

GENERAL CONDITIONS FOR THE SALE OF GOODS

1 DEFINITIONS

1.1 In these general conditions of sale (these “**Conditions**”):-  
 “**Affiliate**” means in relation to a Party, any subsidiary, subsidiary undertaking or any entity under its control directly or indirectly; or any holding company or parent undertaking; or any ultimate holding company or ultimate parent undertaking; or any entity that controls directly or indirectly that Party; or any subsidiary or subsidiary undertaking or any entity under the control directly or indirectly of any holding company, parent undertaking or any ultimate holding company or ultimate parent undertaking and in each case for the time being. “**subsidiary**”, “**holding company**”, “**subsidiary undertaking**” and “**parent undertaking**” have the meanings given to them in sections 1159 and 1162 Companies Act 2006; “**Company**” means RWE Generation UK (company number 3892782); “**Confidential Information**” means information, communications or material whether in oral, written or electronic form which is supplied to or received by a Party in relation to the Contract or which is proprietary to the disclosing Party or which concerns the business or financial affairs of the disclosing Party or any person with whom the disclosing Party is in a confidential relationship; “**Contract**” means together the Proposal, the Specification and these Conditions; “**Contract Price**” means the price payable for the Goods as set out in the Proposal; “**Contract Year**” means the twelve month period commencing on the date of Acceptance and any subsequent anniversary thereof during the term of the Contract; “**Defects Liability Period**” is as specified in the Proposal or, if not so specified, 12 months from the date of delivery of the Goods (or if Goods are subsequently repaired or replaced by the Company, 12 months from such repair or replacement); “**Fees**” means (severally or in aggregate) the Contract Price and any other costs or additional sums payable pursuant to these Conditions; “**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances; “**Goods**” means any item of whatsoever nature set out in the Proposal and which is to be sold or supplied by the Company to the Purchaser; “**Intellectual Property, Intellectual Property Rights or IPR**” means all: patents, rights to inventions, utility models, copyright and related rights; trade marks, service marks, trade, business and domain names; rights in trade dress or get-up, rights in goodwill or rights to sue for passing off; unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in Confidential Information, know-how, trade secrets; and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world; “**Party**” means either the Company or the Purchaser and “**Parties**” shall mean both of them; “**Personnel**” means in relation to a Party or person, its directors, officers, employees, subcontractors, consultants, contractors or agents; “**Proposal**” means the Company’s proposal appended to these Conditions; “**Purchaser**” means the person, firm or body corporate which is named in the Proposal or if none is so named, the party that buys or has agreed to buy the Goods; “**Security Cover**”, means the aggregate amount for the time being which the Purchaser shall be required in writing by the Company to provide and maintain by way of security. Such security may be in the form of a security deposit, letter of credit, or a guarantee in a form and amount and from a provider reasonably acceptable to the Company; “**Security Cover Document**”, means a form of document satisfactory to the Company which the Purchaser shall procure to be entered into by its Security Cover Provider pursuant to clause 22.3 (Security Cover on Commencement); “**Security Cover Provider**”, means each provider of any Security Cover or Security Cover or any replacement permitted in accordance with clause 22.2; and “**Specification**” means the detailed

description of the Goods named as such and either included within the Proposal or otherwise and appended to the Contract.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.

1.3 The Proposal and the Specification form part of this Contract and shall have effect as if set out in full in the body of these Conditions and any reference to this Contract includes the Proposal and the Specification.

1.4 Words in the singular shall include the plural and vice versa; references to any gender include every gender; and references to persons include individuals, corporations, partnerships and other unincorporated associations or bodies of persons;

1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.6 A reference to **writing** or **written** includes faxes and e-mail save in relation to the serving of notices referred to in this Contract. Notices may not be validly served by email and may only be deemed to be validly served if served in compliance with clause 40 (*Notices*).

1.7 Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.8 Any obligation in this Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.9 References to a Party includes its respective successors in title and/or respective permitted assigns;

1.10 The definitions contained in the Interpretation Act 1978 apply (unless a specific definition has been included or the context otherwise requires) in interpreting words and phrases used in these Conditions.

1.11 A reference to:- “**day**” shall mean 24 hours running midnight to midnight; “**week**” shall mean a period of 7 consecutive days; “**month**” shall mean a calendar month; “**year**” shall mean a calendar year.

2 CONTRACT FORMATION

2.1 The Proposal is an offer from the Company to supply the Goods on these Conditions.

2.2 No Contract shall come into being unless the Purchaser has expressly accepted these Conditions by either:-  
 2.2.1 supplying to the Company a purchase order or other written order which expressly refers to the Proposal; or  
 2.2.2 signing and returning to the Company a duplicate copy of the Proposal,  
 in each case, within the deadline specified within the Proposal or if no deadline is so specified, within 28 days of the date of the Proposal (“**Acceptance**”).

2.3 On Acceptance, a contract for the supply and purchase of the Goods on these Conditions (“**the Contract**”) will be created and the Purchaser shall purchase the Goods subject to and in accordance with these Conditions.

3 COMMENCEMENT AND DURATION

3.1 The term of this Contract shall commence on Acceptance and shall continue until a period of three months after the date on which all the Goods have been delivered at which time the Contract shall expire unless or until this Contract is terminated earlier in accordance with clause 22 (*Termination*),

3.2 In the event that goods the same as or similar to the Goods have been supplied by the Company to the Purchaser prior to Acceptance, those goods shall be deemed to be Goods and shall be deemed to have been supplied pursuant to the provisions of this Contract.

4 APPLICATION OF CONDITIONS

4.1 Unless otherwise expressly stated in the Proposal or the Specification or unless otherwise agreed in writing

between the Parties, the following documents shall take precedence in the interpretation of this Contract:-

- 4.1.1 the Specification;
  - 4.1.2 the Proposal;
  - 4.1.3 the Conditions.
- 4.2 Subject to any variation under clause 26 (*Variations*), these Conditions are the only terms and conditions upon which the Purchaser shall transact with the Company in relation to the Goods. These Conditions shall govern the Contract to the entire exclusion of all other terms and conditions that the Purchaser seeks to impose or incorporate, including without limitation terms or conditions:-
- 4.2.1 endorsed upon, delivered with or contained in a Purchaser's tender, request for information, purchase order, acknowledgement or acceptance of the Company's Proposal, confirmation of order, specification, invoice or any other document similar to any of them; or
  - 4.2.2 on which the Purchaser seeks to imply by trade, custom, practice or course of dealing.
- 4.3 The Purchaser waives any right which it otherwise may have (or claims that it has) to rely on terms and conditions other than these Conditions.
- 4.4 These Conditions shall apply to any repaired, replaced or rectified Goods.

