

GENERAL TERMS AND CONDITIONS FOR THE TESTING, REPAIR, MAINTENANCE, OVERHAUL OR REFURBISHMENT OF PARTS, ASSEMBLIES, MACHINERY OR PLANT

and including all applications for and renewals or extensions of such rights, and all similar rights or forms of protection in any part of the world.

I DEFINITIONS

1.1 Unless otherwise defined in the Proposal or these Conditions, the following terms shall have the following meanings throughout the Proposal or these Conditions:

"Buyer" means the person who accepts a Proposal of the Company for the provision of Company Goods and/or Services;

"Buyer's Components" means the Components owned by the Buyer set out in the Proposal on which the Company shall provide the Services;

"Company" means Turbo Power Services Limited (CRN 01903418) a company registered in UK whose registered office is at Unit 19, Atley Way, Cramlington, Northumberland, NE23 1WA;

"Completed Components" means the Buyer's Components (if any) combined with the Company Goods (if any) after the Services have been provided by the Company;

"Company's Goods" means the goods or parts (if any) (including any instalment of the goods or any parts) which the Company is to supply to the Buyer as set out in the Proposal;

"Conditions" means the standard terms and conditions set out in this document;

"Contract" means the Contract between the Company and the Buyer formed in accordance with Condition 2 below incorporating these Conditions and the Proposal;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyrights and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered

"Proposal" means the formal offer to which these Conditions are attached setting out amongst other things the Buyer's Components, the Company Goods, the technical specification, which can also be referred to as 'Quote' or 'Quotation', the Services and the payment terms and the Proposal shall be deemed to include any amendments or modifications to the Proposal which may be agreed in writing by the Buyer and the Company; and

"Services" means the Services to be performed or provided by the Company in accordance with the Proposal.

"Third Party Goods" means goods supplied by the Company but manufactured by a third party.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal identity)

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

1.6 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2 APPLICATION OF TERMS AND FORMATION OF CONTRACT

2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification, acceptance of a quotation or other document or implied by law, trade custom, practice or course of dealing).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

- 2.3** These Conditions apply to all the Company's provision of Services and sales of Company's Goods and any variation to these Conditions and any representations about the Services or the Company's Goods shall have no effect unless expressly agreed in writing and signed by the Customer Services Manager or his authorised representative for the time being of the Company. When entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 2.4** Each acceptance by the Buyer of the Company's Proposal shall be deemed to be an offer by the Buyer to purchase the Services and/or Company's Goods (as appropriate) subject to these Conditions.
- 2.5** No offer by the Buyer to purchase the Services and/or Company's Goods (as appropriate) shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Completed Components to the Buyer.
- 2.6** Any Proposal is given on the basis that no contract will come into existence until the Company dispatches an acknowledgement of order issued in accordance with Condition 2.5 above and (if earlier) the Company delivers the Completed Components to the Buyer. Any Proposal is valid for a period of 90 (Ninety) days only from its date, provided that the Company has not previously withdrawn it, or such other period set out in the Proposal.

3 SPECIFICATIONS

- 3.1** The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of the Proposal (including any applicable specification) and for giving the Company any necessary information relating to the Buyer's Components within sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.2** The quantity, quality and description of and any specification for the Completed Components shall be as set out in the Proposal.
- 3.3** If any process is to be applied to the Buyer's Components or the Company's Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company and keep the Company indemnified against all loss, damages, costs and expenses (including all professional fees) awarded against or incurred or paid or agreed to be paid by the Company in settlement of any claim for infringement of any Intellectual Property Rights of any other person which results from the Company's use of the Buyer's specification.
- 3.4** The Buyer agrees to advise the Company of requirements applicable to the Completed Components resulting from the applicability of any laws, rules or regulations in the location in which the Completed Components will be installed (including any health and safety rules and regulations and any reasonable security requirements) and the Buyer agrees to indemnify the Company and keep the Company indemnified against all loss, damages, costs and expenses (including all professional fees) awarded against or incurred or paid or agreed to be paid by the Company in respect of any breach by the Buyer of its obligation under this Condition.
- 3.5** The Company reserves the right to make any changes in the specification of the Completed Components which are required to conform with, any applicable safety or other statutory requirements, those portions of industry specifications, codes and standards which the Company has deemed applicable to the Completed Components or, where the Company's Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.6** The price and delivery dates will be equitably adjusted to reflect the additional costs incurred by the Company resulting from any changes in the specification resulting from the operation of Condition 3.4 or 3.5.
- 3.7** No Contract which has been accepted by the Company in accordance with Clause 2.5 above may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4 PRICE OF THE COMPANY'S GOODS AND SERVICES

