

voestalpine Metsec plc

Terms and Conditions of Sale

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in these Contract Terms.

1.1 Definitions

Bribery Laws: the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction.

Buyer: the person or firm who purchases the Goods and/or Works from the Seller.

Buyer Default: has the meaning given to it in Clause 12.2.

Buyer's Goods: the goods or materials belonging to the Buyer or any of them upon or in connection with which Works are to be carried out by the Seller.

Buyer's Specification: has the meaning given to it in Clause 5.2.

Commencement Date: has the meaning given in Clause 2.2.

Contract Terms: these terms and conditions as amended from time to time in accordance with Clause 2.1.

Contract: the contract between the Seller and the Buyer for the supply of Goods and/or Works in accordance with these Contract Terms.

Delivery Location: has the meaning given to it in Clause 6.3.

Force Majeure Event: any cause beyond the Seller's reasonable control including governmental action, war, riot, terrorist attack, civil commotion, fire, flood, epidemic or pandemic, labour disputes including labour disputes involving the work force or any part thereof of the Seller, restraints or delays affecting shipping or carriers, currency restrictions and acts of God.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Buyer and the Seller.

HSWA: the Health and Safety at Work Act 1974.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

JCT: Joint Contracts Tribunal.

New Goods: goods produced by the Buyer converting, incorporating or mixing the Goods with other goods prior to title in the Goods passing to the Buyer and includes any of them and any part of them.

Order: the Buyer's order for the supply of Goods and/or Works, as set out in the Buyer's purchase order form, or made by electronic data interchange, or the Buyer's written acceptance of the Seller's quotation, or overleaf, as the case may be.

Seller: voestalpine Metsec plc, registered in England and Wales with company number 01551970.

Special Conditions: the special conditions (if any) set out in the annexure to these Contract Terms.

Supplied Goods: the Goods and the New Goods and includes any of them and any part of them.

Trade Account: a trade account with the Seller, pursuant to which a buyer may be offered credit terms.

Works: the services supplied by the Seller to the Buyer as set out in the Order (including but not limited to as set out in any related appointment document and/or designing and/or detailing agreement) and/or in any separate Works Specification.

Works Specification: the description or specification for the Works provided in writing by the Seller to the Buyer (including but not limited to any appointment document and/or designing and/or detailing agreement).

1.2 Interpretation

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Buyer to purchase Goods and/or Works in accordance with these Contract Terms.

2.2 The Order shall only be deemed to be accepted when the Seller:

- (a) issues a written acceptance of the Order to the Buyer; or

(b) commences production of the Goods and/ or supply of the Works,

whichever is the earlier, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 No drawings, descriptive matter, sample, weights, dimensions or shipping specifications issued by the Seller or the manufacturer of the Goods and/or supplier of the Works, nor the descriptions and illustrations contained in the Seller's or manufacturer's or supplier's catalogues, price lists or other promotional material will form part of the Contract nor be regarded as a warranty or representation relating to the Goods and/or the Works nor have any contractual force.

2.4 The Contract constitutes the entire agreement between the parties. Unless other terms and conditions are expressly accepted by the Seller by means of a specific written amendment hereto signed by the Seller or a director of the Seller the Contract will be on the Contract Terms to the exclusion of any other terms and conditions (except those implied in favour of a seller which are not inconsistent with the Contract Terms) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Buyer to the Seller. Any reference to the Buyer's order, specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect to the exclusion or amendment of the Contract Terms. For the avoidance of doubt, any quotation, order acknowledgment or other document issued by the Seller is subject to these Contract Terms, including without limitation the Seller's right to adjust the Contract Price in accordance with Clause 14.3, and no statement or agreement as to price shall be binding except as expressly provided in these Contract Terms.

3. SPECIAL CONDITIONS

Where the Seller undertakes to carry out steelwork erection or other Works on site, the Special Conditions shall form part of the Contract Terms. The Contract price is based upon the Buyer (or main contractor or employer, if different) providing the services and attendances set out in such annexure.

4. QUOTATIONS

4.1 Any quotation given by the Seller is given on the basis that no contract will come into existence until the Seller issues written acceptance of the Order in accordance with Clause 2.2.

4.2 Except where stated otherwise on a quotation, any quotation is valid for a period of 30 days only from its date of issue provided that the Seller has not previously withdrawn it. All quotations are provided subject to these Contract Terms, including the Seller's right to adjust the Contract Price in accordance with Clause 14.3.