## 5 CONTRACT PRICE

- 5.1 The Company shall charge and the Purchaser shall pay the Contract Price in consideration for the provision of the Goods. The Contract Price shall, unless otherwise stated by the Company in writing, be the price stated in the Proposal, subject to any variation in accordance with clause 26 (*Variation*) or as otherwise expressly permitted in this Contract.
- 5.2 Unless otherwise stated by the Company in the Proposal or otherwise in writing, in the case of an order for delivery by instalments, the Contract Price payable for each instalment shall be the Company's list price current at the date of despatch of such instalment.
- 5.3 Unless otherwise expressly stated in the Proposal to be fixed or firm, the Contract Price is subject to adjustment to take account of any increases in wages, materials and/or other costs to the Company of performing its obligations under the Contract including the cost of any materials and the cost of goods reasonably and properly provided by third parties and required by the Company for the supply of the Goods and such expenses, materials and third party goods shall be invoiced by the Company and substantiated where possible by copies of receipts or other reasonable evidence of the expenditure incurred. The Company reserves the right, by giving the Purchaser written notice at any time before delivery of the Goods, to increase the Contract Price by an amount equivalent to any increase the Company is subject to in relation to such costs.
- 5.4 Each element of the Fees is exclusive of Value Added Tax and any applicable import or export duties. If VAT is applicable it will be charged in addition to the prices quoted in this Contract and paid by the Party receiving the supply to the Party making the supply on receipt by the Party receiving the supply of a valid VAT invoice from the Party making the supply. Any applicable import or export duties shall be recoverable from the Purchaser in addition to the Contract Price and shall be invoiced at the then current rate.

## 6 PAYMENT

- 6.1 The Company shall invoice the Purchaser for the Fees following delivery of the Goods.
- 6.2 The Purchaser shall pay each invoice submitted to it by the Company in full and in cleared funds within 28 days of receipt (the "**Due Date**").
- 6.3 Payments shall be made by the Purchaser without any right of deduction, counterclaim or set-off.
- 6.4 Without prejudice to any other right or remedy that it may have, if the Purchaser fails to pay the Company on the Due Date, the Company may in its absolute discretion:-
- 6.4.1 charge interest on such sum from the Due Date at the annual rate of 3% above the base lending rate from time to time of National Westminster Bank plc or such other rate of interest as shall be determined under the Late

Payment of Commercial Debts (Interest) Act 1998 on any overdue payments, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and/or

- 6.4.2 suspend all further deliveries until such payment has been made in full together with any other amounts owing to the Company (whether the Due Date for payment has been reached or not); and/or
  - 6.4.3 cancel any balance of the Goods not yet delivered; and/or
  - 6.4.4 bring an action for recovery of the Fees or any part thereof whether or not title in the Goods has passed to the Purchaser.
- 6.5 If any item or part of an item of an invoice rendered by either Party is disputed in good faith by the other Party, then the other Party may withhold payment of the disputed element of the invoice pending resolution of the dispute and shall pay that part of the invoice which is not in dispute.
- 6.6 The provisions of clause 6.4 shall apply to any such invoice or part of an invoice which is not disputed or questioned and which remains unpaid. When the dispute is resolved and it is agreed by the Parties or it is otherwise determined that the disputed part of the invoice is payable then the relevant Party shall pay the amount properly payable together with interest pursuant to clause 6.4 from and including the Due Date up to but excluding the date of actual payment.
- 6.7 Time for payment shall be of the essence of this Contract.
- 6.8 The Company may, without prejudice to any other rights it may have, set off any liability of the Purchaser to the Company against any liability of the Company to the Purchaser.
- 6.9 All sums payable to the Company under this Contract shall become due immediately on its termination, despite any other provision.

## 7 CARRIAGE AND INSURANCE

- 7.1 Unless otherwise agreed by the Parties in writing, the Contract Price is exclusive of carriage and insurance to the Purchaser's premises or such other place of delivery specified in the Contract. The Company shall invoice the Purchaser for and the Purchaser shall pay the Company for such carriage and insurance costs. The Company reserves the right to make an additional charge to cover any increase in transport costs or insurance that occur before actual delivery.

## 8 DELIVERY

- 8.1 Subject to clause 9 (*Storage*), the Company shall deliver the Goods to the location set out in the Proposal.
- 8.2 The Company shall commence the supply or delivery of Goods on the date set out in the Proposal and, subject to any delays which are outside the reasonable control of the Company, shall complete the delivery of Goods within the time set out in the Proposal.
- 8.3 In the event the Proposal contains no start or completion dates then the Company shall commence the delivery of Goods within a reasonable time of Acceptance and shall take such time to complete the delivery of Goods or shall deliver the Goods at such frequency as the Company deems to be reasonable.
- 8.4 Unless otherwise agreed by the Parties in writing, all times or dates for delivery of the Goods are given in good faith but are approximate only and shall not be of the essence of the Contract.
- 8.5 Unless an express date is given, all times or dates for delivery shall be calculated from the latter of: a) the date of Acceptance; and b) the date of receipt by the Company from the Purchaser of all information, instructions and drawings as shall be necessary to enable the Company to carry out the delivery.
- 8.6 Unless otherwise agreed by the Parties in writing, the Company may make partial deliveries of Goods to the Purchaser.

## 9 STORAGE

- 9.1 If the Company does not receive adequate delivery instructions enabling it to deliver the Goods within 14 days

of notifying the Purchaser that the Goods are ready for delivery or that they have been tested in accordance with clause 11 (*Inspection and Testing*) the Company shall:-

- 9.1.1 arrange storage of the Goods at its own premises or elsewhere on the Purchaser's behalf; and
- 9.1.2 all charges incurred by the Company as a result of such delay including storage and insurance shall be payable to the Company by the Purchaser; and
- 9.1.3 the Company shall be entitled to invoice the Purchaser and be paid for the Goods as though the Goods had been duly delivered in accordance with these Conditions.

