

Terms and Conditions

Any sale of products, parts, and/or services by **Mexichem UK Limited/Mexichem Fluor EU BV** (“**Supplier**”) to the purchasing party (“**Customer**”) (each of them a “**Party**”, and collectively, “**Parties**”) is subject to these terms and conditions (“**Conditions**”) and these conditions shall govern any and all purchase orders entered into by the parties for such goods, parts and/or services. A purchase order shall not be binding on supplier unless and until expressly accepted in writing by supplier. Any additional or different terms and conditions proposed by customer are expressly objected to and shall not be binding upon supplier unless expressly accepted in writing by supplier’s authorized representative. Any order for product, parts and/or services shall constitute acceptance of these terms. These conditions contain a limitation of liability clause and the customer’s attention is drawn to this at clause 8.

1. Interpretation

1.1. Definitions:

Business Day: means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: means the terms and conditions set out in this document as amended from time to time.

Contract: means the contract between the Supplier and the Customer for the sale and purchase of the Goods and/or services in accordance with these Conditions.

Customer: means the person or firm who purchases the Goods and/or services from the Supplier.

Force Majeure Event: means any of the circumstances described in clause 12.

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

Incoterms: means the International Commercial Terms published by the International Chamber of Commerce and known as Incoterms® 2020.

Order: means the Customer’s order for the Goods and/or services, which may be set out in the Customer’s purchase order form.

Order Acknowledgment: means the Supplier’s written confirmation of its acceptance of the Order, addressed, and sent to the Customer.

Specification: means the Supplier’s written specification for the Goods.

1.2. Interpretation:

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

(b) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

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

(d) A reference to **writing or written** includes email unless expressly stated otherwise.

2. Basis of contract

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate by reference to any purchase order, confirmation of order, specification or other document, or which are implied by law, trade custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order in the form of an Order Acknowledgment, at which point the Contract shall come into existence.
- 2.4. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is in addition to, inconsistent with, or different from these Conditions. These Conditions expressly exclude any of Customer’s general terms and conditions contained in any purchase order or other document issued by Customer.
- 2.5. Any samples, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier’s catalogues or brochures are produced for the sole purpose

of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

- 2.6. A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for such period as may be stated in the quotation or, if none, a period of five (5) Business Days from its date of issue.

3. Goods

- 3.1. The Goods are described in the Specification.
- 3.2. The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 3.3. The Goods may be delivered in returnable packages, depending on the volume, using either a refillable cylinder (“**Cylinder**”), a drum (“**Drum**”) or a bulk ISO tank (“**ISO tank**”) (together “**Packaging**”). Packaging will remain the property of the Supplier and shall not be used for purposes other than the storage of Goods.

4. Delivery

- 4.1. Delivery is completed when the Goods are delivered in accordance with the agreed Incoterm stated in the Order Acknowledgment. Supplier will notify Customer of the shipment details as soon as reasonably possible after the Order Acknowledgment.
- 4.2. If the Supplier’s delivery note requires the Customer to return any Packaging to the Supplier, the Customer shall return such Packaging in accordance with the Supplier’s instructions, and in the same condition in which it reached the Customer. If the Customer fails to comply with such instructions, Customer shall pay a reasonable fee based on the rental value of the Packaging until the Packaging is returned.
- 4.3. On return of any Packaging, the Supplier:
- (a) may undertake a heel test. If the heel test shows that the heel is contaminated in any way, the Customer shall pay immediately to the Supplier any and all costs incurred in remedying that contamination.
 - (b) will measure the weight of the return heel. If the heel is above the maximum allowed subject to shipping line rules then the Packaging will need to be fully imported in accordance with applicable law (including using F-gas quota allocation) and the Customer shall fully indemnify Supplier for any and all costs associated with such importation.
 - (c) will measure the weight of the return heel. If the return heel is 15% or above of the total capacity of the Packaging then the Customer shall fully indemnify Supplier for any and all costs associated with emptying the Packaging.
- 4.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall have no liability for any delay

or failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer’s failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5. If the Customer fails to accept delivery of the Goods, then, except where such failure or delay is caused by the Supplier’s failure to comply with its obligations under the Contract the Supplier may store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including but not limited to insurance, quay rent, wasted transportation costs, chassis hire, daily tank rental).
- 4.6. If ten (10) Business Days after the day on which the Supplier first attempted delivery of the Goods, the Customer has not accepted actual delivery of them, the Supplier may either
- (i) resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods, in addition to reasonable storage and selling costs, or
 - (ii) continue to hold the Goods on Customer’s behalf pending confirmation from the Customer they are ready to accept delivery of the Goods, and charge Customer for all related costs and expenses connected to such holding of Goods pending re-delivery (including but not limited to insurance, quay rent, chassis hire, daily tank rental, and wasted transportation costs). If the Supplier delivers up to and including 10% more or less than the weight or volume of Goods ordered the Customer may not reject them.
- 4.7. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

