4.10.2 following written notice to the Customer (i) sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the contract (ii) or if it is not possible to sell the Goods, dispose of the Goods as the Company sees fit and in the event that there is any cost associated with disposal of the Goods, claim such cost of disposal of the Goods back from the Customer;
 - 4.10.3 The Customer will provide at its expense at the delivery point adequate and appropriate equipment and manual labour for offloading the Goods (whether or not the offloading is supervised by or on behalf of the Customer) and ensure that it has adequate insurance to cover for:
 - 4.10.4 any personal injury or death of any of the Company's employees, agents or subcontracts or any third party; and
 - 4.10.5 any damage to or loss of any property of the Company, its employees, agents or subcontractors or any third party.
- 4.11 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5 Acceptance

- 5.1 If Goods are not returned to the Company at the Customers expense within 5 Business Days of delivery, then the Company will deem acceptance of the delivery.
- 5.2 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Customer's acceptance of these Terms & Conditions.

6 Risk

- 6.1 The Goods shall be at the Customer's risk from the time they are delivered or deemed delivered, in accordance with Clause 4.3.

7 Description

- 7.1 Description of the Goods shall be as particularised in the Company's Order, or as amended by an authorised representative of the Company.

- 7.2 All drawings, descriptive matter, specifications and advertising issued by the Company or the manufacturer of the Goods and any description or illustrations contained in the Company's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the contract.
- 7.3 No variation in the specification or design of any Goods which, in the Company's reasonable opinion, does not adversely affect the suitability of the Goods for the particular purpose for which they are supplied by the Company will constitute a breach of contract or impose any liability upon the Company.
- 7.4 An application approval is given against the written specification supplied by the Customer. No warranty is given by the Company as to the suitability of the products supplied should the specification change howsoever.

8 Price

- 8.1 The price payable shall (if not expressly stated in the Company's order) be that stated in the Company's price list or written quotation in force at the date of delivery of the Deliverables. If the price is stated in the Order then prior to the delivery the Company shall be entitled to notify the Customer of an increase in the price of the Deliverables which increase the Customer shall be obliged to accept unless within 5 Business Days of receiving such notification the Customer gives notice in writing to the Company terminating that part of the Contract relating to the Deliverables which has been increased.
- 8.2 Notwithstanding clause 8.1, the Company may increase the price with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Company of supplying the relevant Deliverables which is due to any factor beyond the control of the Company.

9 Taxes

- 9.1 Any contract unless otherwise stated excludes customs and imports duties and other taxes. The Customer shall be responsible for all import duties and other taxes imposed up to and including the actual date of delivery of the Goods. Unless otherwise stated all quotations exclude VAT. Any applicable VAT shall be paid by the Customer on receipt of a VAT invoice.

10 Payment

- 10.1 The Company will invoice Customer on acceptance of an Order. The Customer shall pay all invoices in full without deduction or set-off.
- 10.2 Unless otherwise agreed in writing, payment of the full invoice price for Deliverables shall be made by the Customer in the currency invoiced, in cleared funds prior to despatch or at 30 days from the date of invoice if a credit account has been agreed.
- 10.3 The Company shall be entitled to charge interest on all overdue payments at the rate of 4% per annum above Barclays Bank Plc base rate then enforced, calculated monthly (any partially completed calendar month being deemed for this purpose a complete month).

11. Title

- 11.1 Title to the Goods shall pass to the Customer once the Company has received payment in full and cleared funds for the Goods.

12 Force Majeure

- 12.1 The Company shall not in any way be liable for inability to perform all or part of its obligations hereunder (whether permanently or temporarily) whether by reason of strikes, lockouts or other industrial dispute or disruption, riot or civil unrest, hostilities (whether war is declared or not), fire, act of god, storm, failure or breakdown regulation or byelaw or any other unforeseen circumstances or cause beyond its control, save for the Customer's inability to pay. Where the cause of the Company's inability to perform is temporary then the time for performance by the Company of its obligations will be suspended until such temporary cause is removed and extended thereafter for a corresponding period to enable the Company to complete and the Customer to accept performance thereof.