## 10 PERFORMANCE

- 10.1 Any data, technical information, forecasts or performance figures provided by the Company are based on tests performed under standard conditions at the Company's premises. They are believed to be accurate but cannot be guaranteed under different conditions or at all.

## 11 INSPECTION AND TESTS

- 11.1 The Goods will be inspected, and, where practicable, submitted to performance tests at the discretion of the Company or as otherwise stated in the Contract at the Company's premises before delivery.
- 11.2 Tests other than those specified in the Contract or tests required to be conducted by the Purchaser in its presence or in that of its representatives will be charged for by the Company in addition to the Contract Price unless otherwise agreed by the Parties in writing.
- 11.3 In the event of any delay on the Purchaser's part in attending such tests after the Purchaser has received 3 days' notice that the Company is ready to perform the same, the tests will proceed in the Purchaser's absence and the Purchaser shall accept the results of and pay for such tests as if they had been performed in the Purchaser's or its representatives' presence.

## 12 LIMITATION OF LIABILITY AND INDEMNITIES

- 12.1 Except as expressly provided in clause 13 of these Conditions, neither Party shall be liable to the other by way of indemnity or by reason of any breach of contract or of statutory duty or by reason of tort (including but not limited to negligence) for any:
  - 12.1.1 loss of profits (direct or indirect); or
  - 12.1.2 loss of business; or
  - 12.1.3 depletion of goodwill, reputation and/or similar losses; or
  - 12.1.4 loss of anticipated savings; or
  - 12.1.5 loss of goods; or
  - 12.1.6 loss of contract; or
  - 12.1.7 loss of use; or
  - 12.1.8 loss or corruption of data or information; or
  - 12.1.9 any special, indirect, consequential loss, costs, damages, charges or expenses.
  - 12.1.10 any pure economic loss; or
  - 12.1.11 loss of production.
- 12.2 Subject to clause 12.5, the Company shall have no liability to the Purchaser for or in respect of:- the Goods; or in consequence of any loss of or damage to the Purchaser's property which occurs; or any defect that may arise; or any other circumstance arising in relation to this Contract after the expiration of the Defects Liability Period.
- 12.3 The Parties intend that their respective rights, obligations and liabilities as provided for in these Conditions shall be exhaustive of the rights, obligations and liabilities of each of them to the other arising out of, under or in connection with the Contract whether or not such rights, obligations and liabilities arise in respect of or in consequence of any representation, breach of contract or statutory duty or a tortious or negligent act or omission which may give rise to a claim and/or remedy at common law. Accordingly, except as expressly provided for in these Conditions, neither Party shall be obligated or liable to the other in respect of any damages or losses suffered by the other which arise out of, under or in connection with the Contract, whether by reason or in consequence of any representation, breach of contract, statutory duty, tortious or negligent act or omission or otherwise.

- 12.4 Subject always to clause 12.5, under no circumstances shall the total aggregate liability of the Company under the Contract exceed the Contract Price.
- 12.5 Nothing in these Conditions shall exclude or limit the liability of either Party (the "**Party Liable**") for death or personal injury resulting from the negligent act or omission of the Party Liable or of any of its Personnel and the Party Liable shall indemnify and keep indemnified the other Party, its Personnel from and against any loss or liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligent act or omission of the Party Liable or any of its officers, employees or agents.
- 12.6 The Company shall have no liability to the Purchaser for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Purchaser which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form; or arising from their late delivery or non-delivery; or from any other fault of the Purchaser.
- 12.7 The Company shall have no liability for any costs, charges or losses sustained or incurred by the Purchaser arising directly or indirectly from a failure of the Company to comply with its obligations under the Contract if and to the extent that the Company's failure to perform such obligations or any resulting loss, cost or expense is caused by:-
  - 12.7.1 any failure of the Purchaser to perform any of its obligations under the Contract; or
  - 12.7.2 the Purchaser preventing or delaying the Company or the Goods; or
  - 12.7.3 by any other act or omission of the Purchaser or its Personnel.
- 12.8 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.
- 12.9 The Company accepts no liability for any general advice given in response to a telephone request from the Purchaser. The Parties acknowledge and agree that any such informal advice given by the the Company is given on a non-obligatory basis, is based on the limited information provided by the Purchaser and should not be relied upon in any way. The Parties further acknowledge and agree that the Company shall not be liable in any capacity for any damages or losses arising in respect of the same.
- 12.10 The liability of the Company under the Contract in respect of any valid claim for which the Purchaser is entitled to receive compensation pursuant to any insurance policy held by the Purchaser shall be limited to the amount of any excess payable by the Purchaser in respect of the insurance claim and the Purchaser shall procure that its insurers waive all and any rights of subrogation against the Company.
- 12.11 The limitations and exclusions of liability set out in this clause have been negotiated by the Parties to reflect the commercial risk undertaken by them under the Contract, the price payable for the Goods and the availability and cost of insurance cover in respect of such liabilities. The Parties accept that such limitation of liability is reasonable and legally enforceable.
- 12.12 If the Purchaser becomes aware of any matter that may give rise to a claim against the Company under this Contract, notice of that fact (together with all details of the matter in question as are available) shall be given as soon as is reasonably possible to the Company. Any failure to give such notice shall not affect the rights of the Purchaser except to the extent that the rights or interests of the Company are adversely prejudiced by such failure.
- 12.13 Each Party shall take steps so far as it is reasonably practicable to do so in relation to any claim (including a claim which relates to any indemnity given under this Contract) to mitigate any loss.

## 13 REJECTION

- 13.1 Unless otherwise agreed by the Parties in writing, any Goods rejected by the Purchaser as not complying with the Specification must be rejected by written notification to the Company within 14 days of delivery of the Goods.