5. GOODS

5.1 The Goods are described in the Goods Specification.

5.2 Where the Goods are manufactured in accordance with a Goods Specification supplied by the Buyer or where standard Goods of the Seller are altered in accordance with the Buyer's instructions (**Buyer's Specification**):

5.2.1 without prejudice to any other of the Contract Terms, no guarantee or warranty is given by the Seller as to the practicability, efficiency, safety or otherwise of the Goods;

5.2.2 the Buyer will indemnify and keep the Seller indemnified against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Seller arising out of or in connection with:

5.2.2.1 any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Seller's use of the Buyer's Specification or the actual or alleged infringement of the provision of any statute, statutory instrument or regulation; and

5.2.2.2 any impracticability, inefficiency or lack of safety or defect in the Goods where such defect is due (whether in whole or in part) to faults or omissions in such Buyer's Specification.

5.3 No variation by the Seller in the specification or design of any Goods (which in the reasonable opinion of the Seller does not affect the suitability of the Goods for the purpose for which they are supplied by the Seller or is within the normal industrial limits of quality and tolerance) will constitute a breach of Contract or impose upon the Seller any liability whatsoever.

5.4 The Seller reserves the right to amend the Goods Specification if required by applicable statutory or regulatory requirement, and the Seller shall notify the Buyer in any event.

5.5 Where relevant, the Seller may at its discretion submit a sample of the Goods to the Buyer for approval and the balance of the Order therefor shall only be commenced upon receipt of the Buyer's written approval of the sample. Any time for delivery under the Contract shall be extended by a period equal to the interim period whilst such sample is with the Buyer for approval. Any sample is exhibited and/or inspected by the Buyer solely to enable the Buyer to judge for itself the quality of the bulk and not so as to constitute a sale by sample. The Seller does not give any warranty that the Goods shall correspond with any sample and no variation between bulk and sample which is within the normal trade limits will constitute a breach of contract or impose upon the Seller any liability whatsoever.

6. DELIVERY OF GOODS

6.1 The Seller will endeavour to deliver the Goods within the time agreed and, if no time is agreed, within a reasonable time but time for delivery is not of the essence and in no circumstances will the Seller be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the delivery of the Goods, nor shall the Buyer be entitled to terminate or rescind the Contract except for termination in accordance with Clause 20.2.

6.2 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

6.3 Unless otherwise agreed in writing between the Seller and the Buyer, the Buyer shall collect the Goods and the Buyer's Goods from the Seller's premises at Broadwell Road, Oldbury, B69 4HF or such other address as directed by the Seller (**Delivery Location**) within 5 days of the Seller notifying the Buyer that the Goods and the Buyer's Goods are ready, and the

Contract price is calculated on that basis. The Buyer shall be responsible for and the Seller shall be entitled to charge for and be paid all delivery and insurance costs in addition to the price for the Goods and/or Works. Delivery of the Goods and the Buyer's Goods shall be completed on the completion of loading the Goods and the Buyer's Goods at the Delivery Location.

6.4 No claim for damage or shortages will be considered unless the Buyer notifies the Seller in writing within 7 days of delivery. In the absence of such notice the Buyer will be deemed to have accepted the Goods. No claim for non-delivery will be considered unless the Buyer notifies the Seller in writing within 21 days of the date of the Seller's invoice. Any claim for damage shortages or non-delivery shall also be notified to the carriers by the Buyer in the manner and within the appropriate time limit prescribed by the carriers' terms and conditions.

6.5 The Seller shall not be liable to the Buyer in the event of:

6.5.1 failure by the Buyer to give (a) adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or (b) the appropriate notice or notices as specified in Clause 6.4, or

6.5.2 any delay in delivery or non-delivery of the Goods caused by a Force Majeure Event.

6.6 If the Seller fails to deliver the Goods and Clause 6.5 does not apply, the Seller's liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

6.7 The Seller will endeavour to supply the exact quantity of Goods ordered but the Seller may supply up to 10% more or less than the exact quantity ordered. A pro rata charge or allowance at the Contract price will be made to cover any variation.