- 4.8. Supplier’s weights for the Goods shall govern, except in the case of proven error.

5. Quality

- 5.1. The Supplier warrants that on delivery (but before discharge into any receiving tank or vessel), the Goods shall conform with the applicable Specification.
- 5.2. Any recommendation or suggestion relating to the use, handling or management of the Goods made by the Supplier either in technical literature or in response to specific enquiry or otherwise is provided “as-is” and is given in good faith but it is for the Customer to satisfy itself of the suitability, handling or management of the Goods for its own particular purpose. TO THE FULLEST EXTENT PERMITTED BY LAW, SUPPLIER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/ OR WARRANTY OF NON-INFRINGEMENT. SUPPLIER WILL NOT BE LIABLE TO ANY PARTY IN STRICT LIABILITY, TORT, CONTRACT, OR ANY OTHER MANNER FOR DAMAGES CAUSED OR CLAIMED TO BE CAUSED

AS A RESULT OF ANY DESIGN OR DEFECT IN SUPPLIER'S PRODUCTS. REPAIR, REPLACEMENT, PARTIAL OR WHOLE REFUND IS THE ONLY REMEDY AND EXCLUSIVE FORM OF REMEDY AVAILABLE TO CUSTOMER IN CASE OF DEFECTIVE PRODUCTS AND THE CONSEQUENCES THAT MAY ARISE FROM IT.

- 5.3. If Supplier provides a certificate of analysis on delivery showing the Goods comply with the Specification, then it shall be presumed that any non-conformity discovered following delivery of the Goods upon delivery is not subject to the warranty specified in Clause 5.1 unless Customer provides reasonable evidence that such non-conformity is not the result of improper actions taken by Customer after receipt of the Goods.
- 5.4. Customer shall inspect the Goods received under the Contract within three (3) business days of receipt of such goods ("**Inspection Period**") and either accept or, only if any such goods are Nonconforming Goods, reject such Goods. "Nonconforming Goods" are Goods that fail to meet the Specification. Customer will be deemed to have accepted the Goods unless it provides Seller with written notice of any Nonconforming Goods during the Inspection Period, stating with specificity all defects and nonconformities, and furnishing such other written evidence or other documentation as may be reasonably required by Supplier (including the subject Good, or a representative sample thereof, which the Customer contends are Nonconforming Goods). All defects and nonconformities that are not so specified shall be deemed waived by Customer, such Goods shall be deemed to have been accepted by Customer, and no attempted revocation of acceptance will be effective. Supplier shall determine, in its reasonable discretion, whether the Goods are Nonconforming Goods.
- 5.5. If Supplier determines that such Goods are Nonconforming Goods, then, subject to clauses 5.4 and 5.6, the Supplier shall, at its option and as Customer's sole and exclusive remedy, replace the Nonconforming Goods or refund the price of the nonconforming goods in full.
- 5.6. The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) Loss or damage in transit;
 - (b) External causes such as accident, abuse, misuse or alteration made by anyone other than Supplier;
 - (c) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.4;
 - (d) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the unloading, storage and use of the Goods or (if there are none) good trade practice regarding the same;
 - (e) the defect arises as a result of wilful damage, negligence, or inadequate storage or working conditions; or

- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.7. Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.8. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 or any law of similar application are, to the fullest extent permitted by law, excluded from the Contract.
- 5.9. These Conditions shall apply to any replacement Goods supplied by the Supplier.

6. Title and risk

- 6.1. The risk in the Goods shall pass to the Customer in accordance with the Incoterms set out in the Order Acknowledgment.
- 6.2. Title to the Goods shall pass to the Customer on delivery.