- 4.1** The price of the Services and the Company's Goods shall be that set out in the Proposal.
- 4.2** The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Services or the Company's Goods to reflect any increase in the cost to the Company which is due to any cause beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Completed Components which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- 4.3** The Company reserves the right to correct any typographical or clerical errors which may be present in the prices or specification of the Proposal.
- 4.4** The price is exclusive of any applicable tax duties or fees. In the event that the Company is required by law to make any such payment direct, then the Buyer shall immediately reimburse this amount to the Company in addition to the price of the Completed Components set out in the Proposal.

5 SHIPMENT OF BUYER'S COMPONENTS

- 5.1** The Buyer shall not ship Buyer's Components to the Company or its designated sub-contractor until the Company has received shipping instructions in writing from the Buyer.
- 5.2** All Buyer's Components shipped shall be clearly identified with the Company's reference number and the delivery point. Any failure to consign the Buyer's Components correctly may incur additional costs including but not limited to duties which shall be added to the Buyer's account.
- 5.3** The Buyer shall send an advice notice in writing to the Company setting out the details of the Buyer's Components shipped together with the reference number and the delivery point marked for the attention of the Repairs Section, Spare

and Renewal Parts Department on the same day as the Buyer ships the Buyer's Components.

5.4 All costs associated with shipping the Buyer's Components to the Company including but not limited to, packaging, carriage, insurance, freight and duties shall be the responsibility of the Buyer unless the Proposal states otherwise.

5.5 Each of the Buyer's Components received by the Company will be subject to an incoming inspection to establish the Buyer's Components suitability for the provision of the Services in accordance with the Proposal.

(a) If the Company finds that the Buyer's Component is acceptable then the Company shall prepare a Pre-Process Inspection Report in order to finalise the scope of work set out in the Proposal. If additional Services and/or Company's Goods are needed then the Company shall notify the Buyer accordingly of the additional cost. The Buyer shall notify the Company within 3 days of receipt of the Company's notification that additional Services and/or Company's Goods are needed whether it wishes the Company to carry out the additional work or not. If the Buyer notifies the Company that it does wish it to carry out the work then the Proposal shall be deemed to be amended accordingly. If the Buyer either notifies the Company that it does not wish it to carry out the additional work or does not notify the Company of its decision within such 3 day period then the Company may at its sole discretion charge the Buyer an inspection fee and will at the Buyer's expense ship the Buyer's Components back to such address or location as set out in the Proposal. To the extent that the Buyer does not specify an address then the provisions of Condition 6.10 shall apply.

(b) If the Company finds that the Buyer's Components are unacceptable including (but not limited to) where the Buyer's Components are damaged beyond the OEM's recommended repair criteria or it is uneconomical to carry out the Services on the Buyer's Components then the Company shall notify the Buyer of this fact. The Buyer agrees to notify the Company within 4 days of receipt of the Company's notification that the Buyer's Components are damaged beyond repair or uneconomical to repair whether it wishes the Company to scrap the Buyer's Components or whether it wishes the Company to return the Buyer's Components to the Buyer. The Company may at its sole discretion charge the Buyer an inspection fee and the cost of shipping the Buyer's Components back to the Buyer or scrapping the Buyer's Components (or such part of them as appropriate) shall be at the Buyer's expense. To the extent that the Buyer does not notify the Company what it wishes the Company to do with the Buyer's Components or does not specify an address to which the Company should send the Buyer's Components then the provisions of Condition 6.10 shall apply.

6 DELIVERY

6.1 Any dates specified by the Company for the delivery of the Completed Components are intended to be an estimate and time for delivery shall not be made of the essence by notice.

6.2 The Company agrees to notify the Buyer when the Completed Components are ready for dispatch.

6.3 The Buyer agrees to provide the Company with shipping instructions without delay after receipt of the notices set out in Condition 6.2 above. Unless otherwise agreed in the Proposal, or otherwise in writing, the Completed Components shall be delivered Ex Company Works as more particularly defined in the Incoterms in force at the date of formation of the Contract.

6.4 The Company agrees to deliver the Completed Components as far as possible in the original packing provided by the Buyer when it shipped the Buyer's Components to the Company. Any repairs or replacement required to the packaging and associated costs will be at the additional expense of the Buyer unless previously agreed in the proposal.

6.5 The delivery date for each Completed Component is defined as the date such item is delivered in accordance with this Condition. Partial deliveries will be permitted.

6.6 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Completed Components into the country of destination and for the payment of any duties on them.

6.7 Where the Completed Components are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.8 The Company shall not be liable for non-delivery of Completed Components unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Completed Components would in the ordinary course of events have been received.

6.9 Any liability of the Company for non-delivery of the Completed Components shall be limited to replacing the Completed Components within a reasonable times or issuing a credit note for the value of the Completed Components which are not delivered against any invoice raised for such Completed Components.

6.10 If the Buyer fails to take delivery of the Completed Components or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may;

(a) store the Completed Components until actual delivery either on site or ship the Completed Components to storage elsewhere; and

(b) after such Completed Components have been in storage for more than 90 (ninety) days then the Company may sell the Completed Components at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.11 If Completed Components are placed in storage in accordance with Condition 6.10 above, including storage at the Company's facility, the following conditions shall apply:

- (a) risk in the Completed Components shall thereupon pass to the Buyer if it has not already passed;
- (b) any amounts otherwise payable to the Company upon delivery or shipment shall be payable upon presentation of the Company's invoices and certifications as to the cause for storage.
- (c) all expenses incurred by the Company including but not limited to preparations for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any taxes shall be reimbursed by the Buyer upon submission of the Company's invoices; and
- (d) where conditions permit and upon payment of all amounts due under this Condition 6.11, the Company shall resume delivery of the Completed Components to the originally agreed point of delivery.

7 RISK AND TITLE

7.1 Risk of damage to or loss of Buyer's Components shall pass to the Company at the time when such Buyer's Components are delivered and signed for at the Company's premises.

7.2 Risk of damage to or loss of the Completed Components shall pass to the Buyer in accordance with the Ex Company Works terms more particularly set out in the current version of the Incoterms or as otherwise set out in the Proposal.

7.3 Notwithstanding delivery and the passing of risk in the Completed Components, or any other provision of these Conditions, the ownership in the Company's Components forming part of the Completed Components shall not pass to the Buyer and the Company shall have the right to hold all Completed Components and Buyer's Components in its possession until the Company has received in cash or cleared funds payment in full of the price set out in the Proposal for the Completed Components.

7.4 Until such time as the ownership in the Company's Goods forming part of the Completed Components passes to the Buyer -

- (a) the Buyer shall hold the Company's Goods on behalf and as bailee of the Company and shall as far as possible keep the Company's Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property; and
- (b) the Company shall be entitled at any time to require the Buyer to deliver up the Company's Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Company's Goods are stored and repossess the Company's Goods both to the extent that such Company Goods are separable from the Completed Components without causing damage to the Buyer's Components.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Company's Components forming part of the Completed Goods which remain the property of the Company, but if the Buyer does so all money owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

7.6 To the extent that the Buyer does not pay for the Completed Components in accordance with the terms of Condition 8 and the Company has demanded payment of the amount outstanding in writing and payment has not been made within 5 days of such notice or the provisions of Condition 14 apply then the Company may sell such Completed Components or Buyer's Components in its possession at the best price readily obtainable and after deducting all reasonable storage, selling and other expenses account to the Buyer of the excess over the amount due under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7.7 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 7 shall remain in effect.

8 TERMS OF PAYMENT

8.1 The Buyer shall pay the price of the Completed Components as set out in the Proposal, notwithstanding that delivery may not have taken place and the ownership in the Completed Components has not passed to the Buyer because the provisions of Condition 6.11, 7.2 or 7.3 apply. The time of payment of the price shall be of the essence in the Contract. Receipts for payment will be issued only upon request.

8.2 The Buyer shall make all payments due under the Contract without any deductions whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to -

- (a) cancel the order or suspend any further deliveries of the Company's Goods and Services to the Buyer;
- (b) appropriate any payment made by the Buyer to such of the Services or the Company's Goods (or the goods or services supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer);
- (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at either (i) the rate of 8% (eight per cent) per annum above Bank Of England's base rate from time to time or (ii) the maximum rate permitted by applicable law, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and

(d) Invoke the provisions set out at Condition 7.6 above.

Goods subject to such complaint to the Company for onward transmission to the Third Party manufacturer.

9 WARRANTIES

9.1 Subject to the conditions set out below the Company warrants that the Completed Components will correspond with their specification as set out in the Proposal at the time of delivery and that the Services performed on the Buyer's Components and the Company's Goods forming part of the Completed Components will be free from defects in material and workmanship for a period of twelve months from the date of their initial use or twelve months from delivery, whichever is the first to expire.

9.2 The above warranty is given by the Company subject to the following conditions:-

(a) the Company shall be under no liability in respect of any defect in the Services performed on the Buyer's Component and/or the Company's Goods forming part of the Completed Components arising from any drawing, design or specification supplied by the Buyer;

(b) the Company shall be under no liability in respect of any defect arising from fair wear and tear (including but not limited to deterioration arising out of climatic conditions), or any wilful damage, negligence (including without limitation failure to maintain, subjection to abnormal working conditions (including but not limited to unsuitable storage and/or protection from the environment), failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Completed Components without the Company's approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party;

(c) the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Completed Components has not been paid by the due date for payment;

(d) the Company shall be under no liability under the above warranty if the Buyer does not notify the Company in writing of a claim under the warranty and the Company receives such claim within 60 days of the Buyer becoming aware of such claim. For the avoidance of doubt such claim must also be received within the warranty period set out at Condition 9.1 above;

(e) the Company shall not be liable for a breach of the warranty unless the Company is given a reasonable opportunity to examine the Completed Components or the Company's Goods and the Buyer (if asked to do so by the Company) returns such Completed Components to the Company's place of business at the Company's cost for the examination to take place there.

(f) the Company shall be under no liability under the above warranty (or any other warranty condition or guarantee) in respect of any Third Party Goods which shall be subject to the manufacturers warranties only. In the first instance, the Buyer shall address any complaints about any Third Party Goods to the Company in writing and shall return the Third Party

9.3 Subject to condition 9.2, if any of the Completed Components or the Company's Goods do not conform with the warranty in condition 9.1 the Company shall at its option repair or replace such Completed Components or the Company's Goods (or the effective part) or refund the price of such Completed Components or the Company's Goods (pro rata) provided that, if the Company so requests, the Buyer shall at the Company's expense, return to the Company the Completed Components or the Company's Goods or part of such Completed Components or the Company's Goods which is defective.

9.4 If the Company complies with Condition 9.3 it shall have no further liability for a breach of the warranty in Condition 9.1.

10 LIABILITY

10.1 The provisions of this Condition 10 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these Conditions including any claims under an indemnity;

(b) any use made by the Buyer of the Completed Components; and

(c) any representations (other than fraudulent) statements or tortious acts or omission including negligent or harmful acts:

10.2 All warranties, conditions or other terms implied by any statute or otherwise are excluded to the fullest extent permitted by law unless such warranty, condition or term is expressly set out in writing either in the Proposal or these Conditions.

