

# GENERAL TERMS AND CONDITIONS OF SALE

## AGL-LEG-GTC-SALE-001-UK

<b>Revision Date</b>	<b>Revision Number</b>	<b>Originator</b>	<b>Approver</b>	<b>Owner</b>
15/02/2021	01	PAQ	CS	RA

## 1. DEFINITIONS AND INTERPRETATION

1.1. The following general definitions shall apply to this Agreement:

**"Affiliate(s)"** shall mean any subsidiary, parent or holding company of any tier, and any company directly or indirectly controlled by such company. For the purpose of this definition the expression "controlled" means the ownership of fifty per cent (50%) or more of the issued share capital, or the legal power to direct or cause the direction of the general management of the company, partnership or other entity in question, whether by share ownership, contract or otherwise; For the purposes of this definition "subsidiary" and "holding company" shall have the meanings assigned to them under Section 1159 and Schedule 6 of the Companies Act 2006, and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that company are registered in the name of (a) another person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.

**"Agreement"** The following documents shall form the "Agreement":

- (a) these General Conditions of Sale, including Appendix 1 – Form of Order ("Conditions"); and
- (b) the Order; and
- (c) any other document(s) expressly incorporated either by reference in or as attached to the Order.

**"Applicable Laws"** means all laws, statutes, ordinances, rules, regulations, by-laws, decrees, orders and the like, and any industrial instruments and any binding determination of a Competent Authority, having jurisdiction over the Parties or any of them, or the Work, and which are or may become applicable;

**"Claim(s)"** shall mean any claim, demand, action or proceeding of any kind for any cost, expense, damage, loss, liability, fine, penalty or other amount arising under, out of or in connection with the Agreement, whether arising in contract, tort, equity, under statute or on any other legal basis.

**"Competent Authority"** shall mean (i) any person having legal, executive and/or regulatory authority and/or enforcement powers (including any public body or authority responsible for the investigation and/or prosecution of criminal offences) over either or both of the Parties or any of their Affiliates providing services in connection with this Agreement or any Order; and/or (ii) any court of law or tribunal with jurisdiction over either or both of the Parties or any of their Affiliates providing services in connection with the Agreement or any Order.

**"Confidential Information"** shall mean all data, information (including business, technical and other information), knowledge, ideas and services that is provided or made available from one party to the other in any tangible or intangible form, whether directly or indirectly for the purpose of this Agreement.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of the Agreement.

Confidential Information does not include information that the receiving party establishes by documentary evidence to the disclosing party's satisfaction that:

- (a) is in or enters the public domain other than through a breach of an obligation of confidence owed to the disclosing party;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing Party in relation to that information;
- (c) is or was developed by the receiving party without the receiving Party relying on, referring to or incorporating any of the Confidential Information;
- (d) is required to be disclosed pursuant to any order of a court of competent jurisdiction but only for the purpose of such disclosure and to the extent required so to be disclosed;
- (e) is required to be disclosed pursuant to any a statute, law, regulation or ordinance but only for the purpose of such disclosure and to the extent required so to be disclosed;
- (f) was (at the time the Party received such information from the other Party) already in the possession of the receiving Party free from any obligation of confidentiality and has not been acquired by the receiving Party in breach of any obligation of confidentiality; or
- (g) has been disclosed to the Party under an express written statement from the providing Party that it is not confidential.

**"Co-Venturer"** shall mean any other entity with whom the Purchaser is or may be from time to time a party to a joint operating agreement or unitisation agreement or similar agreement relating to the operations for which the Work and the successors in interest of such Co-Venturer or the assignees of any interest of such Co-Venturer.

**"Defect(s)"** shall mean the Products not meeting the standards or specifications expressly detailed in the Contract;

**"Delivery"** shall mean when the Products have been made available for Purchaser's collection at the Delivery Location and **"Delivered"** shall have the same meaning;

**"Delivery Date"** shall mean the date the Products are delivered at the Delivery Location;

**"Delivery Location"** shall be the place where the Products is to be Delivered, as specified upon the Order;



**“Documents”** shall mean all documentation produced by Seller pursuant to this Agreement including any reports, drawings, plans, specifications, calculations, models and records which, for the avoidance of doubt, does not include Seller Background Technology.

**“EU”** shall mean the European Union.

**“EU Trade Laws”** shall mean (i) Council Regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items; and (ii) any EU embargoes and economic or financial sanctions of certain countries, persons and entities or bodies administered and implemented by the Parliament and/or Council of the EU or their successors;

**“Force Majeure”** shall mean:

- (a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- (b) Ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
- (e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected Party its subcontractors or its suppliers and which affect a substantial or essential portion of the Work;
- (f) Maritime or aviation disasters;
- (g) Changes to any general or local statute, ordinance, decree, or other law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such statute, ordinance, decree, law, regulation or bye-law;
- (h) Any government-imposed sanction effecting the Work;
- (i) Epidemic or pandemic;
- (j) Any other cause whatsoever beyond the control of the Seller;

**“Seller Background Technology”** shall mean technical information and know-how, which includes, but is not limited to, any designs, models, data, documents, patents, copyrights, discoveries, inventions, native files, or improvements, whether or not patentable, that is conceived, owned or controlled by Seller Group prior to the date of this Agreement, or that is generated or created independently of this Agreement during or after the term of this Agreement, or any improvement, modification, supplementation, adaption or enhancement to Seller’s technical information and know-how that is conceived during the performance of this Agreement, including any patent rights which claim such technical information, know-how or both.

**“Order”** shall mean the specific formal written agreement between the Parties, which may be known as a “purchase order”, “call off order” or similar, issued by the Purchaser to Seller detailing the specific Work, to be provided by Seller under the

Order in accordance with the Agreement, and shall be similar to the form detailed in Appendix – Form of Order;

**“Parties”** shall mean Seller and Purchaser, as herein sometimes referred to individually as a “Party” and collectively as the Parties

**“Person”** shall mean a natural person or a legal entity, including any partnership, limited partnership, limited liability company, corporation, firm, trust, body corporate, government, governmental body or agency, or unincorporated venture.

**“Price”** shall mean the amount to be paid by the Purchaser to Seller for the Work under the Order as stipulated upon such Order and may also be known as “Order Price”

**“Product(s)”** shall mean any spare parts, goods, materials, or other tangible items purchased by Purchaser from Seller pursuant to an Order and as stipulated upon such Order. The term Products does not mean or include (i) computer programs or software employed by Seller in providing the Work or made available to Purchaser in connection with the Work, or (ii) proprietary computer program(s) or software of Seller or licensed use of which shall be subject to the terms of a separate license agreement between the Parties.

**“Purchaser”** shall mean the legal entity stipulated on the Order for whom Seller is providing Work for pursuant to the Order, and its successors and assignees.

**“Purchaser Group”** shall mean Purchaser, its Co-Ventures, its and their contractors of every tier (including any Purchaser Subcontractors), its clients of every tier, its and their respective Affiliates, and its and their respective directors, officers, employees, agency personnel, agents, representatives, servants, invitees, and secondees, but shall not include any member of Seller Group.

**“Purchaser subcontractor”** shall mean any contractor or person to whom the Purchaser has engaged as independent contractor for the provision of goods and/or services to the Purchaser and includes and is not limited to: a trade contractor, consultant, supplier, vendor or subcontractor, in each case of any tier, but shall not include the Seller.

**“Seller”** shall mean the legal entity stipulated on the Order the is providing Work to the Purchaser pursuant to the Order, and its successors and assignees.

**“Seller Group”** shall mean the Seller, its Affiliates, and its and their respective officers, directors and employees but shall not include any member of the Purchaser Group.

**“Technical Information”** shall mean all information provided by or caused to be provided by the Purchaser pursuant to the Agreement.