7. BLANKET ORDERS

7.1 This Clause 7 shall apply where the Seller supplies the Goods and/or the Works under a blanket Order received from the Buyer:

7.1.1 if the Order is a scheduled order where the maximum quantity of Goods and/or Works required and the approximate dates (including the terminal date) on which the requirements will be called off are specified, the whole Order will be treated as a single Contract upon the Contract Terms;

7.1.2 if the Order is a non-scheduled order where the maximum quantity of Goods and/or Works required or where the appropriate call off dates are not specified, each call off will be deemed to conclude a separate Contract upon the Contract Terms;

7.1.3 if the Order is a non-scheduled order where the appropriate call off dates are not specified, the Seller may require the Buyer to accept delivery of the maximum quantity of Goods required and/or performance of the maximum required Works within twelve months of the Commencement Date.

7.2 Without limiting the generality of any of the other Contract Terms, the Seller will not be under any liability to the Buyer if at the time of any call off by the Buyer the Seller is unable for whatever reason to supply Goods and/or perform Works in accordance with the Buyer's requirements.

8. PROVISION OF WORKS

8.1 The Seller shall provide the Works (if applicable) to the Buyer in accordance with the Works Specification in all material respects.

8.2 The Seller shall use all reasonable endeavours to provide the Works within the time agreed and, if no time is agreed, within a reasonable time but time for performance is not of the essence and in no circumstances will the Seller be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in performance of the Works, nor shall the Buyer be entitled to terminate or rescind the Contract except for termination in accordance with Clause 20.2.

8.3 The Seller reserves the right to amend the Works Specification if necessary to comply with applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Works, and the Seller shall notify the Buyer in any such event.

9. QUALITY OF GOODS AND WORKS

9.1 Where the Seller is not the manufacturer of the Goods or does not personally perform the Works the Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.

9.2 In respect of Goods manufactured by the Seller, the Seller warrants that on despatch the Goods shall:

9.2.1 conform in all material respects with the Goods Specification; and

9.2.2 be free from material defects in design, material and workmanship.

9.3 The Seller warrants to the Buyer that the Works will be provided using reasonable care and skill.

9.4 In respect of Goods manufactured or Works personally performed by the Seller itself the Seller will free of charge within a period of 6 months from the date of despatch of the Goods or the date of the invoice for the Works as appropriate repair or at its option replace any Goods or issue a credit note to the value of the relevant Goods and reperform or at its option remedy any Works or issue a credit note to the value of the relevant Works which are proved to the reasonable satisfaction of the Seller to be defective in material or workmanship provided that this obligation will not apply where:

9.4.1 the Goods or the Buyer's Goods have been altered in any way whatsoever or have been subjected to misuse or unauthorised repair; or

9.4.2 the defect arises as a result of the Seller following any Buyer's Specification; or

9.4.3 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

9.4.4 the Goods or the Buyer's Goods have been improperly installed or connected (unless the Seller carried out such installation and connection); or

9.4.5 the Buyer has failed to observe any maintenance requirements relating to the Goods or the Buyer's Goods; or

9.4.6 the Buyer has failed to notify the Seller of any defect or suspected defect within 14 days of the same coming to or when the same ought reasonably to have come to the knowledge of the Buyer; or

9.4.7 the Buyer is in breach of this or any other contract made with the Seller.

Goods must be returned carriage paid to the Seller. Any Goods replaced will belong to the Seller. Clauses 9.2 to 9.4 (inclusive) shall apply to any repaired or replacement Goods and Works reperformed or remedied by the Seller for the unexpired portion of the 6 month period.

10. BUYER'S GOODS

10.1 All Buyer's Goods shall at all times remain at the Buyer's entire risk whilst in the possession of the Seller.

10.2 It is the Buyer's responsibility to ensure that the Buyer's Goods are tested or inspected and are suitable for use by the Seller in the performance of the Works.

11. HEALTH AND SAFETY AND PROPER USE

11.1 To the best belief of the Seller, Goods comply with any relevant requirements of HSWA but whilst all care is taken to ensure that the Goods are safe there are certain inherent dangers in the use of certain of the Goods, details of which are provided in the product safety sheet prepared by the Seller and the Buyer's attention is drawn to this which is available on request.

11.2 The Seller's acceptance of the Order may be conditional upon the issue by the Buyer to the Seller of a written undertaking to take such steps as may be specified in the undertaking sufficient to ensure, so far as reasonably practicable, that the Goods or the Buyer's Goods will be safe and without risk to health when properly used, stored or handled.

11.3 The Buyer shall ensure that Goods are used, handled and stored in accordance with the Seller's notes and any other instructions supplied with the Goods and shall notify the Seller forthwith if it has reason to believe that the Goods may be unsafe or a risk to health in any respect.