10.3 If a failure to meet any warranty set out at Condition 9.1 above occurs within the period set out at Condition 9.1 above, then the Buyer shall make the Completed Component available for correction Ex Company Works as defined in the current version of the Incoterms. The Company shall be entitled to re-carry out the Services or repair or replace the Company Goods that formed part of the Completed Components free of charge or at the Company's sole discretion, refund to the Buyer the price of the Completed Components (or an equitable part of the price). The Buyer and the Company agree that the Company shall have no further liability in respect of warranty claims.

10.4 Under no circumstances shall the Company be liable to the Buyer for any indirect or consequential losses (whether for loss of profit, loss of business, depletion of goodwill, loss of use of equipment, damage to associated or connected equipment, loss of goods, loss of use, loss of contract, loss or corruption of data or information, loss of anticipated savings or otherwise), costs (including costs of substitute equipment facilities or services), expenses or other claims for consequential compensation whatsoever (however caused) which arise out of or in connection with the Contract.

10.5 (a) In all circumstances other than those specifically set out at Condition 10.5 (b) below, the Company's total liability in

contract, tort (including negligence or breach of statutory duty, misrepresentation other than fraudulent representation) or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract price set out in the Proposal. This Condition 10.5 shall not limit the liability of the Company arising out of death or personal injury claims.

- (b) The Company shall be liable for all loss of or damage to Buyer's Components from the time risk passes to the Company in accordance with Condition 7.1 above until such time as risk passes in the Completed Components or Buyer's Components (as appropriate) back to the Buyer in accordance with this Contract.

10.6 The Buyer agrees to procure that its insurance policies include a waiver of all rights of subrogation against the Company and its employees and waiver of any other rights of the insurer to any offset, counterclaim or any other deduction whether by attachment or otherwise and agrees to indemnify and keep indemnified the Company against all action, costs expenses (including legal costs) and liabilities to the extent that the Buyer does not procure the same.

10.7 The Company imposes these limits on liability to reduce the overall cost that it charges to the Buyer. If the Buyer requires additional protection and therefore a higher limit on liability then the matter should be discussed with the Company and the Proposal can be varied in writing to reflect the additional costs inherent in accepting greater liability including, but not limited to, the cost (if available) of additional insurance cover.

10.8 In no event shall the Buyer be entitled to reject the Completed Components on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.

10.9 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.

10.10 The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.

10.11 Nothing in these Conditions limits or excludes the liability of the Company:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Buyer as a result of fraud or fraudulent misrepresentation by the Company; or

- (c) for any liability incurred by the Buyer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

10.12 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform, any of the Company's obligations under this Contract, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Company's reasonable control:

- (a) Act of God, explosion, flood, tempest, fire, storm, terrorism or accident;
- (b) war or threat of war, sabotage, insurrection, riot, civil disturbance or requisition;
- (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (g) power failure, failure of a utility service or breakdown in machinery.
- (h) failure of a transport network;
- (i) default of suppliers or subcontractors.

11 INTELLECTUAL PROPERTY

11.1 As between the Company and the Buyer, all Intellectual Property Rights and all other rights in the Completed Components (including the Company's Goods) shall be owned by the Company. The Company licences all such rights to the Buyer free of charge and on a non-exclusive worldwide basis to such extent as is necessary to enable the customer to make reasonable use of the Completed Components.

11.2 If any claim is made against the Buyer that the Completed Components infringe or that their use or resale infringes any Intellectual Property Rights of any other person, then unless the claim results from the use of the Buyer's specification for the Completed Components, the Company shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred or paid or agreed to be paid by the Buyer in settlement of the claim, provided that :

- (a) the Company is given full control of any proceedings or negotiations in connection with any such claim;

- (b) the Buyer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;
- (c) except pursuant to a final award, the Buyer shall not pay or accept any such claim or threat, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);
- (d) the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to the claim, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- (e) the Company shall be entitled to the benefit of, and the Buyer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of the claim; and
- (f) without prejudice to any duty of the Buyer under law the Company shall be entitled to require the Buyer to take such steps as the Company may reasonably require to mitigate or reduce any loss, damages, costs or expenses for which the Company is liable to indemnify the Buyer.