## 14 INTELLECTUAL PROPERTY

- 14.1 Any Intellectual Property Rights existing prior to Acceptance shall belong to the Party owning such rights.
- 14.2 Any rights in Intellectual Property which were not in existence prior to Acceptance and which arise solely and directly out of the provision of the Goods or which are used or embodied in the Goods or generated in the manufacture of the Goods are and shall unless otherwise expressly agreed between the Parties vest in and remain the sole property of the Company.
- 14.3 Subject to clause 14.4, the Purchaser agrees that if the Company in the performance of its obligations under the Contract makes any Intellectual Property available to the Purchaser or introduces any Intellectual Property to the Purchaser ("Company IPR") then:
- 14.3.1 all proprietary rights to the Company IPR will remain the sole property of the Company (or other third party owner of such Intellectual Property);
- 14.3.2 the Purchaser shall not use the Company IPR for any purpose other than as specified by the Company; and
- 14.3.3 upon termination of the Contract the Purchaser shall cease to use the Company IPR and promptly return to the Company all manuals, documents or other records (including records in electronic or digital form) which embody the Company IPR.
- 14.4 In the event any Company IPR is embodied in any Goods, then subject to clause 14.5 and in consideration for payment of the Contract Price, the Company hereby grants to the Purchaser a perpetual, non-exclusive, world-wide, non assignable, non transferable licence (not capable of sub licence) to use any Company Intellectual Property Rights of the Purchaser which are embedded in the Goods and are necessary for the Purchaser to obtain the benefit of the Goods as intended by this Contract (and to the extent referred to in the Proposal) PROVIDED THAT the Purchaser shall not be entitled to copy, distribute, transfer or sub licence such Company IPR.
- 14.5 The Company gives no warranty in relation to the Company IPR including, without limitation, in relation to the accuracy, completeness or fitness for purpose of such Company IPR.
- 14.6 The Purchaser hereby grants to the Company an irrevocable, non-exclusive, world-wide, assignable and royalty-free licence for the term of the Contract to use any Intellectual Property Rights of the Purchaser which are necessary to enable the Company to perform its obligations under this Contract.
- 14.7 The Purchaser and the Company hereby agree to do such further acts and execute such further documents as may be necessary to give effect to the provisions of this clause 14.
- 14.8 Subject to clause 14.4 and 14.6, in the event this Contract expires or is terminated under clause 22 (*Termination*), any licence granted by the Company under this Contract which is not expressly referred to as granted on a perpetual basis will automatically terminate.
- 14.9 The Purchaser shall fully indemnify and keep the Company indemnified against all damages, penalties, costs, losses and/or expenses suffered by the Company or for which it may become liable in respect of:-
- 14.9.1 any infringement or alleged infringement by the Purchaser or its Personnel of the Company's IPR; and/or
- 14.9.2 the infringement of any Intellectual Property of the Purchaser, its Affiliates or that of any third party arising out of the Company's manufacture of the Goods in accordance with any specification, design drawings or other data supplied to the Company by the Purchaser or its Personnel.
- 14.9.3 the infringement of any Intellectual Property of the Purchaser, its Affiliates or that of any third party arising out of the Purchaser's subsequent use of the Goods where such use is not envisaged within the Proposal.

## 15 WARRANTIES

- 15.1 The Company warrants that the Goods will;
- 15.1.1 be free from substantive defects in materials and workmanship;
- 15.1.2 conform to the Specification; and
- 15.1.3 be free from material design defects,
- PROVIDED THAT, no such warranty is given to the extent that designs have a) been furnished by the Purchaser; or b) been

replicated from an existing design by the Company at the request of the Purchaser.

- 15.2 The Company does not represent or give any warranty or guarantee:-
- 15.2.1 as to the quality or fitness for purpose of the Goods; or
- 15.2.2 that any specific results will be obtained from performance of the Goods; or
- 15.2.3 that the Goods are fully comprehensive or suitable for the purposes required by the Purchaser, in each case other than to the extent stated in the Specification.

## 16 DEFECTS LIABILITY

- 16.1 Subject always to clause 12.4, the Company shall be responsible for making good by repair or replacement with all reasonable speed and at its sole expense (other than the cost of removing and refitting replacement parts, which for the avoidance of doubt shall be borne by the Purchaser) any defect in or damage to any part of the Goods (which shall be deemed to expressly exclude normal wear and tear) which may appear or occur during the Defects Liability Period and which arises either from any defective materials, workmanship or design ("**Defect**") PROVIDED ALWAYS that the Company's obligations under this clause 16.1 shall not apply to any Defects nor to any damage to any part of the Goods in consequence thereof:-
- 16.1.1 caused or contributed to by the Purchaser or any of its Personnel; or
- 16.1.2 caused in designs, specification or data furnished or specified by the Purchaser or requested by the Purchaser to be copied;
- 16.2 If any Defect (other than ones excluded under clause 16.1 above) shall appear or damage occur to the Goods during the Defects Liability Period, the Purchaser shall notify the Company in writing forthwith stating the nature of the Defect or damage.
- 16.3 Providing there is no delay between the manifestation of a Defect and the Purchaser informing the Company of the Defect, the Defects Liability Period shall be extended by a period equal to the period during which the Goods (or that part of the Goods in which the Defect or damage to which this clause 16 applies has appeared or occurred) cannot be used by the Purchaser by reason of such Defect or damage. If a delay has occurred between the manifestation of the defect and the Purchaser informing the Company of the same, then the extension of the Defects Liability Period shall be reduced by a period of time equivalent to the period of such delay..
- 16.4 The Company may with the consent of the Purchaser (not to be unreasonably withheld, conditioned or delayed) remove from the Purchaser's premises any part of the Goods that is defective or damaged if the nature of such Defect or damage cannot in the reasonable opinion of the Company be economically or expeditiously repaired on the Purchaser's premises.
- 16.5 The Company's liability under this clause 16 shall be in lieu of any condition or warranty implied by law as to the quality or fitness for purpose or workmanship of the Goods or any part of the Goods. Save as otherwise set out in clause 12 (*Limitation of Liability and Indemnities*) and this clause 16, the Company shall not be liable, whether in contract, in tort (including but not limited to negligence) or by reason of breach of statutory duty or otherwise, in respect of defects in or damage to the Goods or part thereof, or for any damage or loss of whatsoever kind attributable to such defects or damage or any work done or service or advice rendered in connection therewith.
- 16.6 The warranties and remedies set out in clauses 15 and 16 are conditional upon: (i) the Purchaser storing, installing, operating and maintaining the Goods in accordance with Good Industry Practice; (ii) the Purchaser promptly notifying the Company of any Defect in or damage to the Goods or part thereof; and (iii) the Purchaser having given the Company full access to in-service reports and any other information relevant to the Goods following their installation at the Purchaser's premises.