7. Price and payment

- 7.1. The price of the Goods or Services shall be the price set out in the Supplier's last quotation issued to Customer or as otherwise stated by Supplier prior to dispatch, or, if no price is quoted, the price set out in Supplier's published price list and/or rate card, as applicable, in force as at the date of dispatch.
- 7.2. The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes, changes in law, including Fgas Rights as hereinafter defined, levies, charges and duties, regulatory changes or increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3. The price of the Goods excludes amounts in respect of value added tax ("**VAT**"), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 7.4. The price of the Goods excludes any import duty, levies or other government tax applicable to the delivery of the Goods or statutory charge relating to the sale of the Goods. Subject to the Incoterms recorded in the Order Acknowledgment, the Customer shall be liable

for, and agrees to pay, all taxes, levies, excises, duties, tariffs and other similar charges and fees (including any environmental assessments, fees, taxes, or similar items or charges) (collectively “**Taxes**”), imposed by any local, national or international authority, which have to do with or affect the Goods ordered under the Contract and the sale or delivery thereof (except those Taxes based on the income of the Supplier).

- 7.5. Unless otherwise agreed, the price of the Goods includes the costs of delivery in accordance with clause 4.1.
- 7.6. If the Goods are a fluorinated gas (“**F-gas**”), the Customer acknowledges:
- (a) that such F-gas is subject to applicable laws (“**F-gas Regulations**”) and F-gas Rights as hereinafter defined;
 - (b) any Goods imported into the European Union and other jurisdictions for Customer may now or in the future entail requirements and obligations relating to rights to deal in, use and/or manufacture F-gas, including, but not limited to, allowances and/or quota allocated to Supplier and/or Customer as required for the sale, use, production, consumption and/or import of F-gases for commercial activity undertaken within the EU, the United States of America, the United Kingdom and/or any other jurisdiction, as and if applicable (“**F-gas Rights**”);
 - (c) to the extent that F-gas Rights are applicable or required by applicable law for the Goods, Supplier reserves the right to use commercially reasonable efforts, at Customer’s cost, to acquire such F-gas Rights as required to cover the Goods ordered by Customer hereunder;
 - (d) to the extent that Supplier secures such F-gas Rights in accordance with the preceding paragraph, it is responsible to Supplier for the cost of obtaining sufficient F-gas Rights to purchase such volumes of Goods as Customer orders under this Contract. For the avoidance of doubt, Supplier does not guarantee the availability of any F-Gas Rights to sell to or otherwise make available to Customer, and Customer acknowledges and agrees that Supplier is not obligated to provide any such F-Gas Rights. Customer further acknowledges and agrees that, to the extent Supplier is unable to provide sufficient F-Gas Rights, Customer shall acquire such F-Gas Rights from third parties sufficient to support Customer’s purchase of Goods pursuant to this Contract; and,
 - (e) The Parties agree that in no event shall Customer be relieved of its obligation to purchase the Goods in accordance with the terms of the Contract nor be entitled to a change in the price of the Goods or any other term as a result of any change in applicable law, including where such change in applicable law necessitates the procurement of any additional F-gas Rights, for which the Customer shall have sole responsibility. Any failure on the part of the Customer to secure such additional quota or allowance shall not relieve the Customer of its obligation to purchase the Goods.

- (f) The Supplier shall comply with all requirements of the F-Gas Regulations as they relate to the supply of Goods or Services under this Contract.

- 7.7. Unless agreed otherwise in writing, the Supplier may invoice the Customer for the Goods on or at any time after despatch or delivery or attempted delivery.
- 7.8. The Customer shall pay each invoice submitted by the Supplier:
- (a) within thirty (30) days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds, in the currency indicated in the Order (or if none is indicated, Pound Sterling) to a bank account nominated in writing by the Supplier, and
 - (c) time for payment shall be of the essence of the Contract.
- 7.9. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier’s remedies under clause 11 (Termination), the Customer 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 7.9 will accrue each day at 4% a year above the Bank of England’s base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.10. 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).
- 7.11. Where any party is required by this Agreement to reimburse or indemnify any other party for any cost or expense, that first party shall reimburse or indemnify the other party for the full amount of the cost or expense, including any VAT on that amount, except to the extent that the other party is entitled to credit or repayment for that VAT from any relevant tax authority.

8. Limitation of liability

- 8.1. THE REMEDIES PROVIDED IN THESE TERMS SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF CUSTOMER (INCLUDING THIRD PARTY CLAIMS). SUPPLIER SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE SUCH AS (BUT NOT LIMITED TO), DELAY DAMAGE, DAMAGE DUE TO BUSINESS INTERRUPTION, LOST PROFITS, LOST SAVINGS, LOST REVENUE, MISSED OPPORTUNITIES, LOSS OF GOODWILL, OR FORFEITED PENALTIES OR FINES, WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT (INCLUDING NEGLIGENCE), WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY.
- 8.2. SUPPLIER’S TOTAL LIABILITY IN CONNECTION WITH OR ARISING OUT OF THE PROVISION OF GOODS OR SERVICES TO BUYER FOR CLAIMS OF ANY KIND (INCLUDING THIRD PARTY CLAIMS)

WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE FOR THE SPECIFIC GOODS OR SERVICES THAT GIVES RISE TO THE CLAIM.

- 8.3. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF THE GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY THE SUPPLIER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.
- 8.4. THE LIMITATIONS AND EXCLUSIONS SET FORTH ABOVE IN THIS CLAUSE SHALL ONLY APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.
- 8.5. Failure by the Customer to provide Supplier with written notice of any claim under the Contract within thirty (30) days of delivery of the Goods applicable to such claim shall constitute a waiver of such claim by the Customer. Notwithstanding any applicable statute of limitations to the contrary, any action by the Customer for a claim hereunder must be instituted no later than one (1) year after the occurrence of the event upon which the claim is based. All of the foregoing limitations shall apply whether Customer's claim is based upon breach of contract, breach of warranty, indemnity, negligence, strict liability or any other legal theory.
- 8.6. This clause 8 shall survive expiration, termination, or cancellation of the Contract.

9. Compliance

- 9.1. Upon delivery of the Goods in accordance with clause 4.1, the Customer assumes full responsibility an liability for compliance with international, domestic and local regulations governing unloading, discharge, storage, handling, marketing, sale, resale, distribution, disposal, and use of the Goods supplied by the Supplier under the Contract.
- 9.2. The Customer shall comply with all applicable laws, including those relating to anti-bribery and anticorruption (including, the UK Bribery Act 2010, US Foreign Corrupt Practices Act and any other similar laws in the relevant territory) and those relating to antislavery and human trafficking (including the UK Modern Slavery Act 2015).
- 9.3. The Customer agrees that the Supplier may cancel the Contract, without liability to the Customer, if at any time it has reason to believe that the Customer is in breach of clauses 9.1 and/or 9.2 above.

10. Customer's Indemnity and Product Recalls

- 10.1. The Customer shall release, defend, indemnify and hold harmless the Supplier, the Supplier's affiliates, and each of their respective officers, directors, managers, employees, representatives, and advisors (the **Supplier**

Indemnitees) from and against any liability, loss, damage, claim, fine, penalty, judgment, settlement, cost and expense (including legal fees and expenses), including personal injury to or death of the Customer's employees, arising out of or in connection with the Contract and the Customer's activities in connection with the Contract, including (a) the handling, storage, marketing, sale, resale, distribution, use, or disposal of the Goods (whether used alone or in combination with other substances) by the Customer or by any third party and (b) the failure of the Customer to comply with any instructions, applicable laws and regulations.

- 10.2. Supplier shall have the right at any time, in its sole discretion, to initiate a recall, market withdrawal, or similar action whether voluntary or mandatory, of the Goods ("**Recall**"). In the event of a Recall, the Customer shall, give any assistance that the Supplier shall reasonably require to effect the Recall, as a matter of urgency, of Goods from the market, including to take such action, institute such proceedings and give such information and assistance as the Supplier may reasonably request to:
 - (a) dispute, resist, appeal, compromise, defend, remedy or mitigate a Recall;
 - (b) enforce against any person the rights of the Customer in relation to the matter; and
 - (c) in connection with any proceedings related to a Recall, use professional advisers nominated by the Supplier and, if the Supplier so requests, allow the Supplier the exclusive conduct of the proceedings.
- 10.3. The Customer shall maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Goods from the market. These records shall include records of deliveries to customers (including batch numbers, delivery date, name and address of customer, telephone number, fax number and email address).
- 10.4. This clause 10 shall survive the expiration, termination, or cancellation of the Contract.