**“UK”** shall mean the United Kingdom of Great Britain and Northern Ireland.

**“UK Trade Laws”** shall mean: (i) the Export Control Act 2002 and any secondary legislation made under the powers thereof including, but not limited to, the Export Control Order 2008; (ii) the Sanctions and Anti-Money Laundering Act 2018, as amended



and any secondary legislation made under the powers thereof; (iii) sanctions prescribed under the EU (Withdrawal) Act 2018 and any secondary legislation made under the powers thereof; and (iv) any other UK embargoes and economic or financial sanctions of certain countries, persons and entities or bodies administered and implemented by the Department for Business, Innovation and Skills (Export Control Organisation) and HM Treasury (Asset Freezing Unit) or their successors.

“US” shall mean the United States of America.

“US Trade Laws” shall mean: (i) the Export Administration Regulations and the International Traffic in Arms Regulations administered by the US Department of the Treasury (Bureau of Industry and Security) and the US Department of State (Directorate of Defence and Trade Controls) and amendments made thereto by any subsequent or successor legislation and/or regulations; and (ii) any US embargoes and economic or financial sanctions of certain countries, persons and entities or bodies administered and implemented by the US Department of the Treasury (Office of Foreign Assets Control) acting under Presidential national emergency powers contained in the International Emergency Economic Powers Act or under authority granted by specific legislation, that is in place from time to time.

“Variation” shall mean both:

- (a) an instruction to the Seller in accordance with Clause 3; and
- (b) an adjustment to the any schedule and/or the Price to which the Seller is entitled under any Clause of the Agreement.

“Work” shall mean the sale of Products by Seller to Purchaser pursuant to the Order. As a result, terms such as “provide Work”, “perform Work”, “performance of the Work” or “Work performed” shall mean Seller sale of the Products to Purchaser in accordance with the terms of this Agreement.

1.2. In the Agreement, unless the context otherwise requires:

a reference to a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

a document (including the Agreement) or agreement, or a provision of a document (including the Agreement) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

a Party includes a successor in title, permitted substitute or a permitted assign of that Party;

"person" includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

"including", "included", "include", "such as", "comprising", "comprise" and other similar words are deemed to be completed by the expression "but not limited to";

"require", "request", "submit", "answer", "notify", "instruct", "direct", "state", "inform", "agree", "approve" and other similar words are deemed to be completed by the expression "in writing" unless expressly stated otherwise;

"instruct", "direct" and other similar words include any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, consent, failure to consent, rejection, request or requirement, but does not include meeting notes or minutes;

"days" or "months" mean "consecutive calendar days" or "consecutive calendar months", it being understood that all dates and time periods referred to in the Agreement relate to the Gregorian calendar;

words indicating the singular also include the plural and vice-versa and words indicating one gender include all genders; and

if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

1.3. Where the Agreement, expressly or impliedly:

allows the Seller a discretion as to whether or not to do or not to do any act, matter or thing of any kind, or as to how it may be done; or confers on the Seller a power of determination or a right or obligation to form an opinion or the like, the Seller may exercise or perform that discretion, power, right or obligation in its sole discretion and it is not required to give reasons when giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy under or in connection with the Agreement, unless expressly stated otherwise.

1.4. In the interpretation of a provision of the Agreement, a construction that would promote the purpose or object underlying the provision (whether that purpose or object is stated in the provision or not) is to be preferred a construction that would not promote that purpose or object.

1.5. In the interpretation of a provision of the Agreement, a construction adverse to a Party must not be preferred solely on the ground that:

- (a) the Party was responsible for the preparation of the Agreement or that provision; or
- (b) the Agreement or that provision favours the Party relying upon that provision.

1.6. Headings are included in these terms and conditions for ease of reference only and shall not affect the interpretation or construction of any of the terms and conditions herein.

1.7. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order regulation or instrument as it is in force for the time being taking account of any amendment, extension, application, consolidation or re-enactment and includes any subordinate legislation for the time being in force under it.



- 1.8. (a) The various parts of the Agreement (as defined) shall be read as one document, the contents of which, in the event of conflict, ambiguity or inconsistency, shall be given precedence in the following order listed in declining weight: (i) any Special Conditions expressly stipulated upon the Order, (ii) these General Terms and Conditions of Sale including Appendix 1 – Form of Order (“Conditions”), (iii) the Order, and (iv) any other document(s) expressly incorporated either by reference in or as attached to the Order in declining precedence as stipulated upon the Order. In case of conflict or inconsistency between the provisions of the Conditions (or those referred to in the Conditions) and any applicable laws or regulations, the provisions of the Conditions (or those referred to in the Conditions) shall, to the extent legally possible, prevail (and to the extent legally impossible, be amended accordingly), notwithstanding anything herein to the contrary.

(b) This Agreement applies in lieu of any terms or conditions (i) provided by Purchaser during the performance of the Agreement, or (ii) contained or referred to in any form generally used by Purchaser, or any correspondence, other contracts performed by the Parties, or elsewhere, which may have been applicable to the subject matter hereof, or (iii) implied by trade, custom, practice or course of dealing. Any of said terms and conditions are void and unenforceable, and any purported provisions to the contrary are hereby excluded or extinguished.

## 2. ORDERS

- 2.1. At the request of Purchaser, and the written acceptance of the Seller, the Seller shall provide Work for Purchaser as specified in Order.
- 2.2. In accordance with the terms and conditions of the Agreement, the Seller shall perform and complete the Work and the Seller shall pay the relevant Price
- 2.3. These general terms and conditions shall apply from the date of express written acceptance by the Seller of the Order.
- 2.4. Orders shall be administered as follows:
- (a) Each Order shall be subject to these Conditions, which shall control and govern all transactions between the Parties with respect to Work provided by Seller, whether or not these Conditions are referred to in the Order;
- (b) No other, additional or different terms and conditions in any written or oral communication with respect to a transaction for Work (including the terms and conditions in any Purchaser request for proposal, request for quote, request for bid, purchase order, or similar document) shall vary or amend these Conditions; and
- (c) Orders submitted by Purchaser orally or via email shall be followed by a purchase order or other written confirmation of the Order within two (2) working days from the date of the oral or email order, failing which Seller shall have no obligation to perform Work thereunder. In the event of a conflict between Conditions and the terms in any Order, these Conditions shall control.
- 2.5. Orders accepted by Seller may not be cancelled by Purchaser without Seller written consent.
- 2.6. Purchaser shall be liable for cancellation, restocking,

demobilisation and other fees, costs and charges incurred by Seller with respect to any cancelled Order.

- 2.7. Purchaser’s submission of an Order to Seller for provision of the Work pursuant to any Order, is deemed to reiterate Purchaser’s acceptance of all terms and conditions contained or referred to in this Agreement. The terms and conditions contained or referred to in this Agreement shall apply, regardless of whether said terms and conditions are referenced in the Order

## 3. VARIATIONS

### 3.1. Variations to the Work

- (a) The Purchaser may issue to Seller at any time a Variation to the Work.
- (b) Seller must not vary the Work except as directed by the Purchaser in writing under a Variation
- (c) Seller is bound only to execute a Variation which is within the capabilities and expertise of Seller and is within the general scope of the Work under the Agreement.
- (d) Seller is entitled to request a Variation where an occurrence has taken place, or an instruction has been received from the Purchaser which impacts upon the Price or the Schedule for the Work. The Variation request shall include the information prescribed under Clause 6.2(a) below. Within seven (7) days of Seller request hereunder, the Purchaser shall issue a notice to Seller whether the request is accepted or rejected with full particulars and substantiation of its decision. If no such notice is received within the time stipulated the variation request shall be deemed accepted. If accepted, the Purchaser shall issue to Seller a Variation in accordance with the relevant Variation request. If the Purchaser rejects the Variation request, the Variation shall be treated as disputed and the Parties shall resolve such disputed variation under Clause 21.2

### 3.2. Proposed Variations

- (a) Upon receipt of a notice in writing from the Purchaser advising Seller of a proposed Variation under this Clause 3, Seller must advise the Purchaser whether the proposed Variation can be affected. If the Variation can be affected, Seller must:
- (i) advise the Purchaser of the effect which Seller anticipates that the Variation will have on the date for completion of the Work; and
- (ii) provide an estimate of the cost (including delay costs, if any) of the proposed Variation.
- (b) If a Variation is executed by both Parties, the Purchaser must reimburse Seller for all costs of complying with the requirements of this Clause 3.2 and for all increases to the Price.