13 Cancellation

- 13.1 Cancellation of orders once placed with and accepted by the Company can only be made with the Company's written consent. The following further conditions apply:
- 13.1.1 the Customer is to pay in full the purchase price stipulated in the Order Form in effect at the date of cancellation for all Deliverables ready or due for delivery.
 - 13.1.2 the Customer will pay in full such charges, included, but not limited to sales and administrative overheads, at the date of cancellation for all articles not completed.
 - 13.1.3 invoices covering the said costs will be due and payable immediately upon the Company's acceptance of cancellation.
 - 13.1.4 the Company may, at its sole discretion accept any cancellation on a no charge basis, retaining in its possession anything required for the processing of the cancelled order.

14 Warranty

- 14.1 Where the Company is not the manufacturer of the Goods, it will endeavour to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer.
- 14.2 Subject to the above, and on the condition that Goods are located within the United Kingdom or Ireland, if within the warranty period a defect of the Goods becomes apparent, the Company will then, subject to the terms of this warranty either repair the component part or (as it shall in its sole discretion determine) supply a replacement part, subject to 14.3 below.
- 14.3 The warranty period shall be (subject to the manufacturers' warranty) in relation to the Goods:
- 14.3.1 in the case of a new product such warranty or guarantee given to the Company by the manufacturer;
 - 14.3.2 in the case of new spare parts 6 months from the date of first installation or 12 months from the date of despatch from the Company, whichever first expires on the component part supplied only;
 - 14.3.3 in the case of a product which has been reconditioned or supplied as a service replacement unit, 6 months from the date of despatch.
- 14.4 The obligation of the Company under this warranty is subject to the following terms and conditions:
- 14.4.1 the Goods must have been operated and maintained in compliance with the appropriate manufacturer's guidelines, except where the owner proves that any failure to operate or maintain was not a contributory cause of the defect.
 - 14.4.2 the defect in the Goods must not be the result directly or indirectly of fair wear and tear, dirt, misuse, negligence of anyone other than the Company and only lubricating oils and operating fluids recommended by the Company/Manufacturer shall have been used;
 - 14.4.3 no part shall have been fitted to the Goods other than the part supplied by the Company or through a source approved by the Company/Manufacturer;

- 14.4.4 adequate records of operation of the Goods shall be maintained and furnished to the Company on request;
 - 14.4.5 the Goods if not installed by the Company, must have been properly installed or connected;
 - 14.4.5 the Goods must not have been improperly altered or subject to misuse or unauthorised repair; and
 - 14.4.6 any claim under this warranty shall be made in writing immediately on the discovery of the defect to the Company. Manufacturer warranty procedures must be followed. The serial number of the product and full details of the circumstances of the defect shall be provided and upon request any defective product must be returned promptly, carriage paid to the Company.
- 14.5 If the Goods are located outside the United Kingdom and Ireland then the following shall apply:
- 14.5.1 the Company shall rely on the manufacturer's warranty so far as the law permits and the Customer should direct all claims in the first instant to the manufacturer of the product whereby the manufacturer shall determine acceptance or rejection of the warranty claim either directly or through their local agent or distributor.
 - 14.5.2 in the event that the Company is liable for the replacement / repair then Clause 14.4 above applies as though the product was located in the United Kingdom and Ireland.
- 14.6 The Company shall not be liable for any consequential or resultant loss or damage howsoever occurring, nor for labour involved in the removal or replacement of product / parts. The Company will endeavour to confer upon the Customer any assignable rights which it may have against a manufacturer or supplier of such parts or assemblies.
- 14.7 No person except an authorised Company representative may assume any liability or expense in relation to the Goods during the warranty period, except where such expenses are authorised in advance and in writing by the Company. The warranty hereby given is not assignable. All warranties and conditions implied by common law statute or trade uses, are hereby excluded.
- 14.8 Any warranty is void unless the Customer provides adequate care and storage of complete units from the date of shipment to date placed in service and unless units are properly installed within rates and capacities, with installation properly engineered in accordance with the practices as approved by the Company.
- 14.9 If failure occurs to a component part of the Goods within the warranty period, then it will be at the discretion of the Company whether the component part is replaced or the complete unit is replaced.
- 14.9.1 if the component part is replaced then such part will be covered by the remainder of the manufacturers unexpired warranty which remains in effect on the complete unit.
 - 14.9.2 If the complete unit is replaced, then such unit will be covered by a new manufacturers' warranty.
- 15. Anti-bribery**
- 15.1 For the purposes of this clause 15 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 15.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 15.2.1 all of that party's personnel;
 - 15.2.2 all others associated with that party; and