11. Termination

- 11.1. Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
 - (a) the Customer commits a material breach of any term of the Contract or any other contract between the Customer and the Supplier and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in 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 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;

- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer'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.

11.2. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 11.1(a) to clause 11.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

11.3. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

11.4. On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

11.5. Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. Force majeure

12.1. The Supplier shall not be liable to the Customer, nor considered in breach or default of its obligations, to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the Supplier's reasonable control, including but not limited to: compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not such regulation or order later proves to

be invalid, natural or man-made disasters, acts of God, acts or omissions of governmental authorities, fire, severe weather conditions, earthquake, strikes or other labour disturbances, flood, serious risk of kidnapping, war (declared or undeclared), armed conflict, acts or threats of terrorism, pandemics, epidemics, quarantines, regional, national or international calamities, civil unrest, riot, severe delay in transportation, severe car shortage, inability to obtain at prices and on terms deemed by it to be practicable necessary materials, components or services, incurring increased costs for compliance with environmental protection, health or safety regulations, partial or complete suspension for any reason of Supplier's or its affiliates' production operation and acts or omissions of the Customer including failure to timely provide the Supplier with any access, information, tools, material, and approvals necessary to permit Supplier to timely perform the required activities ("**Force Majeure Event**")

12.2. The Supplier shall promptly notify the Customer in the event of a delay under this clause 12. The delivery or performance dates shall, at the Supplier's option either

- (i) be extended for a period equal to the time lost by reason of such delay, plus such additional time as may be reasonably necessary to overcome the effect of such delay, or
- (ii) if the Force Majeure Event only partially affects the Supplier's ability to perform its obligations under the Contract, the affected quantity shall be eliminated from the Contract without liability, but the Contract shall remain otherwise unaffected. If the Supplier is delayed by acts or omissions of Customer, Supplier shall also be entitled to an equitable price adjustment.

12.3. The Supplier shall have no obligation to obtain the Goods or raw materials from a third party or affiliate in order to supply quantities excused under this clause 12. If shortages occur in Supplier's supply of the Goods, or any materials, components, or parts ("**Materials**") necessary to produce the Goods for any reason, Supplier may, without obligation to obtain similar Goods or Materials from other sources, allocate its available supply among its customers (whether under contract or not) and its own requirements and the requirements of its divisions, subsidiaries, and affiliates, in a manner and amount that in Supplier's sole discretion is fair and reasonable.

12.4. If the period of delay or non-performance continues for ninety (90) days, the Supplier may terminate the Contract by giving thirty (30) days' written notice to the Customer.

13. Export Control

13.1. Customer agrees to comply with all applicable export laws and regulations, including (without limitation), those of the United States, the UK and the European Union, to ensure goods, parts, and technology provided by Supplier under the Contract are not used, sold, disclosed, released, transferred, or re-exported in violation of such laws and regulations. Customer shall not directly or

indirectly export, reexport, or transfer any items or technology provided by Supplier under terms to:

- (i) any country designated by the U.S. Department of State as a “State Sponsor of Terrorism”, including for the purposes of the Contract, North Korea, or to a resident or national of any such country;
- (ii) any person or entity listed on the “Entity List” or “Denied Persons List” maintained by the U.S. Department of Commerce, the list of “Specifically Designated Nationals and Blocked Persons” maintained by the U.S. Department of Treasury, or any other applicable prohibited party list of the U.S. government; or

13.2. an end-user engaged in any nuclear, chemical, or biological weapons activities. If goods or parts to be exported outside the U.S., UK and/or EU are considered or likely to be considered as “dual use”, Customer shall (or shall cause the end user of the goods/parts to) provide to Supplier, promptly upon its request, an “End User Statement” in accordance with the applicable legal requirements. Supplier shall not be liable to Customer for any delay and shall not be in breach of its obligations in the event of Customer’s failure or delay in providing such statement.

14. Environmental Health and Safety (EHS)

- 14.1. This clause shall apply if Supplier’s personnel are required to attend a site operated by or under the control of Customer.
- 14.2. Customer shall take all actions necessary to provide a safe, healthy, and secure work environment, including transportation and accommodation, if applicable, for Supplier’s personnel. Customer shall inform Supplier of any known risks, hazards, or changed conditions impacting worker health, safety, or the environment, including the presence or potential presence of hazardous materials, and provide relevant information, including safety data sheets, site security plans, risk assessments, and job hazard analyses.
- 14.3. To evaluate risks associated with the rendering of services and performance under the Order, Customer shall provide Supplier with reasonable access to review the site and related equipment. If Supplier’s work at the site is subject to local, state, or national EHS legal requirements that are not reasonably available, Customer shall notify and provide copies of the same to Supplier.