## 17 FORCE MAJEURE

- 17.1 The Company shall be entitled without liability on its part and without prejudice to its other rights, to terminate the Contract or any unfulfilled part thereof, or at its option to suspend or make partial deliveries or extend the time or times for delivery, if:- the manufacture of the Goods by the Company or the Company's suppliers or sub-contractors; or the delivery of the Goods or the performance by the Company of any of its obligations under the Contract is in each case hindered or delayed whether directly or indirectly by reason of either:-
- 17.1.1 the Purchaser failing to furnish necessary instructions or information; or
  - 17.1.2 by war or other hostilities, terrorist act, civil commotion, act of God, government action or legislation, interruption of transport, strike, lock-out or other form of industrial action (including, without limitation, labour disputes with the Company's or any supplier's or sub-contractor's employees), accidents or stoppages to works, shortage of labour, materials, equipment, fuel or power; breakdown of machinery; or
  - 17.1.3 any other cause whatsoever beyond the reasonable control of the Company or its suppliers or sub-contractors,
- and in each case, whether or not such cause existed at the date of the Purchaser's Acceptance.

## 18 PASSING OF TITLE AND RISK

- 18.1 Risk of damage to or theft or loss of the Goods shall pass to the Purchaser:-
- 18.1.1 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery; or
  - 18.1.2 in the case of Goods to be collected from the Company's premises (or that of any third party nominated by the Company) and if the Purchaser wrongfully fails to take delivery of the Goods at the time notified by the Company for tendering of delivery and collection of the Goods by the Purchaser, at the time when the Company has so tendered delivery of the Goods.
- 18.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, title in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the Contract Price for all Goods (and any other Fees relating to them) agreed in this Contract to be sold by the Company to the Purchaser.
- 18.3 Until such time as title in the Goods passes to the Purchaser, the Purchaser shall:-
- 18.3.1 hold the Goods as the Company's fiduciary agent and bailee; and
  - 18.3.2 keep the Goods separate from those of the Purchaser and third parties; and
  - 18.3.3 keep the Goods properly stored, protected and insured and identified as the Company's property
- PROVIDED THAT the Purchaser shall, notwithstanding the provisions of clause 18.3.1 to 18.3.3 but without prejudice its obligations under this Contract (and without prejudice to the Company's rights and remedies under this Contract) be entitled to resell or use the Goods in the ordinary course of its business.
- 18.4 Until such time as title in the Goods passes to the Purchaser (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or the premises of any third party where the Goods are stored and repossess the Goods.
- 18.5 The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Purchaser does so all monies owing by the Purchaser to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and shall become payable on demand.

## 19 SITE SAFETY RULES

The Company and the Purchaser shall each supply the other with a copy of their site safety rules current from time to time and relevant to the Contract and each Party shall adhere to such site safety rules and the reasonable directions of the other Party whilst on that Party's premises.

## 20 ACCESS

- 20.1 The Purchaser shall at all reasonable times and subject to the Company complying with all of the Purchaser's reasonable site security, health and safety procedures grant the Company rights of access to the premises of the Purchaser (or procure access) where the Goods are to be delivered.
- 20.2 In the event that any part of the Goods are required to be delivered other than on the premises of the the Purchaser, the Purchaser shall provide and/or procure such rights of access as are required by the Company to perform its obligations under the Contract.
- 20.3 In relation to clauses 20.1 or 20.2, the Purchaser shall provide to the Company or procure the provision of:-
- 20.3.1 health and safety and security processes; and
  - 20.3.2 safety instruction and training to the Company,
- in each case relevant and necessary to the delivery location.

## 21 CONFIDENTIALITY

- 21.1 Each Party shall keep in strict confidence all Confidential Information disclosed to it (the "**Receiving Party**") by the other Party ("the "**Disclosing Party**") its Personnel or its Affiliates in relation to this Contract.
- 21.2 The Receiving Party shall not disclose (in whole or in part), announce or make into a publicity statement to any other person any Confidential Information without the Disclosing Party's prior written consent except as and to the extent permitted in clauses 21.3 and 21.4 below.
- 21.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:
- 21.3.1 to its Personnel who need to know such information for the purposes of carrying out the Receiving Party's obligations under this Contract PROVIDED THAT the Receiving Party takes all reasonable steps to ensure that its Personnel comply with the confidentiality obligations contained in this clause 21 as though they were a party to this Contract. The Receiving Party shall be responsible for its Personnel's compliance with the confidentiality obligations set out in this clause 21 and shall be primarily liable in the event of any non compliance; and
  - 21.3.2 subject to clause 21.4, as may be required by law, court order or any governmental or regulatory authority
  - 21.3.3 if it is in or comes into the public domain otherwise than as a result of a breach of these confidentiality obligations; or
  - 21.3.4 if it can be proved by the non-disclosing Party to have already been known to that Party free from any obligation of confidentiality.
- 21.4 In the event the Receiving Party is required to make any disclosure, announcement or publicity statement by any legal, regulatory or government authority, legislative or regulatory requirement or pursuant to any court order, then the Receiving Party may do so PROVIDED THAT:-
- 21.4.1 the Receiving Party shall first use reasonable endeavours to ensure that any exemption available to it in relation to any such authority, requirement or court order has been sought; and
  - 21.4.2 the Receiving Party shall give the Disclosing Party warning of any required disclosure as soon as it is reasonably practicable to do so;
  - 21.4.3 to the extent possible, the Receiving Party shall consult with the Disclosing Party in relation to the content, nature and content of any such disclosure.
- 21.5 the Disclosing Party reserves all rights in its Confidential Information. No rights or licences in respect of the Receiving Party's Confidential Information other than those expressly stated in this Contract are granted to the Receiving Party or are to be implied from this Contract.

