

**SPIE Matthew Hall Ltd**  
**STANDARD TERMS AND CONDITIONS**  
**OF PURCHASE**

**1. Definitions**

In these Terms and Conditions:-

'Conditions' shall mean the terms and conditions contained herein numbered as clauses 1 – 32 and any additional conditions specifically incorporated into the Purchase Order in writing by the Purchaser.

'Contract' shall mean these Conditions, the Purchase Order and the documents listed therein.

'Contract Documents' shall mean the documents listed in clause 2(c).

'Delivery Date' shall mean the date or dates for physical delivery of the Goods as specified in the Purchase Order.

'Goods' shall mean the goods described in the Purchase Order (including any replaced goods and spare parts) and the term 'the Goods' shall whenever the context permits include without limitation all components and materials, items or things as ordered by the Purchaser.

'Intellectual Property Rights' shall mean all intellectual property rights (including without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets and confidential information), and all applications for protection of any of the same.

'Purchase Order' shall mean a document headed 'Purchase Order', together with any amendment thereto signed by or on behalf of the Purchaser, and issued to the Supplier, and which incorporates these Conditions.

'Purchaser' shall mean SPIE Matthew Hall Ltd.

'Supplier' shall mean the person or persons or firm or company to whom the Purchase Order is issued.

'Works' shall mean the works for and in connection with which the Goods are required and are incorporated.

A reference to one gender includes a reference to the other gender.

Headings do not affect the interpretation of these Conditions,

**2. Contract Terms**

(a) The acceptance of the Purchase Order by the Supplier shall be subject to these Conditions. Any amendment or variation of the Purchase Order or these Conditions shall only be by prior mutual written agreement between the parties.

- (b) If any term or condition of the Contract is held to be unenforceable, invalid or illegal by any court or tribunal, it shall be deemed severable and shall not affect any other term or condition of the Contract which shall otherwise remain in full force and effect between the parties.
- (c) In the event of any ambiguity or conflict between any of the Contract Documents, the order of precedence will be as follows:
- the Purchase Order;
  - these Conditions;
  - any documents attached to the Purchase Order; and
  - any quotation from the Supplier.

### **3. Notices and Communications**

Any notice or communication required or permitted to be given by either party to the other under the Purchase Order shall be in writing addressed to the other party at its registered address or principal place of business, or such other address as stipulated. Such notice or communication shall be given by hand, first class post, recorded delivery or facsimile transmission. Notice given by hand shall be effective immediately. Notice by recorded or postal delivery shall be effective two working days after the date of posting. Notice by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the facsimile transmission has been successful.

### **4. Guarantee and Indemnity**

The Supplier shall forthwith upon the request of the Purchaser:

- (a) procure that the Supplier's holding company (as defined by section 1159 Companies Act 2006) shall guarantee to the Purchaser the due performance by the Supplier of its obligation hereunder, and indemnify the Purchaser against all losses, claims and liabilities arising from a breach thereof, such guarantee and indemnity to be given as a deed in a form satisfactory to the Purchaser; and
- (b) grant to the Customers of the Purchaser who subsequently acquire the Goods such warranties concerning the fitness and quality of the Goods as they may reasonably require.

### **5. Pricing and payment**

- (a) The price of the Goods shall be as stated in the Purchase Order and except as otherwise agreed in writing between the parties shall be the total compensation payable to the Supplier under the Contract.
- (b) Unless otherwise agreed in writing by the Purchaser, the price shall include as appropriate (i) secure and proper packaging acceptable to the Purchaser and (ii) the cost of delivery to the address specified under Clause 6 hereof.

- (c) Where the supply of the Goods is subject to the addition of Value Added Tax, the price of the Goods and the amount of Value Added Tax shall be stated separately.
- (d) The Purchaser reserves the right to set off any sums in respect of which the Supplier may be indebted or in default to the Purchaser whether or not in connection with the sale or supply of the Goods under the Contract or otherwise.
- (e) Unless the Purchase Order otherwise provides, the Supplier shall not invoice the Purchaser until performance of the Contract has been completed.
- (f) Unless the Purchase Order otherwise provides, payment of amounts correctly invoiced by the Supplier shall, subject to sub-clauses (d) and (g) of this Clause 6, be made by the end of the month following the month in which the invoice is received.
- (g) No payment made by the Purchaser shall in any way be construed as acceptance of any of the Goods supplied by the Supplier and no payment shall in any way impair or restrict any rights or remedies the Purchaser may have under the Contract or otherwise for and in connection with the supply of the Goods by the Supplier.