### 3.3. Pricing the Variation

- (a) The Parties must negotiate in good faith to agree on the price for a Variation based on the prices listed upon the Order (and where no such prices are listed using reasonable market rate prices at the time of the Variation). If Seller and the Purchaser do not agree on the price for a Variation, Seller has the right to impose on the Purchaser a fair and reasonable price for that Variation.
- (b) If the Purchaser disputes the price imposed by Seller in Clause 3.3 (a) or Seller and the Purchaser do not agree on the price for a Variation, then the price will be decided in accordance with Clause 21.2.



- (c) Purchaser may direct the Seller to provide a detailed quotation for Work of a Variation supported by measurements or other evidence of costs that Purchaser may reasonably require.

#### 3.4. Valuation

- (a) Seller must not commence to carry out any Variation unless the value of the Variation has been first agreed with Purchaser or determined pursuant to Clause 3.3.
- (b) Notwithstanding the fact that the value of the Variation has not been agreed or determined, Purchaser may instruct Seller to proceed with the Variation on the condition that Seller subsequently supply, as soon as reasonably practicable, a detailed quotation for the Work of the Variation supported by measurements or other evidence of costs that the Purchaser may reasonably require. Any dispute in relation to such detailed quotation will be resolved in accordance with Clause 21.2.

#### 4. PAYMENT TERMS

- 4.1. Purchaser shall pay Seller the Price as specified in the Order.
- 4.2. Invoices are payable by the Purchaser to Seller within thirty (30) days of the invoice date. Payment in accordance with this Clause 4 is a material condition, and shall be of the essence, of the Agreement.
- 4.3. Notwithstanding any other provision, all payments to Seller under the Agreement which have not been previously paid shall become due immediately on the termination of the Agreement.
- 4.4. The Purchaser shall make all payments due under the Agreement in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Purchaser had a valid court order requiring an amount equal to such deduction to be paid by Seller to the Purchaser. The Purchaser has no right to withhold any payments from Seller.
- 4.5. If the Purchaser fails to pay Seller any sum due pursuant to the Agreement, the Purchaser shall be liable to pay interest on such sum from the due date for payment at the annual rate of eight percent (8%) above the Bank of England Official Bank Rate, accruing on a daily basis and compounded every three (3) months until payment is made, all whether before or after any judgment. No payment shall be deemed to have been received by Seller until Seller has received cleared funds.
- 4.6. In respect of any and all payments due by Purchaser under this Agreement, time shall be of the essence.
- 4.7. In the event Purchaser fails to make payment to Seller in accordance with Clause 4.2, Seller shall be entitled to suspend the Work by providing the Purchaser with written notice until such payment is made in full.
- 4.8. In the event the Purchaser fails to make payment following suspension under Clause 4.7 for a period of seven (7) days, the Seller shall be entitled to terminate the Agreement with immediate effect.

#### 5. TAX AND DUTIES

- 5.1. Seller is responsible for payment of all taxes and contributions, for which the Seller is liable as imposed by a government authority in the United Kingdom or elsewhere which are properly chargeable upon the Seller or its employees relating to this Agreement.
- 5.2. Purchaser is responsible for payment of all taxes and contributions, for which the Purchaser is liable as imposed by a government authority in the United Kingdom or elsewhere, which are properly chargeable upon the Purchaser or its employees relating to this Agreement.
- 5.3. Except where otherwise provided for in the Agreement:
  - (a) The Purchaser shall be responsible for and agrees to pay all costs (including export and import costs), taxes (including withholding tax), levies and duties assessed by any government or body against the Work and associated apparatus in connection with importation and/or exportation of the same and the Purchaser shall indemnify and hold harmless Seller Group from and against any such costs, taxes, levies and duties.
  - (b) the Purchaser agrees to pay all costs, taxes, levies, or duties assessed by any foreign government in respect of the salary and other payments made by the Purchaser Group to its own employees and the Purchaser shall indemnify, save, defend and hold harmless the Seller Group from and against any such costs, taxes, levies or duties.
- 5.4. Purchaser acknowledges that Seller has made no allowance in its pricing for taxes, duties, levies or assessments (including withholding taxes) imposed by any governmental or other taxing authority other than the country it is registered within. If under the law of any country where the Work is performed the Purchaser is required to withhold, or the Seller after being duly notified, is required to pay, any taxes or levies assessed in that country, including, but not limited to any applicable goods or services tax or similar, then the Order Price shall be paid after withholding by the Purchaser or payment by the Seller of these taxes in accordance with the law of such country. In such a case, the amount of compensation due to the Seller under the Agreement, shall be increased in such a manner that the net amount received by the Seller after withholding or payment is equal to the Order Price.
- 5.5. The Purchaser shall be responsible for, and shall apply to the relevant governmental authorities for, all permits, temporary permits, authorizations, licenses and applicable relief for export and import of the Products being sold under this Agreement. The Purchaser shall be accountable and liable for compliance with customs procedures in relation to the Products.
- 5.6. Products, technology, software and/or services provided by Seller may require an export or reexport license from the U.S., UK, and/or EU prior to being exported or reexported and such Products, technology, software and/or services will not be exported or reexported without all required export or reexport license(s).

#### 6. WARRANTY

- 6.1. Seller Product Warranty  
Seller represents and warrants to Purchaser that all Products of its own manufacture ("Seller Products") supplied pursuant to the Order (i) shall conform in all respects to Seller Product specifications; and (ii) shall be



and remain free from Defects for twelve (12) months from the Delivery Date ("Warranty Period"). The Seller reserves the right to make substitutions or design and construction modifications with respect to any Seller Products prior to the Delivery Date, provided those substitutions or modifications do not affect the performance of the Seller Products.

6.2. The foregoing Seller Product warranties are the sole and exclusive warranties provided by Seller with respect to Seller Products, and Seller hereby expressly disclaims any and all other warranties and conditions, expressed or implied by law, including the implied warranties of merchantability, and/or, fitness for purpose.

- 6.3. The warranties under Clause 6.1 do not apply to:
- (a) Products that have been modified by Purchaser Group or a third party after Delivery;
  - (b) Defects caused by Purchaser or any third party.
  - (c) Seller Products subjected to improper handling, storage, installation, operation or maintenance by Purchaser Group or Third Parties, including use of unauthorized replacement parts or operation under more severe conditions than those for which the Seller Products are manufactured to be used under;
  - (d) Seller Products requiring replacement because of natural wear and tear;
  - (e) Purchaser's failure to implement any update or upgrade to Seller Products as recommended by Seller.

**6.4. Remedies for Breach of Seller Product Warranties**

- (a) Subject to Clause 6.3 and Clause 6.4(d), if during the Warranty Period there is a Defect in the Seller Products caused by the Seller and notified by the Purchaser within the Warranty Period to Seller in writing as soon as the Purchaser knew or ought to have known of the Defect, whichever is the earlier, the Purchaser's sole and exclusive remedy, and the Seller's sole and exclusive liability, regarding such Defect, shall be for the Seller, at the Seller's sole option, to rectify the Defect either at the Seller's chosen site or on a return-to-manufacturer basis at Purchaser's cost or provide a replacement item of similar specification EXW (Incoterms) 2020 Seller's premises. Seller reserves the right to require prepaid return of the allegedly defective Seller Product to establish a claim. The Seller shall not be responsible for retrieving or removing defective Seller Products or any part thereof, or for reinstalling the same when repaired or replaced, or for any cost incurred in connection with such retrieval, removal or reinstallation.
- (b) The warranty for the replaced or repaired Seller Products shall be extended by 6 (six) months from the date of re-delivery under the terms of this Clause 6, provided that the total period of warranty shall not exceed eighteen (18) months from the original Delivery Date.
- (c) For the avoidance of doubt, where the Seller elects to rectify the Defect under Clause

6.4(a), the Purchaser shall return any defective Seller Products to the Seller on a DDP (Incoterms) 2020 basis at the Seller's designated premises and repaired or replaced Seller Products shall be re-delivered to the Purchaser on an EXW (Incoterms) 2020 basis at the Seller's chosen site.