21.6 This clause 21 shall survive termination (for any reason) of this Contract.

## 22 SECURITY COVER

### 22.1 Obligation to provide Security Cover

- 22.1.1 the Purchaser shall within 20 Business Days of the date of a written request from the Company, provide, increase or replace any Security Cover that is reasonably acceptable to the Company if in the reasonable opinion of the Company:-
- 22.1.2 the Purchaser suffers one or more events which cause(s): a) a Material Adverse Change in the creditworthiness and/or financial standing of the Purchaser; or b) any other adverse change which affects the Purchaser's ability to meet its financial or other obligations under this Agreement; and/or
- the Purchaser's Security Cover Provider suffers one or more events which causes:- a) a Material Adverse Change in the creditworthiness and/or financial standing of the Purchaser's Security Cover Provider; or b) any other adverse change which affects the Purchaser's Security Cover Provider's ability to meet its obligations under any Security Cover; and/or
  - any Security Cover already provided has ninety (90) days or less until it expires; or
  - the ability of the Purchaser or any of its Security Providers to perform its obligations under this Contract or any obligations under any Security Cover Document is or becomes, in the reasonable opinion of the Company, materially impaired.
  - If the Purchaser fails to procure the Security Cover pursuant to clause 22.1.1 then the Company shall have a right to terminate this Contract pursuant to clause 23.4.1.

### 22.2 Release of Security Cover

22.2.1 A Security Cover Provider shall only be released in the event that:

- a suitable equivalent and/or alternative Security Cover Provider has been proposed by the Purchaser;
- the source and identity of the alternative Security Cover Provider is agreed by the Company;
- the relevant Security Cover Document is agreed between the Parties, such agreement not to be unreasonably delayed, conditioned or withheld; and
- the relevant Security Cover Document is executed and comes into full force and effect on or prior to the release of the pre-existing Security Cover.

22.2.2 the Company shall procure that the Security Cover Document relating to the Security Cover which is released is returned, on request, to the appropriate Security Cover Provider.

22.2.3 Any alternative Security Cover provided pursuant to clause 22.2.1 shall provide that the alternative Security Cover Provider assumes all of the liabilities of the existing Security Cover Provider:-

- that have accrued as of the date upon which the alternative Security Cover takes effect (but which at that date have not been demanded or, if demanded, not yet satisfied); or
- which may accrue after that date.

22.2.4 Any alternative Security Cover provided pursuant to clause 22.2.1 shall commence at the value set out in clause 22.5 for the Contract Year in which it is provided less any amount paid out under the Security Cover being replaced in respect of that Contract Year and then reduced in accordance with the amounts set out in clause 22.5 as appropriate.

### 22.3 Security Cover on Commencement

22.4 Pursuant to clause 22.2.1, the Purchaser shall on the Commencement Date or within a period of 20 business days after the Commencement Date, provide the Company with or procure the supply to the Company with Security Cover in form of a signed Security Cover Document and at least at the level(s) set out below in clause 22.5.

### 22.5 Levels of Security Cover

Contract Year	GB pounds Sterling Million [Party 1] [Security Cover Type]	GB pounds Sterling Million [Party 2] [Security Cover Type]
2010	[XX]	[XX]
2011	[XX]	[XX]

### 22.6 Non Cumulative and Applicable Maximum Amount under Security Cover

22.6.1 The amounts set out in clause 22.5 above set out against each Contract Year and against each Security Cover Provider are the maximum amounts which can be claimed from each Security Cover Provider for the Contract Year in question and are separate obligations on each Security Cover Provider and for the avoidance of doubt are non-cumulative Contract Year on Contract Year.

22.7 Subject always to the expiry periods of a Security Cover, in relation to any demand made under a Security Cover and in relation to the maximum amounts set out in clause 22.5 above against each Contract Year, where a liability in relation to which any payment under a Security Cover is being sought which arose in one Contract Year is not demanded until any subsequent Contract Year then, for the avoidance of doubt, the relevant maximum amount which shall apply shall relate to the Contract Year in which that liability accrued and not the maximum amount applicable to the Contract Year in which the liability is satisfied (where any such maximum amounts are different).

## 23 TERMINATION

23.1 Subject to clause 24.1.1 and 24.3 and without prejudice to any other rights or remedies which the Parties may have accrued, either Party may terminate this Contract without further liability to the other on giving the other not less than six months written notice.

23.2 Either Party may terminate immediately on giving notice to the other if the other Party ("the **Defaulting Party**):

23.2.1 commits a material breach of any of the terms of this Contract and (if such a breach is remediable) has failed to remedy that breach within 30 days of the Defaulting Party being notified in writing of the breach

23.2.2 commits a material breach of any of the terms of this Contract and (if such a breach is not remediable); or

23.2.3 fails to pay any undisputed amount due under this Contract on the Due Date for payment and remains in default not less than 30 days after being notified in writing to make such payment (and such amount remains not in dispute);

23.2.4 passes a resolution or a petition is filed or an order is made for or in connection with the winding up of the Defaulting Party (otherwise than for the purpose of solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations under the Contract of the Defaulting Party) or the Defaulting Party becomes subject to an administration order or an administrator, receiver or administrative receiver is appointed of all or part of the Defaulting Party's undertaking and assets;

23.2.5 suspends, ceases or threatens to suspend or cease to carry on its business or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

23.2.6 commences negotiations with all or any class 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 (other