## **6. Delivery**

- (a) The Goods shall be securely and properly packed by the Supplier and, if applicable, in accordance with any instructions given by the Purchaser and delivered to the address specified on the Purchase Order (hereinafter called the 'Place of Delivery') by the Delivery Date. The Supplier shall give reasonable notice to the Purchaser of the time of delivery of the Goods.
- (b) The Purchaser shall be entitled to amend the Delivery Date or the Place of Delivery without any liability for any costs whatsoever which may be incurred by the Supplier as a result of the amendment to the Delivery Date or the Place of Delivery.
- (c) It is a condition of the Contract that the Supplier shall, subject to the provisions of Clauses 8, 9 and 18 hereof, deliver the Goods by the Delivery Date stipulated in the Purchase Order.
- (d) Subject to Sub-clause (c) above, the Supplier shall give the Purchaser immediate notice of any potential delay in delivery.
- (e) In giving the notice required under Sub-clause (d) above the Supplier shall state whether, in his opinion, any part of the delay has been caused by the Purchaser being in breach of the Contract and shall provide details of the alleged breach(es) and the resulting delay. Provided notice is given as aforesaid the Purchaser shall grant such extension of any date or period specified in the Contract as shall, in his opinion, be fair and reasonable.
- (f) Without prejudice to any of the Supplier's obligations under the Contract, the Supplier shall at all times allow persons duly authorised by the Purchaser to enter upon the premises where the Goods or any part thereof are being

manufactured and shall provide such programmes, schedules, reports and other information as the Purchaser may require to monitor the progress of the manufacture of the Goods and to satisfy the Purchaser that all practicable measures have been and are being taken to meet the Delivery Date.

- (g) Delivery of the Goods in instalments or separate consignments shall be permitted only with the prior consent in writing of the Purchaser and only in accordance with the terms of such consent and permission. If such consent or permission is given this shall not entitle the Supplier to claim payment prior to delivery of the whole of the Goods, unless otherwise expressly agreed in writing by the Purchaser.

## **7. Risk and title**

- (a) In no circumstances shall the risk of damage to or loss or destruction of the Goods pass to the Purchaser prior to delivery of the Goods to the Place of Delivery.
- (b) Title in the Goods or any part thereof shall pass to the Purchaser on delivery of or on payment for the Goods or any such part, whichever is the sooner. Any Goods for which the Purchaser has paid but which have not been delivered shall be clearly identified as the property of the Purchaser and stored in safe and suitable conditions and in accordance with any instructions given by the Purchaser.
- (c) Where the Purchaser issues materials or other items free of charge to the Supplier, such materials and other items shall be and remain the property of the Purchaser and shall be used by the Supplier solely in connection with the Contract. The Supplier shall, (unless within three working days from receipt thereof the Supplier notifies the Purchaser in writing to the contrary setting out appropriate details), be deemed to have satisfied itself as to the suitability of such materials and other items for their intended use and to have received same in good order and condition and in the quantities specified in the Contract. The Supplier shall thereafter be responsible for and accountable to the Purchaser for any loss of or damage thereto (including without limitation any waste thereof arising from any fault or neglect of the Supplier) until safe delivery of the completed Goods incorporating the said materials and/or other items is effected in accordance with Clause 6 hereof and any scrap or surplus arising from free-issue materials and/or other items as the Purchaser may at its option have decided and instructed the Supplier is/are (i) safely delivered with the Goods as aforesaid or (ii) sold by the Supplier by competitive tender and the amount so obtained paid or credited to the Purchaser.
- (d) The Supplier warrants that it has good title to the Goods and that the Goods are free and clear of any lien, encumbrance or rights of any third party. The Supplier shall indemnify the Purchaser from and against all losses, costs, damages or expense suffered or incurred by the Purchaser as a result of any breach of this warranty.
- (e) The Supplier shall have no rights to claim or retake possession of the Goods once delivered to, or paid for the Purchaser (whichever is the earlier).

- (f) The Supplier shall off-load the Goods at the Place of Delivery at its own cost and risk as directed by the Purchaser.

## **8. Storage**

If the Purchaser is not able to accept delivery of the Goods on the DeliveryDate:

- (a) the Supplier shall at its own risk, (but subject to reimbursement as provided in Sub-clause (c) of this Clause 8) if the Purchaser so requests, store the Goods at suitable premises, advising the Purchaser beforehand of the particulars of such proposed storage.
- (b) the Supplier shall insure the Goods for their full replacement value on 'all risks' terms acceptable to the Purchaser in the joint names of the Supplier and the Purchaser and shall notify the Purchaser of such insurance cover.
- (c) subject to receiving a certificate of insurance in a form acceptable to the Purchaser, the Purchaser shall reimburse the Supplier in respect of all reasonable storage charges and insurance premiums so incurred or paid.

## **9. Variations**

- (a) The Supplier shall not make any variations in the design, materials or method of manufacture of the Goods, nor substitute other parts or fitments for any proprietary or special parts or fitments ordered by the Purchaser without the prior written consent of the Purchaser.
- (b) If the Purchaser refuses its consent under Sub-clause (a) above, and the Supplier is for any reason unable to perform the Contract without making the variation or substitution as requested, the Purchaser may terminate the Contract in accordance with the provisions of Clause 15(b)(i) hereof.
- (c) Where the Contract or any part thereof is terminated under Sub-clause (b) above, any payments already made by the Purchaser shall be returned to the Purchaser.
- (d) The Purchaser shall have the right, from time to time during the performance of the Contract, by notice in writing to direct the Supplier to add to or omit, or otherwise vary the Goods (including without limitation any required changes in any drawings, specifications, instructions or directions) and the Supplier shall carry out such variations and be bound by the same terms and conditions so far as applicable, as though the said variations were stated in the Contract.
- (e) Any adjustment to the Contract price occasioned by any variation shall be ascertained and determined at the same level of pricing as that stated in the Purchase Order. The Supplier shall within five working days from receipt of the Purchaser's direction and if that direction so instructs prior to proceeding with the required variation advise the Purchaser in writing of its estimate of the amount of any such adjustment to the Contract price.
- (f) If, in the opinion of the Supplier, any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the Contract, the Supplier shall

within five working days from the receipt of the Purchaser's direction so notify the Purchaser and the Purchaser shall decide with all possible speed whether or not the same shall be carried out and shall confirm his direction in writing and modify the said obligations to such an extent as in the Purchaser's opinion may be justified. Until the Purchaser so confirms his instructions they shall be deemed not to have been given. If the Supplier fails to notify the Purchaser as aforesaid then the Supplier shall forfeit any right to modification of any of its obligations under the Contract by reason of or in connection with the aforementioned Purchaser's direction.

- (g) Variations shall be confirmed by amendment to the Purchase Order, signed by or on behalf of the Purchaser and issued to the Supplier.
- (h) The Supplier shall be deemed to have full knowledge and to have made full allowance in respect of all matters whatsoever (including without limitation any local conditions) that may be relevant to the proper performance of its obligations under the Contract. The Supplier shall in no event be entitled to any additional compensation or any modification to any of its obligations under the Contract by reason of or in connection with any failure on its part under this Sub-clause 9(h).

## **10. Quality**

- (a) All Goods (including raw materials and unfinished goods) shall be provided and/or made in a professional manner using all due care and skill and shall, on delivery to the Purchaser, be of satisfactory quality, fit for the purpose for which the Purchaser requires them and, where applicable, in accordance with the Purchaser's specifications, and of first class materials, workmanship and design and to the satisfaction of the Purchaser. All Goods shall comply in all respects with the terms of the Contract, all statutory requirements and regulations relating to the supply of the Goods and where British Standard specifications are referred to, or are relevant, in accordance with the relevant British Standard, and all warranties or representations given or made on behalf of the Supplier or implied at law. For the avoidance of doubt, any express warranty or guarantee given by the Supplier shall extend to parts and labour and shall apply until expiry of a period of twenty four months from the date the Works incorporating the Goods are completed.
- (b) The Supplier shall satisfy itself that it understands the Purchaser's requirements in order to comply with the obligations contained in Sub-clause (a) above and also to prevent delay caused by any work which may be necessary to meet the Purchaser's requirements. The cost of any such work shall be borne by the Supplier.
- (c) For the purpose of satisfying the Purchaser that the obligations contained herein are being observed, the Supplier shall at all times allow persons duly authorised by the Purchaser to make any inspections or tests which the Purchaser may require and/or witness any inspections or tests carried out by the Supplier pursuant to Sub-clause (e) of this Clause 10 and shall afford to the Purchaser all reasonable facilities and assistance which shall be free of cost to the Purchaser unless specifically agreed in writing to the contrary.

- (d) The Supplier shall operate a quality system in accordance with the relevant parts of BS EN ISO 9000 or equivalent.
- (e) Without prejudice to the provisions of Sub-clause (c) of this Clause 10, the Supplier shall at its own expense carry out such inspections and tests of the Goods as may be required for the purposes of ensuring that the Goods are (i) safe and without risks to health when properly used and (ii) in full compliance with the Contract.

## **11. Defects**

- (a) If, on inspection or test, (whether at any time prior to or after delivery) in manufacture or use, any Goods are found to be faulty in quality, damaged, defective, or not to comply with these Conditions (including Goods damaged in transit), the Purchaser may, at its option, (i) reject the whole or any part of the Goods in which event any payment previously made therefor shall be refunded to the Purchaser or (ii) require the Supplier at its own cost either to replace the Goods or to rectify any defect or (iii) undertake or procure at the risk and expense of the Supplier the replacement of the Goods or the rectification of any defect. The twenty four month period specified in paragraph (ii) of Clause 10(a) shall, in respect of Goods replaced or rectified as aforesaid, be renewed from the date such replaced or rectified Goods are put into use by the Owner.
- (b) In addition to its remedies under Sub-clause (a) above the Purchaser shall be indemnified by the Supplier against all loss, damages, costs, charges, expenses or claims (including without limitation any claims by third parties) arising by reason of any failure of the Goods to comply with Clause 10(a) or any other terms of these Conditions whether express or implied by statute, common law, custom or otherwise or by reason of any act or omission of the Supplier, its servants, agents or sub-contractors in the performance of the Contract.
- (c) Where the Purchaser requires the Supplier to rectify a defect: (i) the cost of collecting the Goods from and returning them to the Purchaser shall be borne by the Supplier; (ii) the cost of any additional inspection or testing of the replaced or repaired Goods and the cost of any further inspection or testing of other Goods as may be reasonably required by the Purchaser having due regard to the nature of the defect found in the Goods being replaced or repaired shall be borne by the Supplier; and (iii) the Supplier shall pay to the Purchaser a sum equal to the cost of any additional insurance considered necessary by the Purchaser.
- (d) Any inspection, test, checking or approval by or on behalf of the Purchaser (or any failure to inspect, test, check, approve or make any complaint to the Supplier), shall in no event be construed as acceptance of any of the Goods supplied and shall in no way relieve the Supplier from any obligation or liability under the Contract or otherwise.
- (e) Any specification supplied by the Purchaser to the Supplier or produced by the Supplier for the Purchaser in connection with the Contract, together with the copyright, design rights or any other Intellectual Property Rights in the specification, shall be the exclusive property of the Purchaser. The Supplier shall

not disclose to any third party or use any such specification except, or as required, for the purpose of the Contract.

- (f) The rights set out in this Clause 11 are without prejudice to all other rights which the Purchaser may have, whether at common law, statute or otherwise, in connection with the supply of Goods which are defective, which do not comply with their description, which are not fit for purpose, or which may have latent defects.

## **12. Assignment and sub-contracting**

- (a) The Supplier shall not sub-contract or assign the whole or any part of the Contract or the benefit thereof without the written consent of the Purchaser. In particular, but without limitation to the foregoing, the Supplier shall not be entitled to assign the benefit of, or to factor, any debt owed to it by the Purchaser under the Contract to any third party. Any consent given by the Purchaser under the foregoing provisions of this Sub-clause shall not relieve the Supplier from any obligation or liability under the Contract.
- (b) When the Purchaser has consented to the placing of sub-contracts copies of each sub-contract or sub-order shall be sent to the Purchaser immediately they are issued unless the Purchaser has specifically requested or approved in writing otherwise.
- (c) The Purchaser shall, without consent from the Supplier, have the right to assign the whole or any part of the Contract or the benefit or burden thereof to any of its parent, subsidiary or associated companies, and, with the Supplier's written consent, which shall not be unreasonably withheld, to any other party.

## **13. Health and safety**

- (a) The attention of the Supplier is drawn to the obligations imposed by the Health and Safety at Work etc. Act 1974, on designers, manufacturers, importers, suppliers, erectors and installers of articles and substances for use at work to ensure, so far as is reasonably practicable, that such articles and substances are so designed, constructed or installed to be safe and without risks to health at all times when they are being set, used, cleaned, maintained, handled, processed, stored or transported.
- (b) Where by reason of its obligations under the said Act or any modification or re-enactment thereof or otherwise the Supplier has carried out or arranged for the carrying out of testing and examination of Goods to be sold hereunder for the purpose of ensuring that they are safe and without risks to health at the times mentioned above, the Supplier shall provide the Purchaser where appropriate on or before delivery of the Goods with proper documented results of such tests or examinations or, in default thereof, certificates issued by a duly qualified and authorised person that the tests and examinations proved satisfactory.
- (c) Without prejudice to the obligation contained in Sub-clause (b) above, on or before delivery of the Goods to the Purchaser, the Supplier shall provide to the Purchaser in connection with the Goods information about the use for which such Goods have been designed and tested, and about any conditions necessary to

ensure that when installed, commissioned and put to use the Goods will be safe and without risks to health.

- (d) Nothing contained in the foregoing provisions of this Clause 13 shall be construed as relieving the Supplier or in any way detracting from any obligation or liability the Supplier may have under the Health and Safety at Work etc. Act 1974 or any modification or re-enactment thereof, or under any other statute, statutory instrument or regulation applicable to the Goods and the use thereof.
- (e) Without prejudice to the generality of the foregoing, in the event that the Supplier is required to supply personnel to perform any services of whatsoever nature at the site or a location other than the Supplier's place of business the Supplier hereby warrants and represents absolutely that all such personnel shall be in a good and sufficient state of health so as to perform such services without hazard to others.
- (f) Where in the performance of the Supplier's obligations under the Contract the Supplier, its sub-contractors, tradesmen or artisans intend either to supply to the Purchaser, or to use any product which may or does contain a substance or substances which is or are hazardous to health within the meaning of Regulation 2(1) Control of Substances Hazardous to Health Regulations 1988 (or any amendment thereto), the Supplier shall supply full details both of such product and such substance in duplicate forthwith.

In supplying such details the Supplier will include in relation to both the product and the substance, without limitation, details of any assessment or monitoring which has been carried out and any data concerned with information or training.

The Supplier shall in addition supply promptly, but no later than seven days following the Purchaser's written request, any other supporting documentation or information relating to the product which the Purchaser may reasonably request.

In considering whether any product contains a substance which falls within the above Regulations, the Supplier shall include any substance which may be comprised in the product and which may be released either by cutting, grinding, spreading or burning the product or by mixing or using the product with other products or by any other means.

#### **14. Suspension**

The Purchaser shall, by notice in writing to the Supplier, be entitled to suspend the Contract or any part thereof. If the Supplier shall be delayed in the performance of any of his obligations under the Contract by any suspension order (other than a suspension order given by reason of the Supplier's own breach of the Contract) then any additional cost or expense directly and unavoidably incurred by the Supplier as a result of such order shall be added to the Contract price. The Purchaser, however, shall in no event be liable to the Supplier for any loss of profit, loss of use or loss of trading revenue, whether arising in connection with or as a result of such suspension or otherwise.