- (d) The Purchaser must give written notification of any warranty claim within seven (7) days of the Defect occurring. Otherwise no such claim may be raised against Seller.

6.5. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement and warranties provided under this Agreement are provided in lieu of such. All errors, omissions or Defects in the Seller Products, whether arising in contract, tort (including negligence), strict liability, product liability or otherwise, shall be subject to the agreements and limitations of Clause 6.

**6.3 Third-Party Product Warranties**

Purchaser acknowledges that certain Products to be provided by Seller may be secured from third parties ("Third-Party Products"). With respect to any such Third-Party Products, Seller shall pass through to Purchaser any warranties received from such third parties with respect to the Third-Party Products, to the extent same are transferable.

6.4 The remedial obligations under this Clause 6 constitute Seller's sole and exclusive liability and the Purchaser's sole and exclusive remedy with respect to the errors, omissions or Defects in the Work, irrespective of Seller fault or negligence.

The warranties expressed under this Clause 6 are in lieu of any other warranties or conditions or terms, expressed or implied by statute or common law, including in respect of design, materials or workmanship and all such warranties, including of merchantability, fitness for purpose or workmanlike performance, and such are excluded from this Agreement to the fullest extent permitted by law. All errors, omissions or Defects in the Work, whether arising under the Agreement, in contract, tort (including negligence), strict liability, product liability or otherwise, shall be subject to the agreements and limitations of this Clause 6.

**6.5 Relied Upon Information**

Seller and Purchaser recognise that in order to satisfactorily perform the Work, Seller requires to rely upon the completeness and accuracy of all information, including Technical Information, supplied to Seller by or via Purchaser in relation to the Work ("Rely Upon Information").

Notwithstanding anything the contrary contained with this Agreement, the Purchaser warrants the completeness and accuracy of all Rely Upon Information. The Purchaser agrees that Seller shall not be liable whether under the Agreement, in contract, in tort or otherwise at law for its use or reliance upon any Rely Upon Information.

6.6 For the avoidance of doubt, in no circumstance shall Seller be responsible for costs which are incidental or ancillary to rectification of Defects in the Work. Such costs shall include but not be limited to heavy lifting, rig/vessel stand by time searching for defects, uncovering or removal of the Work, re-installation and, where applicable, work at or below the waterline, diving support.

## 7. DELIVERY AND TITLE

### 7.1. Delivery

- (a) The Purchaser will be responsible for collection of the Products from the Delivery Location (and where the location is not stated upon the Order the Hirer shall collect the Equipment from the Seller's designated base Ex Works (Incoterms 2020)) upon the Delivery Date.
- (b) The Purchaser will be responsible for all transportation and full coverage insurance costs associated with the delivery and return of the Products, based on Ex Works (Incoterms 2020) unless as agreed otherwise in writing with the Seller or detailed upon the Order. Any transport and handling arranged by the Seller on behalf of the Purchaser will be billed at cost plus ten percent (10%).
- (c) The Purchaser will be deemed to have accepted the Products once they are Delivered.

### 7.2. Risk

Risk of loss, theft, damage or destruction of the Products will pass to Purchaser upon Delivery.

### 7.3. Title

Title of Products shall pass upon full payment of the Price by the Purchaser to Seller in accordance with Clause 4 of these Conditions.

## 8. LAWS AND REGULATIONS

- 8.1. The Seller shall comply with all applicable laws, rules and regulations of any governmental or regulatory body having jurisdiction over the Work.
- 8.2. Purchaser shall obtain all licences, permits, temporary permits and authorisations required by the applicable laws, rules and regulations for the performance of Work, save to the extent that the same can only be legally obtained by Purchaser or except anything to the contrary contained within this Agreement in which instance the Purchaser shall indemnify the Seller Group for any and all Claims as a result of having to obtain such licences, permits, temporary permits and authorisations.
- 8.3. Should changes in any applicable laws, rules and regulations, including any change in interpretation of the same by Competent Authority result in increases in the cost to the Seller Group of performing the Work, the Order Price shall be adjusted accordingly and the Parties shall enter into amendment to that effect.

## 9. INDEMNITIES

- 9.1. Seller shall be responsible for and shall release, save, indemnify, defend and hold harmless the Purchaser Group

from and against all Claims in respect of:

- (a) loss of or damage to property of any member of Seller Group whether owned, rented, leased or otherwise provided by any member of Seller Group arising from, relating to or in connection with the performance or non-performance of this Agreement;
- (b) personal injury including death or disease to any personnel of any member of Seller Group arising from, relating to or in connection with the performance or non-performance of this Agreement; and
- (c) personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (statutory or otherwise) of Seller Group. For the purposes of this Clause 9.1(c) "third party" shall mean third parties which are not part of the Seller Group or the Purchaser Group

- 9.2. The Purchaser shall be responsible for and shall release, save, indemnify, defend and hold harmless Seller Group from and against all Claims in respect of:

- (a) loss of or damage to property of the Purchaser Group, whether owned by any member of the Purchaser Group, or leased or otherwise obtained under arrangements with financial institutions by any member of the Purchaser Group, arising from, relating to or in connection with the performance or non-performance of this Agreement; and
- (b) personal injury including death or disease to any personnel of any member of the Purchaser Group arising from, relating to or in connection with the performance or non-performance of this Agreement; and
- (c) personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (statutory or otherwise) of the Purchaser Group. For the purposes of this Clause 9.2(c) "third party" shall mean third parties which are not part of the Seller Group or the Purchaser Group

- 9.3. Except as provided by Clause 9.1(a), Clause 9.1(b) and Clause 9.4, the Purchaser shall be responsible for and shall release, save, indemnify, defend and hold harmless Seller Group from and against all Claims in respect of any pollution howsoever caused emanating from the reservoir, or property, including vessels, (whether owned, leased or otherwise provided) of any member of the Purchaser Group arising from, in connection with or relating to the performance or non-performance of the Agreement.

- 9.4. Except as provided by Clause 9.2(a), Clause 9.2(b), and Clause 9.3, Seller shall be responsible for and shall release, save, indemnify, defend and hold harmless the Purchaser Group from and against all Claims in respect of sudden and accidental pollution originating from the property (whether owned, leased or otherwise provided) of any member of Seller Group arising from, in connection with or relating to the performance or non-performance of the Agreement.

- 9.5. The Purchaser shall assume all liability for and shall save,





defend, indemnify and hold harmless Seller Group from and against any Claims of whatsoever nature in respect of:

- (a) damage to or loss of or impairment to any well (including the casing therein) or well bore;
- (b) damage to or loss of any reservoir or productive formation, or subsurface minerals;
- (c) blowout, fire, explosion, cratering, subsurface pressure, losing control of the well (including efforts to regain control of the well) or any other uncontrolled well event;
- (d) pollution or contamination of any kind, as well as containing, controlling and cleaning up any such resulting pollution or contamination;
- (e) damage to or loss of the drilling rig, vessel, platform, pipeline or other system forming part of or connected to the platform;

which arises from, relates to or is in connection with the performance or non-performance of this Agreement, regardless of cause and even if caused or contributed to by the negligence, fault, strict liability, strict products liability, or breach of duty, statutory or otherwise, of Seller Group.