11.4 The Buyer will indemnify the Seller and keep the Seller indemnified against claims by third parties and all fines and penalties for which the Seller is liable pursuant to HSWA or otherwise to the extent that such liability would not have arisen save for any failure of the Buyer to comply with its obligations under this Clause 11.

12. BUYER'S OBLIGATIONS

12.1 The Buyer shall:

12.1.1 ensure that the terms of the Order and any information it provides in either or both the Goods Specification and the Works Specification are complete and accurate;

12.1.2 co-operate with the Seller in all matters relating to the Works;

12.1.3 provide the Seller with such information and materials as the Seller may reasonably require in order to perform the Works, and ensure that such information is complete and accurate in all material respects;

12.1.4 if relevant, prepare the Buyer's premises for the performance of the Works;

12.1.5 comply with all applicable laws, including health and safety laws; and

12.1.6 comply with any additional obligations as set out in the Goods Specification or the Works Specification or both.

12.2 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):

12.2.1 without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Works until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;

12.2.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this Clause 12.2; and

12.2.3 the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

13. TITLE AND RISK

13.1 Notwithstanding any other Contract Term, risk in the Goods shall pass to the Buyer:

13.1.1 when the Goods are delivered to the Buyer or its agent; or

13.1.2 where Goods are delivered ex the Seller's works, when the Buyer is notified that the Goods are available for collection; or

13.1.3 where the Seller is carrying out Works on site, when the Goods are delivered to the site, whichever is the earlier.

13.2 Title (both legal and equitable) to the Goods shall not pass to the Buyer until:

13.2.1 the purchase price of the Goods has been paid in full; and

13.2.2 payment to the Seller of any sum which is at the Commencement Date or may thereafter become due or owing from the Buyer to the Seller under the Contract or any other contract between them.

13.3 The Buyer may convert or incorporate the Goods into or mix the Goods with other goods to produce the New Goods prior to title to the Goods passing to the Buyer but in such event title to the New Goods (whether the other goods into which the Goods have been converted or incorporated or with which the Goods have been mixed belong to the Buyer or not) shall be and remain with the Seller immediately upon such conversion, incorporation or mixture until:

13.3.1 the purchase price of the Goods has been paid in full; and

13.3.2 payment to the Seller of any sum which is at the Commencement Date or may thereafter become due or owing from the Buyer to the Seller under the Contract or any other contract between them.

13.4 Until title to the Supplied Goods has passed to the Buyer or until delivery of the Supplied Goods to a third party pursuant to the permission given at Clause 13.5, the Buyer will hold the Supplied Goods in a fiduciary capacity, will not obliterate any identifying mark on the Supplied Goods or their packaging and (save where the Goods are being converted or incorporated into or mixed with other goods to create New Goods) will keep the Supplied Goods separate from any other goods.

13.5 Prior to title to the Supplied Goods passing to the Buyer, the Seller permits the Buyer to deliver the Supplied Goods to a third party pursuant to a bona fide and arm's-length agreement to sell the Supplied Goods but such permission shall cease forthwith upon notice from the Seller or upon the termination of the Contract.

13.6 Both the Buyer's right to convert or incorporate the Goods into or mix the Goods with other goods pursuant to Clause 13.3 and the Buyer's ability to deliver the Supplied Goods to a third party pursuant to Clause 13.5 shall cease forthwith upon notice from the Seller or upon the termination of the Contract.

13.7 Where the Seller is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have converted incorporated mixed or sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer, and any New Goods so created shall be deemed to have been delivered to the Buyer's customers in the order in which they were created.

13.8 The Seller may at any time after payment for the Goods has become due take possession of the Supplied Goods (which for the avoidance of doubt will include the right to stop the Goods in transit) and remove them and the Buyer shall be deemed to have granted irrevocable authority to the Seller to enter upon the Buyer's premises or other premises where the Supplied Goods may be by its employees or agents to take possession of the Supplied Goods and (if necessary) to dismantle the Supplied Goods from anything to which they are attached.

13.9 If prior to the expiry of 7 days from the date when the Seller has taken possession of the Supplied Goods (pursuant to Clause 13.8) the Buyer pays all sums then due or owing to the Seller together with the costs of taking possession of the Supplied Goods, the Seller will re-deliver the Supplied Goods to the Buyer at the Buyer's expense. If within the 7 day period the Buyer fails to pay all sums then due or owing to the Seller, the Seller may sell the Supplied Goods and shall pay to the Buyer the balance of any sums received upon the sales of the Supplied Goods after deducting all sums due or owing from the Buyer to the Seller and the costs of taking possession of and selling the Supplied Goods save that if the sums so received by the Seller do not exceed all sums due or owing from the Buyer to the Seller and the costs of taking possession of and selling the Supplied Goods the Buyer will pay to the Seller any shortfall.