- than for the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction where the resulting entity assumes all of the obligations under the Contract of the Defaulting Party);
- 23.2.7 has a creditor or encumbrancer attach or take possession of it or it becomes subject to a distress, execution, sequestration or other such process in relation to the whole or any part of its assets and such attachment or process is not discharged within fourteen days;
- 23.2.8 has an application made in court or an order is made in relation to it for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it;
- 23.2.9 has a floating charge holder over its assets become entitled to appoint or has appointed an administrative receiver;
- 23.2.10 has a person become entitled to appoint a receiver over its assets or a receiver is appointed over its assets;
- 23.2.11 becomes insolvent (within the meaning of the Insolvency Act 1986) or makes or proposes to make any arrangement or composition with its creditors;
- 23.2.12 suffers any analogous event to those set out in clauses 23.2.4 and 23.2.11 in any other jurisdiction;
- 23.2.13 ceases or threatens to cease to carry on all or substantially the whole of its business.
- 23.3 The Company shall be entitled to terminate in the circumstances set out in clause 17 (Force Majeure).
- 23.4 The Company may, by giving written notice to the Purchaser, terminate this Agreement with immediate effect upon the occurrence of any event where the Purchaser:-
- 23.4.1 fails to provide the Company with or increase the amount of or replace Security Cover when requested to do so by the Company pursuant to clause 22.1;
- 23.4.2 consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and:
- a) at the time that such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Purchaser by operation of law or pursuant to an agreement reasonably satisfactory to the Company; and/or
- b) such action does not constitute a Material Adverse Change but the credit worthiness of the resulting, surviving or transferee entity is materially weaker than that of the Purchaser immediately prior to such action.
- 23.5 For the purposes of clauses 22.1 and 23.4b), a material adverse change ("**Material Adverse Change**") shall occur if any one or more of the following events occurs and is continuing:
- 23.5.1 **Purchaser's Credit Rating:** If the Purchaser's Credit Rating is withdrawn by either Standard & Poors (a division of McGraw Hill Inc) ("**S&P**") or Moody's Investor Services Inc. ("**Moody's**") or downgraded below a rating of "BBB-" by S&P or "Baa3" by Moody's;
- 23.5.2 **Credit Rating of a Security Cover Provider that is a bank:** If the Credit Rating of a bank serving as the Purchaser's Security Cover Provider is withdrawn by either S&P or Moody's or downgraded below a rating of "A-" by S&P or "A3" by Moody's;
- 23.5.3 Credit worthiness of a Security Cover Provider that is not a bank: If in the reasonable opinion of the Company either:-
- a) a material adverse change in the financial standing occurs; or
- b) the credit worthiness of the Security Cover Provider not being a bank decreases.
- 23.5.4 **Expiry of Security Cover or Security Cover:** If any form of Security Cover already provided pursuant to the terms of this Contract or any Security Cover:
- a) expires or terminates with respect to any outstanding obligations of the other Party under this Contract; or
- b) is due to expire or terminate within 30 days; or
- c) the failing or ceasing of that Security Cover to be in full force or effect for the purpose of the Contract, (in each case other than in accordance with its terms or the terms of this Contract) before the satisfaction of all outstanding obligations of the Purchaser under this Contract, without the written consent of the Company.
- 23.5.5 **Amalgamation/Merger:** If the Purchaser or its Security Cover Provider undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or re-organises, incorporates, reincorporates or reconstitutes into or as another entity, or another entity transfers all or substantially all its assets to, or re-organises, incorporates, reincorporates or reconstitutes into or as the Purchaser or its Security Cover Provider or Security Cover provider and:
- a) the creditworthiness of the Purchaser or any of its Security Cover Providers or the resulting surviving transferee or successor entity is materially weaker than that of the Purchaser or any such Security Cover Provider immediately prior to such action; or
- b) the resulting, surviving, transferee or successor entity fails to assume all the obligations of the Purchaser or any such Security Cover Provider under this Contractor any Security Cover document to which it or its predecessor was a party (by either operation of law or pursuant to an agreement reasonably satisfactory to the Company); or
- c) the benefits of the Security Cover cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting, surviving, transferee or successor entity of its obligations under this Agreement.
- 23.5.6 **Failure of Security Cover:** If any Security Cover Provider of the Purchaser disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of any Security Cover provided by it or otherwise fails to comply with or perform its obligations under or in respect of the Security Cover provided by it and such failure is continuing after any applicable grace or cure period.
- 23.6 For the avoidance of doubt, if a right to terminate the contract accrues to the Company pursuant to clauses 23.2.4 to 23.2.12, the Company may, at its absolute discretion, give the option to any relevant receiver or administrator of carrying out the conditions of the Contract on behalf of the Purchaser subject to the provision by the receiver or administrator of a guarantee in the terms required by the Company for the performance of the Contract and any sums payable to the Purchaser in relation to it or to any breach of it.

## 24 CONSEQUENCES OF TERMINATION

- 24.1 On termination of this Contract for any reason:
- 24.1.1 the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
- 24.1.2 the Purchaser shall, within a reasonable time, return all documentation or materials containing the Intellectual Property of the Company. If the Purchaser fails to do so, then the Company may enter the premises of the Purchaser or of any third party where they are located (or are thought to be located) and take possession of them. Until they have been returned or repossessed, the Purchaser shall be solely responsible for their safe keeping; and
- 24.1.3 the accrued rights of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected; and.
- 24.1.4 the Company shall be discharged from any further obligations to deliver the Goods;
- 24.2 If clause 23.2 applies where the Purchaser is the Defaulting Party, then:-
- 24.2.1 the Purchaser shall have a duty to immediately bring to the notice of any receiver, administrator or any such person or persons appointed the existence of and content of clause 18 of these Conditions (*Passing of Title and Risk*); and
- 24.2.2 the rights of the Purchaser to use or trade on the Goods are immediately terminated; and

- 24.2.3 any such receiver, administrator or other person or persons appointed will not be entitled to use or to trade on the Company's Goods unless so authorised in writing by the Company.
- 24.3 If the Purchaser terminates pursuant to clause 23.1 then, in addition to the sums payable as referred to at clause 24.1.1, the Company shall invoice and the Purchaser shall pay all costs actually and reasonably incurred by the Company in the reasonable expectation of the satisfaction of its obligations under this Contract; and in the cessation of it, including but not limited to:; any parts ordered or manufactured or procured to be so ordered or manufactured; any cancellation of any parts ordered or procured to be ordered and any costs, damages or other expenses incurred by the Company as a result of such cessation or cancellation (whether or not the aggregate costs incurred in such cessation and/or cancellation exceed the Contract Price).

## 25 NON-SOLICITATION

- 25.1 The Purchaser will not, without the prior written consent of the Company, at any time from Acceptance to expiry or earlier termination of this Contract or for a period of twelve months from expiry or earlier termination individually or through any Affiliate directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the Company; or employ or attempt to employ any person who is, or has been, engaged as Personnel of the Company in the provision of the Goods in any event other than by means of a national advertising campaign open to all-comers and not specifically targeted at the Company's Personnel.
- 25.2 In the event that the Purchaser acts in breach of clause 25.1 then the Purchaser shall pay to the Company a sum equivalent to six months' salary of the person so solicited, engaged or enticed, such sum being agreed by the Parties to represent a genuine pre-estimate of the cost and loss suffered by the Company in the event of such breach.