#### **15. Termination of the Contract**

- (a) In addition and without prejudice to the Purchaser's right to terminate the Contract or any part thereof under any other provision in these Conditions, the Purchaser shall have the right at its sole discretion to terminate the Contract or any part thereof at any time prior to discharge of the Contract by performance by giving notice in writing to the Supplier under this Sub-clause (a).
- (b) The Purchaser shall have the right to terminate the Contract or any part thereof forthwith:
  - (i) if the Supplier shall be in breach of any of the obligations set out in these Conditions or in the Purchase Order and (if the breach is capable of being remedied) shall not have remedied such breach to the complete satisfaction of the Purchaser within seven days (or within such longer period as the Purchaser may have agreed in writing), after notice thereof in writing (ii) in the event that the Supplier, not being a body corporate, becomes bankrupt, or compounds or makes any arrangements with his creditors, or commits any act of bankruptcy, or where the Supplier, being a body corporate, goes into liquidation, whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation while solvent), or has a receiver, administrator and/or manager appointed of its undertaking or assets or any part thereof.
- (c) Termination of this Contract or any part thereof for any reason shall be without prejudice to the rights and remedies of either party hereto accrued up to and including the date of such termination.
- (d) Unless the Purchaser's termination notice otherwise provides, upon receipt of such notice the Supplier shall promptly cease any further work (except on any part not terminated by the Purchaser) and shall instruct its sub-contractors if any, to similarly do so, and shall comply with all reasonable instructions from the Purchaser in regard to termination.
- (e) The Supplier hereby agrees that notwithstanding anything contained elsewhere in the Contract to the contrary, whether expressly or by implication, the Supplier's sole remedy in the event of termination pursuant to Sub-clause (a) of this Clause 15 is to receive payment from the Purchaser of (i) such part of the Contract price as represents the value of Goods (if any) completed, delivered and accepted in accordance with the Contract prior to the date of receipt of such termination notice, less any monies previously received under the Contract (ii) any direct costs and expenses reasonably and necessarily incurred by the Supplier in complying with the provisions of sub-clause (d) of this Clause 15 as substantiated to and agreed by the Purchaser or (iii) in lieu of (i) and (ii) such sum as the Purchaser and the Supplier may agree as full and final settlement. The Purchaser, however, shall in no event be liable to the Supplier for any loss of profits, loss of use or loss of trading revenue, whether arising in connection with or as a result of such termination or otherwise.

## **16. Patents, copyrights etc**

The Supplier warrants that the supply by the Supplier and the use by the Purchaser or any other user of the Goods does not and will not infringe the Intellectual Property Rights of any third party, and the Supplier shall indemnify the Purchaser and the

Owner against all claims, demands, damages, penalties, costs, expenses or liability arising as a result of the breach of this warranty by the Supplier.

**17. Confidentiality**

- (a) Any items provided to the Supplier by the Purchaser (including without prejudice to the generality of the foregoing, specifications, plans, drawings, designs, samples, patterns, dies, moulds, gauges, equipment, material and computer programmes, whether by way of free issue or not) for use in connection with the Contract, whether for incorporation in the Goods or not, shall be and remain the property of the Purchaser, and the Supplier shall (i) bear the risk of loss of or damage to such items and be generally responsible and accountable to the Purchaser therefor in accordance with Clause 7(c) hereof; (ii) affix and keep affixed a clear sign upon each such item indicating that it is the property of the Purchaser; (iii) not without the Purchaser's prior written consent use or allow the use of any such items for any purpose whatsoever, other than the supply of the Goods and the carrying out of any associated work under the Contract; (iv) not without the Purchaser's prior written consent disclose or allow the disclosure of any such item or information relating thereto to any person whatsoever save for the purposes of the proper performance of the obligations owed to the Purchaser by the Supplier under the Contract; and (v) upon completion by performance or termination of the Contract, or earlier at the Purchaser's request, return to the Purchaser all such items.
- (b) The Supplier shall not publish any information in connection with the Works, or the Contract, or the Goods supplied or to be supplied hereunder without the prior written consent of the Purchaser.
- (c) The provisions of this Clause 17 and Clauses 16, 20 and 24 shall remain in effect notwithstanding any discharge by performance, termination or suspension of the Contract, howsoever arising.