13.10 If the Buyer sells the Supplied Goods before title to them passes to the Buyer, the Buyer will promptly account to the Seller for the proceeds of any such sale and, prior to paying such proceeds to the Seller, the Buyer will hold the same in a fiduciary capacity keeping the same separate from its other moneys. On receiving such proceeds, the Seller will return to the Buyer any sum received in excess of the total of all sums due or owing from the Buyer to the Seller at the date of receipt by the Seller of such proceeds of sale.

13.11 The Seller will have the right to maintain an action against the Buyer for the price of the Goods notwithstanding that title to the Goods has not passed.

13.12 Nothing in the Contract will constitute the Buyer the agent of the Seller in respect of any sale of the Supplied Goods by the Buyer so as to confer any rights upon a third party against the Seller.

13.13 For the avoidance of doubt, the Supplied Goods shall be at the Buyer's risk.

14. PRICE AND PAYMENT

14.1 The price for the Goods shall be inclusive of packaging and shall be:

14.1.1 the price set out in the Order or, if no price is quoted, the price set out in the Seller's price list as the date of delivery; and

14.1.2 unless quoted otherwise by the Seller, exclusive of all costs and charges of insurance and transport of the Goods, which shall be for the account of the Buyer.

14.2 The charges for the Works shall be calculated on a time and materials basis:

14.2.1 the charges shall be calculated in accordance with the Seller's hourly rates, as set out in the relevant appointment document and/or designing and/or detailing agreement;

14.2.2 the Seller shall be entitled to charge an overtime rate as set out in the relevant appointment document and/or designing and/or detailing agreement; and

14.2.3 the Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the Works including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Seller for the performance of the Works, and for the cost of any materials.

14.3 Unless expressly stated otherwise the Contract price is based on the costs of materials, metal surcharges, labour, sub-contracts, transport, taxes, duties and currency exchange rates ruling at the date of the Seller's quotation. The Seller reserves the right to amend the Contract price to take account of any variations in these costs or the imposition of any new taxes or duties occurring from whatever cause before delivery of the Goods and/or performance of the Works.

Without limitation to the foregoing, the Seller shall be entitled to increase the Contract price to reflect any additional costs arising from or in connection with: (a) the application, introduction, variation or exhaustion of steel safeguard quotas, including any resulting tariffs or duties; (b) the implementation or operation of the Carbon Border Adjustment Mechanism (CBAM) or any equivalent carbon-related regulatory regime; (c) any governmental, regulatory or trade measure affecting the cost of steel or steel-containing products; and (d) any circumstance where the applicability or quantum of such costs is not known at the time of quotation or order acceptance. The Buyer acknowledges that such costs may only be determined after importation of steel into the United Kingdom and agrees that all such cost increases shall be payable in full and without set-off or deduction.

14.4 Unless otherwise agreed in writing, any costs incurred for expedited delivery or any overtime (being work outside of the Seller's normal working hours or at weekends or on public or statutory holidays) worked at the Buyer's request shall be charged to the Buyer in addition to the Contract price.

14.5 Any goods, services or other matters requested by the Buyer but not specified in the Seller's quotation or the Seller's acknowledgement of Order may be supplied by the Seller at its absolute discretion and the cost thereof will be charged to the Buyer in addition to the Contract price.

14.6 Unless expressly stated otherwise all prices are exclusive of any value added tax chargeable from time to time (**VAT**) which shall be charged at the rate and in the manner prescribed by law.

14.7 The Seller shall be entitled to invoice the Buyer for all Goods and/or Works prior to delivery and/or performance thereof.

14.8 No Trade Account

If the Buyer does not have a Trade Account, the full amount of any invoice relating to the Contract shall be due and payable prior to the Seller delivering any Goods and/or performing any Works pursuant to the Contract.

14.9 Trade Account

In the event that the Buyer is provided with a Trade Account:

14.9.1 the Seller may in its absolute discretion set and alter the Buyer's credit limit and the Seller reserves the right not to deliver the Goods and/or perform the Works if the price thereof increases the aggregate amount owed by the Buyer to the Seller beyond the Buyer's credit limit under such Trade Account;

14.9.2 provided that the price of the Goods and/or the Works pursuant to the Contract together with all other indebtedness of the Buyer to the Seller does not exceed the Buyer's credit limit under such Trade Account, such price will become payable upon delivery and payment will be made by the Buyer by the end of the calendar month following the calendar month of issue of the Seller's invoice.

14.10 If the Buyer fails to make a payment due to the Seller under the Contract by the due date, then, without limiting the Seller's remedies under Clause 24, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 14.10 will accrue each day at 5% a year above National Westminster Bank plc's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.

14.11 Notwithstanding any Contract Term allowing the Buyer credit, all amounts owing from the Buyer to the Seller shall become due and payable immediately upon the termination of the Contract.

14.12 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

14.13 Where the Buyer is in default of the payment terms under the Contract or any other contract with the Seller or an associated company of the Seller, the Seller may, without liability to the Buyer, postpone any delivery of the Goods and/or performance of the Works or may cancel the Contract or any other contract between the Seller and the Buyer but without prejudice to any right or remedy which the Seller may have against the Buyer in respect of such default.

14.14 The Seller will be entitled to payment for all instalments of Goods delivered to the Buyer and/or Works part performed whether under a blanket Order or otherwise.

14.15 The Seller shall at any time be entitled to apply any payment made by the Buyer in respect of any goods or services in settlement of such invoices or accounts for such other goods or services as the Seller may in its absolute discretion think fit, notwithstanding any purported application to the contrary by the Buyer.

15. PACKING

15.1 The price for Goods includes the cost of packing and the Seller shall (in its absolute discretion) choose the materials and means used and method of packing the Goods or other items, provided that the Seller shall pack the Goods to normal accepted commercial standards for the purpose of transportation to the Buyer.

15.2 The cost of special packing requirements requested by the Buyer shall be charged in addition to the Contract price.

15.2 All packaging that the Seller requests to be returned must be returned to the Seller's premises in good condition carriage paid within 8 weeks of delivery of the items. In the event that the Buyer fails to comply with this Clause 15.2, the Seller shall be entitled to invoice the Buyer for the cost of such packaging.

16. STORAGE

If the Buyer fails to take delivery of the Goods and/or redelivery of the Buyer's Goods when they are ready for delivery the Seller may, at its option, either store them itself or have them stored by a third party on such terms as the Seller may in its absolute discretion think fit. In any event the cost of such storage will be borne by the Buyer and, insofar as the storage is provided by the Seller itself, then such cost will be at the Seller's storage charges current at the time of storage. The storage costs together with any additional insurance or double handling charges will be added to and form part of the price for the Goods and/or the Works.

17. TESTING AND INSPECTION

Any testing, site visits or inspections of the Goods and/or Works shall be carried out at the Seller's premises. If the Buyer requires any testing or inspection other than that specifically included on the Seller's quotation and confirmed on the Seller's acknowledgement of Order, all costs in connection therewith including the fees of any independent inspecting engineer shall be borne by the Buyer and will be added to and form part of the price for the Goods and/or Works.

18. LIEN

The Seller will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Buyer a general lien on all property of the Buyer in the possession of

the Seller for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days' notice in writing to the Buyer to dispose of such property and to apply the proceeds towards the satisfaction of such debts including any storage costs and costs suffered or incurred in making such disposal. The Buyer authorises the Seller to do such acts and execute such documents as may be reasonably necessary or desirable to enable the Seller to dispose of such property.

19. CANCELLATION

If the Buyer cancels, extends or delays or purports to cancel, extend or delay the Contract or part thereof, or fails to take delivery of any Goods and/or accept supply of any Works at the time agreed (if any), or if no time is agreed within a reasonable time or where the Buyer is to provide materials information or services and fails to provide the same to the Seller so as to enable the Seller to proceed without interruption, then the Buyer will (without prejudice to any other rights of the Seller to claim damages) indemnify and keep indemnified the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-supply of the Goods and/or Works including (a) the cost of any services, materials, plant or tools used or intended to be used therefor (b) the cost of labour (which shall be charged at the Seller's hourly rates) and (c) other related overheads including a percentage in respect of anticipated profit on the sale of the Goods and/or Works . Where the Buyer requests alterations to the Contract or part thereof it shall be in the Seller's absolute discretion whether or not to accommodate the Buyer's request.