9.6. All exclusions and indemnities given under this Clause 9 (save for those under Clauses 9.1(c) and Clause 9.2(c)) and Clause 11 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.

9.7. If either Party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other and both Parties shall co-operate fully in investigating the incident.

9.8. The indemnities given by the Parties under this Agreement are full and primary and shall apply irrespective of whether the indemnified party has, or has not, insurance in place relating to any claims, losses, damages or costs in respect of the subject matter of any indemnity given under this Agreement.

## 10. INSURANCE

10.1. The Purchaser shall effect and maintain appropriate insurances and ensure they are in full force and effect to cover its liabilities under Clause 9. All such insurances shall be placed with reputable and substantial insurers, satisfactory to Seller. All insurance under this Clause 10 shall name the Seller and its Affiliates as additional insured and shall be endorsed to provide the underwriters waive any rights of recourse, including subrogation rights against Seller Group in relation to the Agreement to the extent of the liabilities assumed by the Purchaser under the Agreement.

10.2. Whereby virtue of Clause 10.1, Purchaser is required to effect and maintain insurance, it shall, if requested by Seller, promptly provide evidence of that insurance. If Purchaser fails to effect and maintain any insurance it is required to effect and maintain under this Agreement, or fails to provide satisfactory evidence of any insurance without delay following a request for this evidence by Seller, then Seller may (at its option and without prejudice to any other right or remedy) effect and maintain insurance for the relevant coverage and pay the premiums due. Hirer shall then pay the reasonable amount of these

premiums plus any extra expense incurred in effecting this insurance to Owner as an adjustment to the Order Price.

## 11. CONSEQUENTIAL LOSS

11.1. For the purposes of this Agreement the expression "Consequential Loss" shall mean:

- (a) consequential or indirect loss under English law; and
- (b) loss and/or deferral of production, loss of product, loss of use (where loss of use shall mean, without limitation, loss of use or the cost of use of property, equipment or associated equipment, materials, spread and services including without limitation, those provided by contractors or subcontractors of every tier or by third parties), down time costs, loss of or deferment of revenue (which for the avoidance of doubt shall not include payments due to Seller by way of remuneration under this Agreement), profit or anticipated profit (if any), loss of business or business interruption including wasted overheads and loss of anticipated savings, loss of bargain, contract, expectation or opportunity, any increase in operating or other costs except as specifically provided for elsewhere in this Agreement, loss and/or deferral of drilling rights and/or loss, restriction or forfeiture of licence, concession or field interests, or down time costs, loss of goodwill, the cost of obtaining any new financing or maintaining any existing financing (including the making of any scheduled or other repayment or prepayment of debt and the payment of any interest or other costs, fees or expenses incurred in connection with the obtaining or maintaining of financing), in each case whether direct or indirect to the extent that these are not included in (a), and whether or not foreseeable at the effective date of commencement of the Agreement.

11.2. Notwithstanding any provision to the contrary elsewhere in the Agreement Seller shall save, indemnify, defend and hold harmless the Purchaser Group from Seller Group's own Consequential Loss and the Purchaser shall save, indemnify, defend and hold harmless the Seller Group from the Purchaser Group's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the Agreement.

## 12. TERMINATION AND SUSPENSION

12.1. The Seller may terminate the Agreement in the event the Purchaser fails to pay, any sum due to the Seller in accordance with the Agreement.

12.2. The Agreement may be terminated as follows:

- (a) either Party may terminate the Agreement, in whole or in part, by serving a written notice to the other Party if a Force Majeure event lasts for more than forty-five (45) consecutive days.
- (b) Seller may terminate the Agreement, in whole or in part, effective immediately upon written notice to the Purchaser, if:
  - (i) the Purchaser has a bankruptcy order made against it or makes an



- arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser, or notice of intention to appoint and administrator is given by the Purchaser, or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up or dissolution of the Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser; or
- (ii) the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Agreement or any other contract between the Seller and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade;
- Each of the foregoing being an “act of bankruptcy” or “act of administration”.
- (c) Seller may terminate the Agreement, in whole or in part, effective immediately upon written notice to the Purchaser, if the Purchaser is guilty of a conduct or a course of conduct or is convicted of a criminal offence which may bring the Seller into disrepute.
- (d) Seller may terminate the Agreement, in whole or in part, effective immediately, upon written notice to the Purchaser, if the Purchaser fails to observe the requirements of:
- (i) Clause 4 - Payment Terms
  - (ii) Clause 14 - Health, Safety and Environment
  - (iii) Clause 22 - Business Ethics, Anti-Bribery and Corruption
- (iv) Compliance
- (v) Clause 23- Compliance with Trade Laws
- (v) Clause 24 - Data Protection
- (e) Seller may terminate the Agreement, in whole or in part, at its convenience by serving a thirty (30) day prior written notice to the Purchaser.
- 12.3. If the Purchaser states an intention to commit an act of bankruptcy or act of administration the Seller may terminate the Agreement by giving written notice to the Seller declaring the Agreement is terminated.
- 12.4. In the event of termination of the Agreement the following shall apply:
- (a) The Purchaser shall pay the Seller for all the Work performed up to and including the date of termination, including for all Products Delivered and for Products not yet Delivered but manufacturing or procuring of such Products has commenced, for any and all costs and expenses incurred by the Seller, in relation to the Agreement, for any and all commitments made by the Seller in relation to the Agreement (including, but not limited to, capex commitments) and for all rates, lump sums, costs and expenses that would have been due to the Seller, for completing the entire Work, along with any other agreed compensation stipulated upon the Order.
- 12.5. The Seller may immediately suspend the Agreement, by giving notice in writing to the Purchaser, as follows:
- (a) To suit its convenience;
  - (b) For the safe and proper execution of the Work;
  - (c) In accordance with Clause 4.7;
  - (d) In accordance with Clause 12.7;
  - (e) In accordance with Clause 22.5; or
  - (f) In accordance with Clause 23.6.
- 12.6. In the event of suspension under Clause 12.5, the Purchaser shall pay the Seller for all Work performed up to and including the date of suspension including for all Products Delivered and for Products not yet Delivered but manufacturing or procuring of such Products has commenced, for all costs and expenses incurred in relation to the suspension, including for demobilization and any remobilization, for all costs incurred in relation to any suppliers and subcontractors of the Seller, and for any suspension rates and/or fees stipulated upon the Order.
- 12.7. Seller may suspend or terminate the Agreement, or any part of the Work, where any Person of the Purchaser Group becomes a Restricted Party. For the purposes of this Clause 12.7, a “Restricted Party” shall mean:
- (a) any Person targeted by national, regional, or multilateral export, trade or economic sanctions under Applicable Laws;
  - (b) any Person designated on the United Nations Financial Sanctions Lists, European Union (EU) or EU Member State Consolidated Lists, UK Sanctions or Consolidated List, US Department of the Treasury Office of Foreign Assets

Control Specially Designated Nationals list, US State Department Non-proliferation Sanctions Lists, or US Department of Commerce Denied Persons List or Entity List, in force from time to time;

- (c) any Affiliates of such Persons; or
- (d) any Person acting on behalf of a Person referred to in the foregoing.

12.8. Exercise of the right of termination or suspension afforded to either Party shall not prejudice legal rights or remedies either Party may have against the other in respect of any breach of the terms of the Agreement.

12.9. The rights and remedies of the Seller under this Clause 12 (and the remainder of the Agreement) are not exclusive and apply in addition to any other rights and remedies available at law, in contract, in equity or otherwise. If either Party exercises its rights under this Clause 12, under no circumstances shall it become liable for the Consequential Loss which may be sustained by the other Party as a result thereof.