15. Nuclear/Hazardous Applications

15.1. NO NUCLEAR USE – The Goods and/or services provided by Supplier are not intended or authorized for use in connection with any nuclear facility or activity, and Customer warrants that it shall not use, or permit others to use such Goods and/or services in connection with or for any such purposes without the advance written consent of Supplier. If, in breach of the foregoing, any such use occurs, Supplier hereby disclaims any and all liability for any nuclear or other damage, injury, or contamination REGARDLESS OF

CAUSE OF ACTION. In addition to any other rights of Supplier and to the maximum extent permitted under applicable law, Customer assumes sole responsibility for, and shall indemnify Supplier group from and against, any and all claims asserted by or in favour of any person or party resulting from any nuclear or other damage, injury, or contamination REGARDLESS OF CAUSE OF ACTION. Consent of Supplier to any use in connection with any nuclear facility or activity, if any, will be conditioned upon additional terms and conditions that Supplier determines to be acceptable for protection against nuclear liability.

15.2. “REGARDLESS OF CAUSE OF ACTION” MEANS (TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW), REGARDLESS OF: CAUSE, FAULT, DEFAULT, NEGLIGENCE IN ANY FORM OR DEGREE, STRICT OR ABSOLUTE LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE) OF ANY PERSON, INCLUDING OF THE INDEMNIFIED PERSON, UNSEAWORTHINESS OF ANY VESSEL, AND/OR ANY DEFECT IN ANY PREMISES/VESSEL; FOR ALL OF THE ABOVE, WHETHER PRE-EXISTING OR NOT AND WHETHER THE DAMAGES, LIABILITIES, OR CLAIMS OF ANY KIND RESULT FROM CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA CONTRACTUAL, OR STRICT LIABILITY, QUASI CONTRACT, LAW, OR OTHERWISE.

16. Supplier’s IP Rights

16.1. Supplier’s intellectual property rights include, without limitation, all trademarks, trade names, logos, designs, symbols, emblems, distinguishing marks, slogans, service marks, copyrights, patents, models, drawings, know-how, information, and any other distinguishing material of Supplier, whether or not subject to registration or filing (hereinafter “IP rights”). Supplier retains all IP rights in the Goods and services, and nothing herein shall be construed to grant Customer any right or license, express or implied, in the Supplier’s IP rights. In particular, Customer shall not use Supplier’s name, logo or other IP rights without Supplier’s prior written consent. Further, Customer will not by act or omission do or fail to do anything that could infringe, damage, endanger or impair Supplier’s IP rights. In particular, Customer will not:

- (a) modify, remove or disfigure any markings or other means of identification of Products goods delivered by Supplier;
- (b) use Supplier’s IP rights in such a way that their distinctive character or validity may be affected;
- (c) use trademarks other than Supplier’s trademarks with regard to Goods delivered by Supplier without Supplier’s prior express written consent, or (d) use trademarks or trade names similar to Supplier’s trademarks or trade names that may cause confusion or deception.

17. Indemnity

17.1. During the term of the Contract and for a period of five (5) years thereafter, the Customer shall maintain in force, with a reputable insurance company, the following insurances:

- (a) professional indemnity insurance, product liability insurance, and public liability insurance at such levels to cover the liabilities that may arise under or in connection with the Contract, and
- (b) employer's liability insurance of at least £5 million.

17.2. On Supplier's request, the Customer shall produce both the insurance certificate giving details of cover set out above at clause 17.1 and the receipt for the current year's premium in respect of each insurance.

18. Confidentiality

18.1. "**Confidential Information**" means the terms of these Conditions and all non-public information, technical data or know-how in whatever form and materials (including samples) concerning the business, Goods, services and/or activities of Supplier and/or its affiliates disclosed or made available to Customer, whether orally or in writing, in electronic or other form, and whether or not marked as proprietary or confidential, and any information derived from the Confidential Information; provided that Confidential Information does not include information

- (i) known to Customer at the time of disclosure or rightfully obtained by Customer on a nonconfidential basis from a third party;
- (ii) that is now, or hereafter becomes, through no act or failure to act on the part of Customer, generally known in the public; or
- (iii) that is independently developed by Customer without reliance on the Confidential Information as shown by contemporaneous documentary evidence.