20. FORCE MAJEURE

If the Seller is unable (whether temporarily or permanently) to procure any services or goods necessary to enable it to supply the Goods and/or Works or if the supply of the Goods and/or Works is prevented or hindered by reason of a Force Majeure Event, the Seller may cancel or suspend performance of the Contract by notice in writing to the Buyer so far as it relates to Goods and/or Works not then supplied or work not then done and such cancellation or suspension shall not give rise to any claims by the Buyer provided that the Buyer shall remain liable to pay for Goods delivered and/or Works supplied prior to the date of such cancellation or suspension.

21. INTELLECTUAL PROPERTY RIGHTS

21.1 All Intellectual Property Rights in or arising out of or in connection with the Works (other than Intellectual Property Rights in any materials provided by the Buyer) shall be owned by the Seller.

21.2 The Seller will be under no liability whatsoever to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer should any Goods and/or Works made or provided in accordance with the Buyer's Specification infringe any Intellectual Property Rights or the provision of any statute, statutory instrument or regulation.

21.3 Unless otherwise agreed in writing all patterns, drawings, tools or other similar items produced or other property (whether intellectual property or not) owned or created by the Seller will remain the property of the Seller and must not be used or copied by the Buyer.

21.4 Unless the Seller agrees otherwise in writing, all works (including design drawings) and any idea, invention or improvement made by or on behalf of the Seller in pursuance of a commission from the Buyer and all Intellectual Property Rights therein shall belong to the Seller.

21.5 Where it is agreed that ownership in any data, patterns, drawings, tools or other similar items is to pass to the Buyer, title to such items shall only pass upon payment in full of the Contract price (including the cost of such items) by the Buyer.

21.6 The Buyer grants the Seller a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any Buyer's Goods for the term of the Contract for the purposes of providing the Goods and/or Works to the Buyer.

22. LIMITATION OF LIABILITY AND INDEMNITIES

22.1 References to liability or liabilities in this Clause 22 includes every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

22.2 Nothing in the Contract limits any liability for:

22.2.1 death or personal injury caused by negligence;

22.2.2 fraud or fraudulent misrepresentation;

22.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

22.2.4 defective products under the Consumer Protection Act 1987; or

22.2.5 any liability that legally cannot be limited.

22.3 Subject to Clause 22.2, the Seller's total liability to the Buyer shall not exceed the Contract price.

22.4 Save as provided in Clauses 9.1 to 9.4 (inclusive) and Clause 22.1, neither the Seller nor its employees, agents or subcontractors will be under any liability under the Contract or otherwise for personal injury, death, loss or damage of any kind whatsoever and including but not limited to:

22.4.1 loss of profits;

22.4.2 loss of sales or business;

22.4.3 loss of agreements or contracts;

22.4.4 loss of anticipated savings;

22.4.5 loss of use or corruption of software, data or information;

22.4.6 loss of or damage to goodwill; and

22.4.7 indirect or consequential loss,

and the Seller hereby excludes all conditions, warranties and stipulations express or implied, statutory, customary or otherwise which but for such exclusion would or might subsist in favour of the Buyer.

22.5 The exclusion in Clause 22.4 will not apply to:

22.5.1 any implied condition that the Seller has or will have the right to sell the Goods when title in them is to pass; or

22.5.2 when the Buyer deals as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977), any implied term relating to the conformity of the Goods with their description or sample or as to their quality or fitness for a particular purpose.

22.6 The Buyer will indemnify and keep the Seller indemnified against all costs, claims, demands, losses and liabilities suffered or incurred by the Seller in connection with the carrying out of Works off the Seller's premises save as arising from any default of the Seller.

22.7 The Buyer shall indemnify the Seller against all costs, claims, demands, losses and liabilities suffered or incurred by the Seller arising out of or in connection with the Goods or Works except to the extent that liability is specifically assumed by the Seller under the Contract Terms.

22.8 This Clause 22 shall survive termination of the Contract.

23. RIGHT OF RE-SALE

If the Buyer defaults in accepting delivery of or paying for the Goods, the Seller reserves the right to re-sell the Goods or any of them to a third party without giving notice to the Buyer of the Seller's intention to re-sell them.

24. TERMINATION

24.1 Without affecting any other right or remedy available to it, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:

24.1.1 the Buyer (being a company) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

24.1.2 the Buyer (being an individual) has a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any act of parliament for the time being in force for the relief of insolvent debtors; or

24.1.3 the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

24.1.4 the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or

24.1.5 there is a change of control of the Buyer; or

24.1.6 the Buyer fails to pay any amount due under the Contract on the due date for payment.