### **13. FORCE MAJEURE**

13.1. Except for the Purchaser's obligations to make payment under Clause 4.2, Clause 12.4, or elsewhere in the Agreement, neither Party shall be responsible for any failure to fulfil any obligation under the Agreement if and to the extent that fulfilment has been made impossible, delayed, hindered or temporarily prevented by a Force Majeure occurrence, and shall not be liable for any claim of any nature whatsoever, including for compensation or damages arising from such failure, provided such has been notified in accordance with Clause 13.2 and which is without the fault or negligence of the Party affected.

13.2. In the event of a Force Majeure event occurring, the Party's obligations under the Agreement that have been made impossible, delayed, hindered or temporarily prevented by Force Majeure shall notify the other Party without delay giving the full particulars thereof and shall use reasonable endeavours to mitigate the effects of the Force Majeure event without delay.

13.3. If any occurrence referred to above causes a prolonged delay of a period of forty-five (45) consecutive days or more in the provision of the Work, either Party may terminate this Agreement without giving rise to any claim for compensation other than as specified under Clause 12.4.

### **14. LIEN**

14.1. Purchaser shall not claim any lien or attachment on Work or on any Products or equipment of the Seller in the possession of Purchaser.

14.2. Without prejudice to any other provisions of this Clause 14, the Purchaser shall save, indemnify, defend and hold harmless the Seller Group from and against all liens or attachments by any of the Purchaser Group or any third party in connection with or arising out of this Agreement.

14.3. Purchaser shall immediately notify Seller of any possible lien or attachment which may affect Work or property of the Seller.

### **15. HEALTH, SAFETY AND ENVIRONMENT**

15.1. The Parties place prime importance on health, safety and environment ("HS&E") issues and both Parties warrant that they subscribe to and actively pursue the highest standards of HS&E performance.

15.2. Each Party shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the performance of the Work. Failure of a Party to satisfy the other Party's reasonable requirements with regard to the control of HS&E risks in any material respect will be regarded as due cause for the other Party giving notice to terminate all of any part of the Work or the Agreement in accordance with Clause 12.

### **16. INTELLECTUAL PROPERTY**

16.1. Neither Party shall have the right of use, other than for the purposes of the Agreement, whether directly or indirectly, any patent, copyright, proprietary right or confidential know how, trademark or process provided by the other Party and the intellectual property rights in such shall remain with the Party providing such patent, proprietary right, copyright or confidential know how, trademark or process. For the avoidance of doubt, all Seller Background Technology and right thereto shall remain the property of Seller. The Purchaser shall not (and shall not permit any third party to) disassemble the Products, decompile or otherwise seek to reverse engineer the Equipment, or any part thereof.

16.2. Where any potential patent or registerable right in any country in the world results from:

- (a) developments by Seller Group which are based wholly on data, equipment, processes, substances and the like in the possession of Seller Group at the commencement date of the Agreement or otherwise produced outside of the Agreement after the commencement date of the Agreement; or
- (b) enhancements of or in the existing intellectual property rights of Seller Group.

such rights shall vest in the Seller or another company within Seller Group as the case may be.

16.3. Except as provided in Clause 16.1 and Clause 16.2, where any potential patent or registerable right in any country in the world arises out of the Work and is invented during the term of the Agreement or under any Order, such rights shall vest in Seller.

16.4. Where under Clause 16.3 rights vest in the Seller, the Seller may at its sole discretion give the Purchaser and its Affiliates and its co-venturers a royalty-free, irrevocable, non-exclusive, non-transferable, world-wide licence to use such right which shall not be sub-licensed.

16.5. The Purchaser shall save, indemnify, defend and hold harmless Seller Group from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the Purchaser under the Agreement or, where applicable the use by Seller of the Technical



Information or materials or equipment supplied by the Purchaser.

#### **17. CONFIDENTIALITY**

- 17.1. Both Parties shall treat Confidential Information as valuable, proprietary and confidential information and shall not disclose it to any other third party without the prior written permission of the other Party, except as permitted below.
- 17.2. Seller may disclose Confidential Information to its employees, consultants, directors, officers and Affiliates and sub-contractors who need to know the Confidential Information for the performance of the Work.
- 17.3. Both Parties may disclose Confidential Information to professional advisors, but only to the extent necessary for the provision of professional advice needed by the party for the performance of the obligations under this Agreement, and such disclosure is subject to confidentiality terms no less stringent than those within this Clause 17.
- 17.4. The obligation on the Parties to maintain confidentiality shall continue beyond the completion or termination of this Agreement for a period of three (3) years.

#### **18. LIMITATION OF LIABILITY**

- 18.1. Notwithstanding anything to the contrary in this Agreement, the Seller's total cumulative liability to the Purchaser arising out of or in relation to the performance or non-performance of this Agreement including but not limited to liability for delay, default, rework or replacement and payment of liquidated damages (if any), under any cause of action whether in tort, contract or otherwise at law shall not exceed the lesser of (i) twenty percent (20%) of the Order Price and (ii) the portion of Order Price paid by the Purchaser to Seller upon the date of the incident that gave rise to the Claim ("maximum liability"). The Purchaser shall be responsible for and shall save, indemnify, defend and hold harmless Seller Group from and against all Claims of any kind or character (including without limitation, reasonable attorneys' fees and costs of litigation), in excess of the maximum liability, asserted by or in favour of any person, party or entity, regardless of whether caused by the negligence, in any form, or fault, or strict liability of any member of Seller Group, or any other person, and whether such Claims arise from tort, contract, quasi-contract, strict product liability or otherwise.
- 18.2. The limitation of liability provided under Clause 18.1 shall not apply to Clause 9, Clause 10 and Clause 11, and in the instance of any liability arising from (i) fraud by Seller; or (ii) death or personal injury caused by the Seller's negligence.
- 18.3. All of the Seller's rights and privileges arising from all indemnities, exclusions and limitations of liability contained in this Agreement shall survive the expiration or other termination of this Agreement, and said indemnities are expressly made for the benefit of and shall be enforceable by the Seller Group, its successors and assigns.
- 18.4. The Purchaser acknowledges and agrees that the

allocation of risk contained in this Agreement is reflected in the Price. The Parties agree that they have considered the allocation of liabilities and risks, including the exclusions and limitations of liability and Force Majeure provisions contained in the Agreement in the context of all the circumstances of the transaction to which the Agreement relates. In considering the allocation of liabilities and risks under the Agreement the Parties have taken into account such matters as the nature of the Work, Price, and the possible availability and cost to each Party of putting in place preventative, protective, curative, insurance and other measures to minimise the impact and amount of loss suffered if such risk should materialise. Accordingly, the Parties agree that the exclusions and limitations of liability contained in the Agreement are reasonable as between the Parties in all the circumstances.

- 18.5. Seller's liability under the Agreement shall cease upon the end of the Warranty Period specified under Clause 6.1.

#### **19. NOTICES**

- 19.1. All formal notices in respect of this Agreement shall be given in writing and delivered by fax, or by first class post to the relevant address specified hereinafter and copied to such other office or offices of the Parties as shall from time to time be nominated by them in writing to the other.
- 19.2. Such notices shall be effective:
- (a) if sent by electronic mail, on the second working day after the receipt of the delivery receipt;
  - (b) if sent by first class post, forty-eight (48) hours after the time of posting.
- 19.3. Subject to any specific administrative instructions agreed between the Parties, any standard business correspondence associated with the Agreement and/or the Work may be sent by either e-mail, fax or letter.
- 19.4. The addresses for the notices shall be defined in the latest relevant quotation and/or Order. If no addresses are upon the Order or quotation, the addresses for the notices shall be the Parties registered address.

#### **20. GENERAL**

- 20.1. Waiver  
None of the Conditions of the Agreement shall be considered to be waived by either Party unless a waiver is given in writing by one Party to the other and shall not be deemed a waiver of any subsequent breach or default whether of a similar nature or otherwise and shall in no way affect the other terms of the Agreement. No failure on the part of either Party to enforce any of the Conditions of the Agreement shall constitute a waiver of such terms.
- 20.2. Retention of Rights  
Subject to the limitations and agreements of the Agreement including the provisions of Clause 9 and Clause 18, unless otherwise specifically stated in the Agreement, all Parties shall retain all rights and remedies, both under the Agreement and at law, which either may have against the other.
- 20.3. Seller's Affiliates

Any limitation of liability given by the Purchaser to the Seller under the Agreement shall include the Affiliates of the Seller.