18.2. Customer shall not:

- (a) Confidential Information except for the purpose of exercising its rights or performing its obligations in relation to the purchase of Goods and/or services from Supplier (the "**Purpose**");
- (b) disclose to the Confidential Information to any third party except its employees and agents who have a need to know such information for the Purpose and who are bound by nondisclosure obligations at least as stringent as those contained in these terms; and,
- (c) reverse engineer any Confidential Information, including any samples, without permission of Supplier.

18.3. Customer shall take reasonable, prudent safeguards to prevent the use or disclosure of Confidential Information in violation hereof. Customer shall be primarily responsible for the obligations of its employees and agents under the Contract.

18.4. Upon Supplier's request, Customer shall promptly return all copies, whether written, electronic, or other form, of any such Confidential Information, or delete and destroy Confidential Information in

a secure manner. Notwithstanding the foregoing, Customer may retain one copy of the Confidential Information for records management purposes, or copies in enterprisewide archival back-up systems. Notwithstanding the destruction or retention of the Confidential Information, Customer shall continue to be bound by its obligations of confidentiality hereunder.

18.5. In the event Customer is required to disclose any Confidential Information by order of a court or any government agency, by law, regulation, judicial or administrative process, Customer shall:

- (a) give prior written notice of such disclosure to Supplier, if legally permitted;
- (b) reasonably cooperate with Supplier, at Supplier's request and expense, to resist or limit such disclosure or to obtain a protective order; and
- (c) in the absence of a protective order or other remedy, disclose only that portion of the Confidential Information that is legally required to be disclosed in the opinion of counsel and assure that confidential treatment will be accorded the disclosed information.

18.6. Following termination, the obligations of Customer under this Contract with respect to the Confidential Information will continue in full force and effect as follows:

- (i) in the case of any Confidential Information which constitutes a trade secret within the meaning of applicable law, for as long as such information remains a trade secret; or
- (ii) in the case of any other Confidential Information or materials, for a term of five (5) years from the date of disclosure.

18.7. Supplier shall be entitled to injunctive relief for any breach or threatened breach of this provision without the requirement of posting bond or proving damages.

19. General

19.1. The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

19.2. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.3. Each party agrees that it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the

Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 19.4. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19.5. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.6. 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 and the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Notices

- 20.1. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each a **"Notice"**) given to a party under or in connection with the Contract shall be in writing and addressed to the parties at the addresses set forth on the face of the Order in the case of Customer or the Order Acknowledgement in the case of the Supplier, or to such other address or email address that may be designated by the receiving party in writing.
- 20.2. Any notice shall be deemed to have been received:
- 20.3. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (a) if sent by pre-paid first-class post, at 9.00 am on the second Business Day after posting or (where the address is overseas) on the fifth Business Day after posting, or at the time recorded by the delivery service;
 - (b) if sent by registered air mail or international courier providing proof of postage, at 9.00 am on the fifth Business Day after posting; or
 - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. Business hours shall mean 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- (d) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

21. Third party rights

- 21.1. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 21.2. Clause 10 is intended to be enforceable by the Supplier Indemnitees.
- 21.3. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

22. Governing Law and Jurisdiction

- 22.1. The Contract, and any dispute or claim (including noncontractual 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. The parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act as enacted by any state, will not apply.
- 22.2. All disputes arising out of or in connection with the subject matter of these terms or a purchase order shall be referred to dispute resolution proceedings under the International Chamber of Commerce (ICC) Mediation Rules, without prejudice to either Party's right to seek emergency, injunctive, or conservatory measures of protection at any time. If any such dispute has not been settled within sixty (60) calendar days following the filing of a "Request for Mediation" (or such other period of time as may be reasonable under the circumstances or agreed in writing), the dispute shall be finally settled in accordance with the ICC Rules of Arbitration by one or more arbitrators appointed under said Rules. The seat, or legal place, of arbitration shall be London and the language of the arbitration shall be English. The decision or award of the arbitrators shall be in writing and is final and binding on both parties.