24.2 Without affecting any other right or remedy available to it, the Seller may suspend the provision of Works or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in Clauses 24.1.1 to 24.1.6 (inclusive), or the Seller reasonably believes that the Buyer is about to become subject to any of them.

24.3 The Seller's rights contained in Clause 13 (Title and Risk) (but not the Buyer's rights) shall continue beyond the discharge of the parties' primary obligations under the Contract consequent upon its termination.

24.4 The termination of the Contract howsoever arising will be without prejudice to the rights and duties of either party accrued prior to termination.

25. CONFIDENTIALITY

25.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 25.2.

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

25.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. 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 25; and

25.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

25.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

26. ANTI-BRIBERY

Each party shall comply with applicable Bribery Laws, and each party shall use all reasonable endeavours to ensure that its officers, employees, contractors and agents involved with the Contract so comply.

27. ANTI-FACILITATION OF TAX EVASION

27.1 Each of the parties shall during the term of the Contract:

27.1.1 not engage in any activity, practice or conduct which would constitute either:

- (a) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
- (b) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;

27.1.2 establish, maintain and enforce its own policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person and to ensure compliance with Clause 27.1.1;

27.1.3 notify the other party in writing if it becomes aware of any breach of Clause 27.1.1 or has reason to believe that it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract.

27.2 Each of the parties shall ensure that any of its agents, consultants, contractors, subcontractors or other persons engaged in performance of its obligations under the Contract do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on that party in this Clause 27 (**Relevant Terms**). Each party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other party for any breach by such persons of any of the Relevant Terms.

27.3 For the purposes of this Clause 27, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017.

28. EXPORT

Where the Goods are to be exported to the Buyer and/or the Works are to be supplied to the Buyer outside the United Kingdom:

28.1 the Uniform Laws on International Sales Act 1967 shall not apply to the Contract;

28.2 payment will be in Pounds Sterling in England. The Buyer will establish and maintain in favour of the Seller an irrevocable and confirmed letter of credit in English with a UK clearing bank payable on drafts drawn at sight upon presentation to the bank by the Seller of a certified copy of the Seller's invoice. Such letter of credit shall be established at least 30 days prior to anticipated shipment date of the Goods and/or supply date of the Works and no goods or raw materials shall be ordered for the purpose of the Contract until such letter of credit has been established. The letter of credit shall cover the full price of the Goods and/or the Works (including applicable taxes) and such letter of credit shall be divisible. All bank charges and other expenses in relation to the letter of credit shall be for the Buyer's account unless expressly stated otherwise;

28.3 the Goods will be sold ex the Seller's works unless expressly stated otherwise and the Seller will be under no obligation to give the Buyer notice as specified in Section 32(3) of the Sale of Goods Act 1979;

28.4 it shall be the Buyer's sole responsibility to obtain any necessary import or customs licences or permits and take all necessary steps to expedite necessary customs clearances (including payment of duties and taxes) and failure to do so shall not entitle the Buyer to withhold or delay payment of the Contract price; and

28.5 without prejudice to Clause 19, where the Buyer has a duty to collect the Goods or the Buyer's Goods or nominate a carrier/vessel and fails to do so within 14 days of notification from the Seller that the Goods or Buyer's Goods are ready for collection or shipment, then without prejudice to any other of the Seller's rights the Seller may invoice for the Goods and/or Works forthwith and payment shall be due as herein provided.

29. GENERAL

29.1 Assignment and other dealings

29.1.1 The Seller may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

29.1.2 The Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

29.2 Failure or delay by the Seller to enforce any of the Contract Terms will not be construed as a waiver of any of its rights or remedies hereunder.

29.3 In relation to all obligations of the Buyer under the Contract, the time of performance is of the essence.

29.4 The legal construction of the Clauses of the Contract shall not be affected by their headings which are for convenience of reference only.

29.5 Any notice to be given or served on the Seller hereunder shall be in writing and sent to the address of the Seller stated in these Contract Terms or its registered office by registered post. Any notice to be given or served on the Buyer hereunder shall be in writing and sent to the address of the Buyer stated in the Order or its registered office by registered post.

29.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this Clause 29.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

29.7 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

30. LAW AND JURISDICTION

30.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

30.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.