20.4. Language

The ruling language of the Agreement shall be English.

20.5. Entire Agreement

The Agreement constitutes the entire agreement between the Parties hereto with respect to the Work and supersedes all prior negotiations, representations or agreements related to the Agreement, either written or oral. No amendment to the Agreement shall be effective unless evidenced in writing and signed by a duly authorised signatory the Parties. The Parties acknowledge and agree that this Agreement has not been entered into wholly or partly in reliance on, not has either Party been given, any warranty, statement, promise or representation by the other or on its behalf other than as set out in this Agreement.

20.6. Invalidity and Severability

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

20.7. Contracts (Rights of Third Parties) Act

Except as expressly provided herein this Agreement, the Parties intend that no provision of the Agreement shall, by virtue of the Contracts (Right of Third Parties) Act 1999 confer any benefit on, nor be enforceable by any person who is not a Party to the Agreement.

20.8. Independence of the Seller

The Seller shall act as an independent contractor with respect to the Work and shall exercise control, supervision, management and direction as to the method and manner of obtaining the results required by the Purchaser, but shall never be deemed a member of the Purchaser Group nor act on behalf of the Purchaser.

20.9. Status of Purchaser

The Purchaser enters into the Agreement for itself and as agent for and on behalf of the other Co-Venturers.

Without prejudice to the provisions of Clause 20.7 and notwithstanding the above, all losses, damages, costs (including legal costs) and expenses recoverable by the Purchaser pursuant to the Agreement, or otherwise shall include the losses, damages, costs (including legal costs) and expenses of the Purchaser's Co-Venturers and its and their respective Affiliates expect that such losses, damages, costs (including legal costs) and expenses shall be subject to the same limitations or exclusions of liability as are applicable to either Party under the Agreement. For the avoidance of doubt any and all limitations of the Seller's liability set out in the Agreement shall represent the aggregate cumulative liability of the liability of the Seller Group to the Purchaser Group.

20.10. Mitigation of Loss

The Parties shall take all reasonable steps to mitigate any loss resulting from any breach of the Agreement by the other Party.

20.11. Survival

In the event of termination of the Agreement, all rights and obligations of the Parties arising during the term of this Agreement shall continue to have full force and effect after the termination of this Agreement, including but not limited to the following: these General Conditions of Sale – Clauses 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24.

20.12. Subcontracting

Seller reserves the right to sub-contract any or all elements of the Work as they deem necessary.

20.13. Assignment

- a) Subject to the further provisions of this Clause 20.13, neither the Seller nor the Purchaser shall assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- b) The Seller may assign, novate or subcontract any or all of its rights and obligations under this Agreement to a member of the Seller Group for so long as that member remains a member of the Seller Group without the consent of the Purchaser.
- c) The Seller may grant security over, or assign by way of security, any or all of its rights under this Agreement for the purposes of, or in connection with, the financing (whether in whole or in part) by the Seller of any of its working capital or other requirements. On the enforcement of any security of a kind referred to in this Clause 20.13, the Seller or any person having the benefit of such security may assign any or all of the relevant rights to any person, but Purchaser's liability to any assignee in respect of those rights shall not be greater than if no assignment had taken place.

20.14. To enable the Seller to perform its obligations under this Agreement, the Purchaser shall:

- (a) Co-operate with the Seller;
- (b) Provide the Seller with any information reasonably required by the Seller;
- (c) Obtain all necessary permissions and consents which may be required before the commencement of the Work; and
- (d) Comply with such other requirements as may be set out in the Agreement or otherwise agreed between the Parties.

20.15. The Seller shall be entitled to adjustments of the Work schedule and Order Price as a result of the Purchaser's failure to comply with Clause 20.14.

**21. GOVERNING LAW AND DISPUTE RESOLUTION**

21.1. Governing Law

This Agreement, and any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation, including any non-contractual disputes or claims, will be exclusively governed by and construed in accordance with the laws of England and Wales.

#### 21.2. Dispute Resolution

- (i) Any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation, whether in tort, contract, under statute, or otherwise, including any question regarding its existence, validity, interpretation, breach, or termination, and including any non-contractual claim, will be finally and exclusively resolved by arbitration by the London Court of International Arbitration (“LCIA”) under its then current commercial arbitration rules.
  - (ii) The arbitral tribunal, to be appointed in accordance with the arbitration rules, will consist of one arbitrator. However, if either Party asserts the amount in controversy exceeds GBP £10 million (Ten Million Pounds Sterling), then the tribunal will consist of three arbitrators.
  - (iii) The seat of the arbitration will be London, England.
  - (iv) The language of the arbitration will be English.
- 21.3. Each Party shall bear their own costs in resolving a dispute under this Clause 21 and unless the Parties otherwise agree, the Parties shall bear equally the costs of any mediator or arbitrators engaged.

#### 22. BUSINESS ETHICS, ANTI-BRIBERY AND CORRUPTION COMPLIANCE

- 22.1. Both the Purchaser and Seller shall uphold the highest standards of business ethics in the performance of the Agreement. Honesty, fairness and integrity shall be paramount principles in the dealing between the Parties.
- 22.2. Neither Party shall knowingly involve itself in any business in connection with, or use information arising from, the Agreement, in any manner which conflicts with the interests of the other Party.
- 22.3. In relation to the Agreement, the Purchaser irrevocably and unconditionally warrants and represents: (a) that it will comply with all applicable laws, statutes, regulations, and codes relating to bribery, corruption, anti-trust, money laundering, trade sanctions, financial sanctions and criminal matters including, but not limited to, the Bribery Act 2010, Modern Slavery Act 2015, the United States Foreign Corrupt Practices Act 1977, any other antibribery laws and regulations of the countries in which any aspect of this Agreement will take place, and all such legislation as the same may be modified, supplemented or replaced, and will not cause Seller to be subject to punitive measures under any laws; (b) that the Purchaser has, and shall maintain in place throughout the duration of the Agreement, its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, Modern Slavery Act 2015 and the United States Foreign Corrupt Practices Act 1977 to prevent contravention of the laws and regulations referred to in this Clause 22.3 and to ensure compliance with local law and will enforce them where appropriate.
- 22.4. The Purchaser shall procure that any persons associated with the Purchaser: (i) will not do, or omit to do, any act that will cause or lead Seller to breach the laws and regulations referred to in Clause 22.3 and (ii) will not cause

Seller to be subject to punitive measures under any laws.

- 22.5. Seller may, at its sole discretion, suspend or terminate the Agreement at any time and without liability if it believes in good faith that the Purchaser has breached any of the obligations it has undertaken pursuant to this Clause 22.
- 22.6. If Seller terminates the Agreement for a suspected breach of this Clause 22, the Purchaser shall not be entitled to claim compensation regardless of any activities or agreements with additional third parties entered into before such termination of the Agreement.
- 22.7. For the purposes of this Clause 22, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with Section 5.6 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act) and Section 8 of that Act respectively as may be modified, supplemented or replaced.
- 22.8. The Purchaser shall indemnify and hold harmless Seller Group from and against any losses, liabilities, penalties, damages, costs, taxes, levies, duties, claims, expenses (including but not limited to legal fees and investigation expenses) and any associated fines and penalties incurred by, or awarded against Seller as a result of any breach of the obligations set out in this Clause 22 by the Purchaser or persons associated with the Purchaser, any person working for the Purchaser or any third party retained by the Purchaser.