**18. Force Majeure**

- (a) If either party is prevented or hindered from carrying out its obligations hereunder by Force Majeure (as defined in Sub-clause (b) of this Clause 18), then the performance of such obligations shall be suspended for such time as the Force Majeure circumstances last and the party affected shall not be liable for any loss or damage caused to the other by the delay, but shall however resume performance of the suspended obligations as soon as the Force Majeure circumstances cease to exist unless the Contract has prior thereto been terminated by the Purchaser pursuant to Sub-clause (c) of this Clause 18.
- (b) 'Force Majeure' shall, for the purpose of the Contract mean any circumstances which were not reasonably foreseeable and which were beyond the control of the Purchaser or the Supplier or the Supplier's sub-contractors and which by the exercise of reasonable diligence the Purchaser or the Supplier or the Supplier's sub-contractors would have been unable to prevent or provide against and shall in any event be limited solely to act of god or the public enemy, war, rebellion, civil disturbance, compliance with any order, act or regulation of any government or government agency.

- (c) In the case of Force Majeure extending beyond a reasonable time (which term for the purposes of the Contract shall in any event include any period in excess of sixty days) the Purchaser may by notice in writing to the Supplier terminate the Contract, with no liability on either party for loss or damage thereby occasioned.

#### **19. Labelling and instructions**

- (a) The Supplier warrants that the design, construction, quality, packaging and labelling of the Goods shall comply in all respects with any requirements of any statute, order or other instrument having the force of law, which may be in force at the times when the Goods are supplied.
- (b) All marking and labelling of the Goods (i) necessary to ensure safe and proper handling, processing, storage and transport and (ii) as particularly required by the Purchaser shall be carried out by the Supplier.
- (c) Hazardous goods must have prominent warnings in English and any other language as may be specified in the Purchase Order on all packing and documents.

#### **20. Liens and claims**

The Supplier shall indemnify and hold the Purchaser and the Owner harmless from all liens and other encumbrances against the Goods or any property belonging to or in the possession of the Purchaser on account of debts or claims alleged to be due from the Supplier or its sub-contractors to any person, including sub-contractors, and on behalf of the Purchaser, and in the Purchaser's name shall defend at its own expense any claim or litigation in connection therewith and shall follow any reasonable instructions issued by the Purchaser in connection therewith.

#### **21. Late delivery**

If the Goods or any part thereof are not delivered by the DeliveryDate, the Purchaser may at its option and without prejudice to any other rights or remedies it may have; either :

- (a) refuse to take delivery of or reject the Goods or any part thereof as it may choose, and the Purchaser shall have no liability for the payment thereof, or,
- (b) take delivery of and subject to Clause 11 hereof keep the Goods or any part thereof as it may choose, in which event the Supplier shall pay to the Purchaser liquidated damages, if any, as may be specified in the Purchase Order or if no liquidated damages are specified in the Purchase Order, such sum as the Purchaser may claim for any costs, losses, damages and expenses suffered or incurred by the Purchaser as a result of or in connection with such late delivery.

#### **22. Liability and Insurance**

- (a) The Supplier shall indemnify the Purchaser in full against all liabilities, losses (including loss of profit), damages, costs and expenses (including legal expenses) incurred or paid by the Purchaser as a result or in connection with:

- (i) a breach by the Supplier of any term or condition of the Contract or of any warranty given by the Supplier in relation to the Goods; or
  - (ii) any claim that the Goods infringe, or their importation or use or resale infringes, the Intellectual Property Rights of any other person; or
  - (iii) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying and delivering the Goods.
- (b) The Supplier shall at its own expense effect and maintain throughout the performance of the Contract (i) such insurances as the Supplier may be required to effect and maintain by law; (ii) "all risks" insurance for the full replacement value of the Goods and other items while they remain at the Supplier's risk; (iii) insurance in respect of liability for death of or injury to third parties or loss of or damage to third party property for an amount of not less than £1,000,000, any one occurrence, unlimited in the aggregate; and (iv) adequate insurance for such other of the Supplier's insurable obligations under the Contract (including in particular its obligations under Clauses 10 and 11) as a prudent and competent person entering into the Contract would effect and maintain.
- (c) The Supplier shall provide the Purchaser upon request with details of all insurance cover for the time being held by it in relation to the Goods and the Supplier's obligations under the Contract.