- 15.2.3 all of that party's subcontractors;
- 15.2.4 involved in performing the Contract so comply.
- 15.3 Neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 15.4 The Customer shall immediately notify the Company as soon as it becomes aware of a breach by the Customer of any of the requirements in this clause 15.
- 15.5 Any breach of this clause 15 by the Customer shall be deemed a material breach of the Contract that is not remediable and shall entitle the Company to immediately terminate the Contract by notice under clause 17.

16 Liability

- 16.1 In the event of the breach of any of the Company's express obligations the remedies of the Customer will be limited to damages.
- 16.2 The Company does not exclude its liability (if any) to the Customer:
 - 16.2.1 for breach of the Company's obligations arising under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Sale and Supply of Goods Act 1982.
 - 16.2.2 for personal injury or death resulting from the Company's negligence.
 - 16.2.3 under Section 2(3) Consumer Protection Act 1987.
 - 16.2.4 for any matter which it would not be legal for the Company to exclude or to attempt to exclude its liability; or
 - 16.2.5 for fraud
- 16.3 Except as provided above, the Company will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage, or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of business, loss of use, loss of contract, loss of commercial opportunity, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
 - 16.3.1 any of the Goods, performance of the services, or the manufacturer or sale or supply, or failure or delay in supply of performance, of the Goods and/or services by the Company or on the part of the Company's employees, agents or subcontractors.
 - 16.3.2 any breach by the Company of any of the express or implied terms of the contract.
 - 16.3.3 any use made or resale by the Customer of any Goods, or of any products incorporating any of the Goods or;
 - 16.3.4 any statement made or not made, or advice given or not given, by or on behalf of the Company or otherwise under the contract
- 16.4 Except as particularised in the above Clauses, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those particularised in the contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 16.5 Subject to the above, the Company's aggregate liability under the contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) and howsoever arising to the Customer will be limited to the Price paid under the contract.
- 16.6 Each of the Company's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in the above Clauses in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word Company wherever it appears in those Clauses.

16.7 The Customer acknowledges that the above provisions in these Terms and Conditions are reasonable.

17 Termination

17.1 The contract will terminate immediately upon the happening of any one or more of the following events:

17.1.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

17.2 The contract will terminate immediately upon service of written notice of termination by the Company on the Customer on the happening of any one or more of the following:

17.2.1 The Customer suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations or duties under the contract or any other contract between the Company and the Customer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases to trade.

17.2.2 the Company's rights contained in these conditions (but not the Customer's rights) shall continue beyond the discharge of the Customer and the Company's primary obligations under the contract consequent upon its termination.

17.2.3 the termination of the contract howsoever arising shall be without prejudice to rights and duties of either the Customer or the Company accrued prior to termination.

18 Processing of personal data

18.1 The parties agree that the Customer is a Controller and that the Company is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Company in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with all Data Protection Laws.

18.2 The Company shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.

18.3 The parties agree:

18.3.1 the Company shall only process (and shall ensure Company Personnel only process) the Protected Data in accordance with the Contract (including when making any transfer to which clause 18.9 relates), except to the extent:

18.3.1.1 that alternative processing instructions are agreed between the parties in writing; or

18.3.1.2 otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and

- 18.3.2 if the Company believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing. The charges payable to the Company shall not be discounted or set-off as a result of any delay or non-performance of any obligation in accordance with this clause 18.3.2.
- 18.4 The Company shall implement and maintain the technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 18.5 The Company shall:
- 18.5.1 not permit any processing of Protected Data by any Sub-Processor without the prior specific written authorisation of the Customer;
- 18.5.2 prior to any Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint such Sub-Processor under a written contract containing materially the same obligations as under this clause 18 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by the Company and ensure such Sub-Processor complies with all such obligations;
- 18.5.3 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
- 18.5.4 ensure that all natural persons authorised by the Company or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 18.6 The Customer authorises the appointment of the Sub-Processors communicated to the Customer.
- 18.7 The Customer shall reply to any communication from the Company requesting any further prior specific authorisation of a Sub-Processor pursuant to clause 18.5.1 promptly and in any event within 10 Business Days of request from time to time. The Customer shall not unreasonably withhold, delay or condition any such authorisation.
- 18.8 The Company shall (at the Customer's cost):
- 18.8.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to the Company; and
- 18.8.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 18.9 The Company shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom without the prior written authorisation of the Customer.
- 18.10 The Company shall at the Customer's cost and expense promptly refer to the Customer all requests it receives for exercising any Data Subjects' rights under Chapter III of the GDPR which relate to any Protected Data. It shall be the Customer's responsibility to reply to all such requests as required by applicable law.
- 18.11 The Company shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Company's compliance with the obligations placed on it under this clause 18 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for