12 DRAWINGS AND TOOLING

- 12.1 All materials, drawings, equipment and tools, data and specifications including all technical documentation concerning the provision of the Services and the Company Goods shall remain the exclusive property of the Company. Under no circumstances may such materials, drawings, equipment and tools, data and specifications or documentation be transmitted to third parties.
- 12.2 Any printed catalogues, pamphlets and other general advertising and technical information submitted to the Buyer are supplied for general information only and have no contractual relevance unless specifically incorporated in writing in the Proposal.
- 12.3 To the extent that any tooling charges are set out in the Proposal then title and possession to all tools shall remain with the Company.

13 CONFIDENTIALITY

- 13.1 The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature had have been disclosed to the Buyer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or the Company's Goods or Services which the Buyer may obtain.
- 13.2 The Buyer may disclose such information:
 - (a) to its employees, officers, representatives, advisers agents or subcontractors insofar as is necessary for the

purposes of carrying out its obligations under the Contract; and

- (b) as may be required by law, court order or any governmental or regulatory authority.

- 13.3 The Buyer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses any such information comply with this Condition 13.

14 TERMINATION

14.1 If -

- (a) The Buyer commits a breach of any of the terms of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of the Buyer being notified in writing of the breach; or
- (b) The Buyer repeatedly breaches any of the terms of the Contract in such manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (c) the Buyer suspends, or threatens to suspend, payment of its debts or becomes insolvent by means of its inability to pay its debts or enters into liquidation whether voluntarily or compulsory (other than for the purposes of amalgamation or re-construction or makes any arrangement or compositions with its creditors generally or suffers distress or any administration order is made in respect of its assets or any similar action is taken in consequence of debt; or the Buyer commences negotiations with all or any class or classes of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (d) an creditor or encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (e) the Buyer ceases, or threatens to cease, to carry on business; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up or bankruptcy of the Buyer;
- (g) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly;
- (h) then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

- 14.2** On termination of the Contract for any reason:
- (a) The Buyer shall immediately pay to the Company all outstanding sums due to the Company; and
 - (b) The accrued rights and liabilities of the parties as at termination and the continuation of any provisions stated to survive or implicitly surviving termination shall not be affected.
- 14.3** On termination of the Contract (however arising), the following clauses shall survive and continue in full force and effect:
- (a) Condition 10;
 - (b) Condition 11;
 - (c) Condition 12;
 - (d) Condition 13; and
 - (e) Condition 15

15 NON-SOLICITATION

The Buyer shall not at any time from the date of the Contract to the expiry of 12 months after termination of the Contract, solicit or entice away from the Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services or the supply of the Completed Components.

16 GENERAL

- 16.1** The Buyer may not assign the Contract or any part of it without the prior written consent of the Company.
- 16.2** The Company may assign the Contract or any part of it to any person, firm or company.
- 16.3** The Buyer agrees that the Company may sub-contract any part of the work but any act or omission of the sub-contractor will be deemed to be an act or omission of the Company.
- 16.4** Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 16.5** No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

16.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

16.7 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of the other party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.8 If any dispute arises under or in connection with these Conditions the Parties undertake to use their best efforts to negotiate in good faith in order to reach an amicable solution to such dispute. In the event that such an amicable solution cannot be reached, then either Party at any time may refer the dispute to be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration will take place in London and arbitration proceedings will be conducted in the English language.

16.9 The Contract shall be governed by the laws of England and Wales.

16.10 The parties agree that the terms of the Contracts (Rights of Third Party) Act 1999 shall not apply to the Contract.

16.11 The Contract, these Conditions and any documents referred to therein constitute the entire agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

16.12 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance, or warranty (whether made negligently or innocently) (other than for breach of contract) as provided in the Contract or these Conditions (or any documents referred to therein),

16.13 Nothing in this Condition 16 shall limit or exclude liability for fraud.