### **23. No waivers**

No failure on the part of the Purchaser at any time or from time to time to enforce or to require the strict adherence and performance of any of the terms or conditions of the Contract or these Conditions shall constitute a waiver of such terms or conditions and/or affect or impair such terms or conditions or these Conditions in any way or the right of the Purchaser at any time to avail itself of such remedies as it may have for each and every breach of such terms or conditions or these Conditions.

### **24. Ethical conduct**

The Supplier shall not offer or give or agree to give to any director, officer, employee or agent of the Purchaser any gift or consideration of any kind as an inducement or reward for doing, or for forbearing to do, or for having done, or forborne to do, any action in relation to the obtaining or execution of the Contract or any other contract with the Purchaser or for showing or forbearing to show any favour or disfavour to any person in relation to the Contract or any other contract with the Purchaser, and nor shall the Purchaser commit any offence under the Bribery Act 2010. In the event of breach of the Supplier's obligation under this Clause 24, the Purchaser may without prejudice to any other rights it may have terminate the Contract forthwith in accordance with the provisions of Sub-clause 15(b)(i) hereof and any payments already made to the Supplier under the Contract shall be returned to the Purchaser forthwith.

### **25. Conditions**

No servant or agent of the Purchaser has any authority to agree to any variation of or addition to these Conditions, unless such variation or addition is expressed in writing and specifically agreed and signed on behalf of the Purchaser by a director or other

person duly authorised by the Purchaser. Subject to the foregoing provisions of this Clause 25, nothing contained in any document issued by the Supplier (irrespective of whether same is referred to in the Purchase Order) shall in any way modify or vary these Conditions.

**26. Disputes**

If any dispute arises out of the Contract the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution's (CEDR) Model Mediation Procedure.

**27. Unloading**

The Purchaser shall make available to the Supplier such assistance in unloading of the Goods as has been included in the Contract and is confirmed by the Supplier to the Purchaser in writing seven days prior to delivery of the Goods. The Goods shall not be treated as having been delivered to the Place of Delivery until they are safely unloaded and taken over by the Purchaser.

**28. Storage**

The Purchaser shall store the Goods at the Place of Delivery in accordance with such storage requirements as included in the Contract. Where the Contract is silent on storage requirements for the Goods then the Supplier warrants that the Goods may be stored without deterioration in the open on the ground whilst in the condition general to the Place of Delivery.

**29. Bribery and Corruption**

- (a) The Supplier undertakes to protect the Purchaser's standards of business practice at all times and to act in such a way as to uphold the Purchaser's good name and reputation, and not to do or attempt to do any act or thing which is intended and/or which in fact causes any damage to or brings discredit upon the Purchaser and/or which amounts to any offence under the Bribery Act 2010.
- (b) The Purchaser shall be entitled by immediate written notice pursuant to Clause 15 to terminate the Contract or any part thereof if, in relation to the Contract or any contract in place between the parties, the Supplier or any persons employed by the Supplier or acting on the Supplier's behalf, shall have committed an offence under the Bribery Act 2010.

**30. Third Party Rights**

No provision of the Contract is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever on any third party.

**31. Entire Agreement**

The Contract shall constitute the entire agreement between the Supplier and the Purchaser on the subject matter hereof and shall cancel and supersede all prior written or oral representations or understandings between the Supplier and the Purchaser other than as expressly included in the Contract.

**32. Governing Law**

Unless otherwise agreed in writing the Contract shall in all respects be construed and governed by the laws of England and subject to Clause 26 the parties agree to submit to the exclusive jurisdiction of the English Courts.

**AS WITNESS** the hands of the Parties or their duly authorised representatives

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Signed by or on behalf of the Purchaser  
SPIE Matthew Hall Limited

.....

In the presence of: .....

Witness signature

.....  
Witness Name

.....  
Witness Address

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Signed by or on behalf of the Supplier  
[Insert Supplier Name]

.....

In the presence of: .....

Witness signature

.....  
Witness Name

.....  
Witness Address