and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 18.11).

- 18.12 The Company shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data].
- 18.13 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Company shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Company to store such Protected Data. This clause 18 shall survive termination or expiry of the Contract.

19. Protection of confidential information

- 19.1 The Customer shall keep the Confidential Information of the Company confidential and secret and shall only use the Confidential Information for the purpose and for performing its obligations under the Agreement. The Customer shall inform its officers, employees and agents of its obligations under the provisions of this clause 19, and ensure that its officers, employees and agents meet the obligations.
- 19.2 The obligations of clause 19.1 shall not apply to any information which:
- 19.2.1 was known or in the possession of the Customer before it was provided by the Company;
 - 19.2.2 is, or becomes, publicly available through no fault of the Customer;
 - 19.2.3 is provided to the Customer without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure; or
 - 19.2.4 is required to be disclosed by order of a court of competent jurisdiction.

This clause 19 shall survive termination of this Agreement for a period of ten years.

20. Communication

- 20.1 All communications between parties about the contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:-
- 20.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
 - 20.1.2 (in the case of communications to the Customer), to the registered office of the addressee (if it is a Company) or (in any other case) to any address of the Customer particularised in any documentation which forms part of the contract or such other address as shall be notified to the Company by the Customer.
- 20.2 Communications shall be deemed to have been received:
- 20.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank holidays) after posting (exclusive of the day of posting);
 - 20.2.2 if delivered by hand on the day of delivery;
 - 20.2.3 if sent by facsimile transmission, or a valid Company email address, on a working day prior to 4:00p.m. at the time of transmission and otherwise on the next working day.

20.3 Communications addressed to the Company shall be marked for the attention of the person agreeing the contract on behalf of the Company.

19 General

- 19.1 Time for performance of all obligations of the Customer is of the essence.
- 19.2 Each right or remedy of the Company under the contract is without prejudice to any other right or remedy of the Company whether under contract or not.
- 19.3 Any provision of the contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the contract and the remainder of such provision shall not be affected.
- 19.4 Failure by the Company to enforce or partially enforce any provision of the contract will not be construed as a waiver of any of its rights under the contract.
- 19.5 The Company may assign, licence or sub-contract all or any part of its rights or obligations under the contract without the Customers consent.
- 19.6 The contract is personal to the Customer who may not assign, licence or sub-contract all or any of its rights or obligations under the contract without the Company's prior written consent.
- 19.7 Except as particularised above the parties to the contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 19.8 The formation, construction, performance, validity and all aspects of the contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.
- 19.9 Any matter arising from the supply of Goods hereunder including interpretation and legal effect of these general conditions of sale and the terms of the warranty hereto shall be determined in accordance with English law and the English Courts shall have jurisdiction with regard to any dispute, claim or action of whatsoever nature arising at any time therefrom and placement from the Customer of the Order with the Company for such Goods or Services shall constitute submission by the Customer his successors and assignees of the jurisdiction of the English Court in respect of any such dispute, claim or action and the generality hereof shall in no way be limited because the Goods in question are supplied anywhere in the world:
 - 19.9.1 to a vessel (the term "Vessel" to include any production or drilling rig or barge) flying a flag other than the flag of the United Kingdom; or
 - 19.9.2 other than to an individual resident in the United Kingdom or other than a company resident or residence of the United Kingdom; or
 - 19.9.3 to a government, government department or agency or government or state owned corporation other than United Kingdom governments or departments or agencies thereof or corporation in the ownership of the United Kingdom government; or
 - 19.9.4 to an international agency or organisation.