#### 23. COMPLIANCE WITH TRADE LAWS

- 23.1. The Purchaser acknowledges that the Seller and the Product are subject to UK Trade Laws, EU Trade Laws and US Trade Laws and the Purchaser warrants that it shall comply in all respects with UK Trade Laws, EU Trade Laws, US Trade Laws and any other applicable trade laws and will not cause the Seller to be subject to punitive measures under any laws. The Seller shall be under no obligation to supply any Work to the Purchaser under the Agreement if the Seller determines, at its sole discretion, that to do would breach UK Trade Laws, EU Trade Laws, US Trade Laws or any other applicable trade laws, or cause the Seller to be subject to punitive measures under any laws.
- 23.2. Subject to Clause 23.1, and unless otherwise agreed by the Parties, the Purchaser shall be responsible for obtaining any export licence(s) required for the export of the Products by the Purchaser to the jurisdiction(s) specified in the Agreement as delivery locations, and the Purchaser warrants that it will use the Products only in those jurisdiction(s) and for the purposes specified in the Agreement.
- 23.3. The Purchaser warrants that it shall comply in all respects with the export and re-export restrictions set forth in any export licence(s) acquired by the Purchaser pursuant to Clause 23.2 and that it shall comply with any end-user undertaking(s) given by the Purchaser in relation to any such export licence(s).
- 23.4. In the event that the Purchaser intends to export the Products from the jurisdiction(s) to which that Products was Delivered pursuant to the Agreement to any other jurisdiction, the Purchaser shall be responsible for obtaining any necessary export licence(s) from the relevant authorities. The Purchaser specifically agrees to

determine whether a UK or US export licence is required and to obtain any required licence(s) prior to exporting.

- 23.5. The Purchaser undertakes to perform adequate due diligence in order to determine whether the export of the Product by the Purchaser would result in the breach of UK Trade Laws, EU Trade Laws or US Trade Laws (whether by the Purchaser or by the Seller) or would cause the Seller to be subject to punitive measures under any laws and shall not export the Product if it determines that such a breach would occur or such punitive measures could be imposed.
- 23.6. The Seller may, at its sole discretion, withhold any payments which are payable to the Purchaser in terms of the Agreement and the Seller may also, at its sole discretion, suspend and/or terminate this Agreement at any time and without liability if it believes in good faith that Purchaser has breached any of the obligations it has undertaken pursuant to this Clause 23.
- 23.7. If the Seller terminates the Agreement for a suspected breach of this Clause 23, the Purchaser shall not be entitled to claim compensation or any further remuneration regardless of any activities or agreements with additional third parties entered into before such termination of the Agreement.
- 23.8. The Purchaser shall indemnify the Seller Group from and against all Claims and any associated fines and penalties incurred by, or awarded against, the Seller as a result of any breach of the obligations set out in this Clause 23 by the Purchaser or persons associated with the Purchaser, any person working for the Purchaser or any third party retained by the Purchaser.
- 23.9. End User  
The Purchaser represents, warrants and guarantees that the Products, technology and/or software to be provided by Seller will (i) not be used for any prohibited use such as nuclear, military, missiles, or weapons (chemical or biological) and will not be sold to any country subject to U.S., UK, or EU sanctions (currently including the Crimea region of Ukraine, Iran, Cuba, North Korea, or Syria) or to any other country subject to sanctions without applicable government approval; (ii) not be used directly or indirectly in exploration for, or production of, oil or gas in deepwater (greater than 500 feet), Arctic offshore locations or shale formations, where such use would be prohibited without the applicable government approval; (iii) not be sold or transferred to any contractor, organization, entity, or individual on any of the various denied parties lists established by the U.S., UK, and/or EU; and (iii) where such are subject to export or reexport license from the U.S., UK, and/or EU will not be exported or reexported without all required license(s).

## 24. DATA PROTECTION

- 24.1. Where either Party receives any Personal Data (as defined by the EU General Data Protection Regulation (EU 2016/679), UK General Data Protection Regulation and UK Data Protection Act 2018 or any successor legislation and any secondary legislation) (hereinafter called the "Acts") from the other Party, it shall ensure that it keeps it confidential, fully complies with the provisions of the Acts, and only deals with the Personal Data to fulfil its obligations under the Order and for the purpose for which it was provided.

- 24.2. Purchaser must only transfer the Personal Data to a Third Country (as defined in the Acts) with the consent of the Seller and in compliance with the Acts. Where Purchaser is based in a Third Country, Purchaser must provide equivalent levels of protection for the Personal Data to that required by the Acts.

- 24.3. Either Party must notify the other Party immediately but in any event within twenty-four (24) hours after becoming aware of any actual, suspected or alleged loss, leak or unauthorized use or disclosure of the Personal Data.

## 25. COVID-19

- 25.1. Notwithstanding anything to the contrary elsewhere in the Agreement, the Purchaser shall be responsible for and shall save, indemnify, defend, and hold harmless the Seller Group from and against all Claims in respect of the outbreak of COVID-19, or actions or events relating to such including, but not limited to virus, disease, epidemic, pandemic, illness or quarantines (and any other restrictions intended to control the same, including but not limited to self-isolation or public interaction restrictions), border-closure, travel restrictions, lockdowns, airport closures, port-closures, refusal of visas, importation or exportation restrictions, Government authority shutdowns, changes to or the introduction of any general or local Statute, Ordinance, Decree, Regulation or other law, or any other actions or events of a similar nature, arising from, relating to or in connection with the performance or non-performance of the Agreement.
- 25.2. For the purposes of this Clause 25 the expression "COVID-19" shall mean: the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (and variants thereof) and any resulting diseases, including the coronavirus disease, known as COVID-19.





## APPENDIX 1 – FORM OF ORDER

This Order (“Order”) is entered into on this [...] day of [...], 20[...] (the “Effective Date”), by and between:

- (i) [Insert entity] a company incorporated under the laws of [...], Company Number [...], having its registered address at [...], (“Purchaser”), and
- (ii) [Insert entity], a company incorporated under the laws of [...], Company Number [...], having its registered address at [...], (“Seller”).

**WHEREAS** Purchaser wishes to purchase certain Products from the Seller, and the Seller is willing to provide the Products to the Purchaser pursuant to the terms and conditions set forth in this Order;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE 1 – TERMS AND CONDITIONS

The Acteon Group Limited General Terms and Conditions of Sale AGL-LEG-GTC-SALE-001-UK Rev01 – 15 February 2021 shall apply to this Order.

### ARTICLE 2 – SCOPE OF WORK

The Seller shall provide the following Products to the Purchaser pursuant to this Order:

[INSERT DETAILS OF THE PRODUCTS TO BE SUPPLIED TO THE PURCHASER]

### Article 3 – Delivery

Delivery of the Products shall be EXW at the Delivery Location (Incoterms 2010).

The Delivery Location shall be [INSERT DELIVERY LOCATION].

The Delivery Date shall be [ENTER DATE].

### ARTICLE 4 – PRICES

The Purchaser shall compensate the Seller pursuant to this Order as follows:

[INSERT REMUNERTION FOR THE SALE OF PRODUCTS]

### ARTICLE 5 – INVOICING

INVOICE ADDRESS

Invoices must be forwarded to the following address:

[REDACTED ADDRESS]

### ARTICLE 6 – NOTICES

Any notice that is to be given by one Party to the other under this Order will be given in writing and delivered to the following addresses:

**For Purchaser**

[...]



[...]

To the attention of: [...]

**For Seller**

[...]

[...]

To the attention of: [...]

**ARTICLE 7 – SPECIAL CONDITIONS**

**THE FOLLOWING SPECIAL CONDITIONS SHALL APPLY TO THIS ORDER:**

**[[Not applicable] OR [INSERT AGREED SPECIAL CONDITIONS]]**

**EXECUTED AS AN AGREEMENT BY THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES**

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF PURCHASER] .....  
[SIGNATURE OF DIRECTOR]  
Director

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF SELLER] .....  
[SIGNATURE OF DIRECTOR]  
Director