## 26 VARIATION

- 26.1 The Company shall be under no obligation to alter or vary any part of the Contract, the Specification or any work connected with it at the Purchaser's request. Any alteration, addition, amendment or other variation of the Specification, including any increase or decrease in the quantity of the Goods or any alteration to any drawings or to the quality, performance, weight or measurements of the Goods or any alteration of delivery schedules, shall, if requested by the Purchaser, be subject to the prior written agreement of the Company, with such alteration or increase in Contract Price, delivery dates or schedules as the Company may reasonably stipulate.
- 26.2 The Company reserves the right to adjust the Contract Price to reflect any additional costs incurred by it and to vary delivery dates or schedules if required by the Company or if otherwise necessitated by the Purchaser's lack of instructions or information.
- 26.3 The Company may from time to time change the Goods PROVIDED THAT such changes do not materially affect the nature or quality of the Goods and, where practicable, the Company will give the Purchaser reasonable notice of any change.
- 26.4 Subject to the foregoing sub clauses of this clause 26, any variation to the Contract or to any part of it shall have no effect unless expressly agreed in writing by both Parties and expressed to be a variation of this Contract.

## 27 WAIVER

- 27.1 A waiver of any right under this Contract is only effective if it is given by the Party granting the waiver in writing, expressed to be a waiver of this Contract. If given, a waiver shall apply only to the Party to whom the waiver is addressed and is limited to the circumstances referred to within the waiver.
- 27.2 Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law unless such rights have been validly and expressly excluded in this Contract.

## 28 SEVERANCE

- 28.1 If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent

jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

- 28.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 28.3 The Parties agree, in the circumstances referred to in clause 28.1 and if clause 28.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

## 29 ENTIRE CONTRACT

- 29.1 This Contract constitutes the whole agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Contract.
- 29.2 Each Party acknowledges that, in entering into this Contract, it does not rely on any statement, representation, assurance or warranty (in each case, whether made negligently or innocently) ("**Representation**") of any person (whether a Party to this Contract or not) other than as expressly set out in this Contract.
- 29.3 Each Party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be where such a Representation is set out in this Contract and is breached and in such case, the only rights and remedies shall be for breach of contract as and to the extent expressly set out in this Contract.
- 29.4 Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.

## 30 ASSIGNMENT AND SUBCONTRACTING

- 30.1 The Purchaser shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 30.2 Subject to clause 30.3, the Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 30.3 In the event that the Company subcontracts any or all of the Goods the Company shall procure that security and confidentiality arrangements analogous to those in this Contract are entered into by the third party with the Company. the Company shall in any event at all times remain liable to the Purchaser for the performance of the Goods subcontracted to a third party.

## 31 NO PARTNERSHIP OR AGENCY

- 31.1 Nothing in this Contract is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 32 SUPERVENING EVENTS

- 32.1 In the event that any legal or other regulatory requirement changes or varies the terms of the Contract or affects the price or charges for the Goods, the Company reserves the right to cancel or amend the Contract without liability and without prejudice to either Party's rights and interests in Goods already supplied PROVIDED THAT the Purchaser shall pay to the Company the Contract Price payable for Goods already supplied to the date of cancellation and/or amendment.

## 33 FURTHER ASSURANCE

- 33.1 Each Party shall (at its own expense) promptly execute and deliver all such documents and do all such things or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this Contract and the transactions contemplated by it.

#### 34 NO PARTNERSHIP

34.1 Nothing in the Contract and no action taken by the Parties pursuant to the Contract shall constitute or be deemed to constitute a relationship between the Parties of partnership, association, joint venture or other co-operative entity.

#### 35 COSTS

35.1 Save as otherwise expressly set out in this Contract, each Party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Contract and all documents ancillary to it.

#### 36 UNAUTHORISED PAYMENTS

36.1 The Purchaser shall not offer or make any gift or inducement (whether financial or otherwise) to any of the Company's Personnel.

#### 37 RWE CODE OF CONDUCT

37.1 the Company expressly refers the Purchaser to the 'RWE Code of Conduct' in force in RWE Group, which can be viewed at ([www.rwe.com](http://www.rwe.com)) and requires the Purchaser to conduct its business (and requires its Personnel to conduct themselves) in accordance with the relevant terms of RWE Code of Conduct.

37.2 On entering into this Contract the Company expects the Purchaser to comply with the law and, in particular, to support and enact the principles established in the Bribery Act 2010 and in the Global Compact Initiative of the United Nations in the areas of human rights, labour standards, the environment and anti-corruption ([www.unglobalcompact.com](http://www.unglobalcompact.com))

#### 38 DISPUTE ESCALATION

38.1 Without prejudice to either Party's right to seek interlocutory relief in the courts, appropriate representatives of each Party shall be appointed by each Party in the event there is a Dispute and each Party's duly appointed representatives shall negotiate in good faith and seek to settle amicably any Dispute. If a Dispute cannot be settled through negotiations by appropriate representatives of each Party, either Party may give to the other a notice in writing (a "**Dispute Notice**"). Within seven days of the Dispute Notice being given each Party shall refer the Dispute to suitable senior managers to be nominated by each Party and who shall discuss the Dispute in order to seek to resolve it. If the Dispute is not resolved by agreement in writing between the Parties within 14 days of the date of the Dispute Notice (unless an alternative time scale is agreed in writing between the Parties), then clause 42 (*Governing Law and Jurisdiction*) shall apply.

#### 39 THIRD PARTY RIGHTS

39.1 A person who is not a Party to the Contract shall not have the right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

#### 40 NOTICES

40.1 Notice given under this Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in this Contract (or such other address, fax number or person as the relevant Party may notify to the other Party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause 21 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

#### 41 COMPETITION ACT 1998

41.1 If any provision of this Contract is or is likely to become, in the reasonable opinion of the Company, void or unenforceable either under the Competition Act 1998 or Articles 101 and 102

of the [Treaty on the Functioning of the European Union \(TFEU\)](#) (as amended) the Purchaser may, by notice to the Company, require the Company to enter into discussions with the Purchaser to vary this Contract so that it does comply with the relevant law or if no agreement can be reached within 90 days the Company may terminate this Contract immediately on notice to the Purchaser.

#### 42 GOVERNING LAW AND JURISDICTION

42.1 The Contract shall be governed by and construed in all respects in accordance with English Law and the Parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract.