

## 1. General

- 1.1. Unless expressly agreed in writing to the contrary in the Memorandum of Agreement entered into between the Company and the Client ("the Memorandum of Agreement"), the following terms and conditions will apply to the provision of the Goods and any Services by the Company (which are described in the Memorandum of Agreement and/ or the Quotation) and any variation to the Goods and or Services carried out through a variation order under clause 2.1 below and shall prevail notwithstanding any printed or other conditions which may appear in any proposal, purchase order or letter of acceptance from the Client.
- 1.2. Except for those people listed in clause 16.13 no term of the Agreement may be enforced by any person under Section 1 of the Contracts (Rights of Third Parties) Act 1999.
- 1.3. The Memorandum of Agreement, the Quotation (and any variation order, if relevant), together with these terms and conditions and any other documents referred to in the Memorandum of Agreement, are together referred to as "the Agreement".
- 1.4. Where no Memorandum of Agreement is entered into by the Client and the Company, these terms will also apply where the Client has accepted the Quotation and where the provisions of the last sentence of clause 3.1 apply. If this occurs, the term "Agreement" means the Quotation, these terms and conditions and any other documents which the parties have agreed in writing will apply to the provision of the Goods and any related Services.

## 2. Fees

- 2.1. The Client will pay the Price which will either be stated in the Memorandum of Agreement and/or the Quotation. The Company may, at its discretion, carry out additional Services, or make changes to the Goods if requested by the Client, provided that details of the additional Services or changes to the Goods, together with the applicable adjustments to the Price, are set out in a separate variation order, and signed by a duly authorised representative of each party.
- 2.2. All sums payable under the Agreement unless otherwise stated are exclusive of Value Added Tax and any overseas withholding taxes, service taxes and levies which, where applicable, the Client shall pay in addition. The Client will also pay in addition the following items where these are applicable:
  - import duties
  - demurrage fees and any other fees charged by a customs authority
  - storage costs incurred at customs due to delays irrespective of cause
  - costs associated with the production of locally required documentation (for example ISF in the USA and Product Certificate in Nigeria)
  - translation costs in accordance with clause 6
  - changes to the design report or drawings in accordance with clause 7.2
  - provision of a certificate of conformity in accordance with clause 8.2
  - changes to the Goods in accordance with clause 8.4 on inspection
  - wasted time and related travel time and expenses in accordance with clause 9.3.

## 3. Commencement of contract

- 3.1. Without prejudice to any accrued rights and obligations of the parties hereunder including their continuing duties under clause 15 (Confidentiality) the Agreement shall commence on the date when a copy of the Memorandum of Agreement, duly signed by the Client, is received by the Company and shall, unless earlier terminated in accordance with clause 17 below continue until the Services (if relevant) are completed and the Goods (and any amendments, variations or additions to the same) are delivered. Alternatively at the discretion of and following written confirmation of this decision by the Company (where no Memorandum of Agreement is provided to the Client) the Agreement commences on the date of written acceptance by the Client of the Quotation.
- 3.2. Notwithstanding the commencement date of the Agreement the commencement of the Agreement shall be subject to the fulfilment by the Client of any requirements stated in the Quotation.

## 4. Payment

- 4.1. Payment terms are detailed in the Quotation.
- 4.2. A letter of credit may be required and where this is required the Client shall ensure that the letter of credit:
  - is in place within the period that the parties have agreed in writing
  - is compliant with the requirements in the Quotation
  - is for a duration of no less than 3 months following the delivery of the Goods or the completion of the Services (whichever is the later)
  - is drawn in the currency agreed for payment (which will usually be detailed in the Quotation)
  - is made payable to the account of the Company detailed in the Quotation.
- 4.3. Where a letter of credit is not required in the Quotation payments shall be due on correct invoice and in accordance with the payment profile detailed in the Quotation. Payment will be made within 7 days of the date of receipt of correct invoice to the Company's bank account detailed in the invoice.
- 4.4. If the Client disputes any portion of an invoice the Client will pay the part not in dispute and notify the Company in writing of the reasons for the dispute within 5 days of the date of receiving the invoice. Failure to notify the Company of any dispute within this time frame will be treated as acceptance by the Client of the invoice.
- 4.5. If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company will be entitled to:

- cancel the Agreement and / or suspend any further deliveries to the Client of the Goods and or Services; and / or
- charge the Client interest (both before and after any judgement) on the amount unpaid at the rate of 3% per annum above the base rate of Lloyds Bank plc current at the time that the payment becomes overdue.

- 4.6. Unless otherwise stated in the Agreement or Quotation payment shall be made in pounds Sterling.
- 4.7. If the Client fails to pay an invoice by the date due for payment (except where the Client can demonstrate that any payment withheld is fair and reasonable) the warranty in clause 16.1 shall be suspended so that the Client shall not be entitled to claim damages for breach of warranty (subject always to the limitation of liability contained in clause 16) until that payment (together with interest in accordance with clause 4.5) is made in full.

## 5. Specification

- 5.1. The Goods and related Services will comply with the Company's technical data sheet provided with the Quotation or any other specifications in the Quotation (if applicable). However the Goods may differ slightly from these to the extent that the design of the Goods has been improved or updated since the date of the sheet or Quotation provided. The Company does not warrant that the Goods and any Services will comply with any specification provided by the Client unless the Company agrees in writing with the Client that the Client's Specification applies. The Client Specification may also be accepted in writing by the parties subject to specific exceptions.

## 6. Documentation

- 6.1. Documentation will be supplied in English. Where translations are required by law into the language of the Client or translations are required by the Client the Company reserves the right to charge the Client for the costs of translation.

## 7. Approval of Drawings

- 7.1. Where the Goods are bespoke for the Client the Company may provide a design report and or technical drawings for Client approval. These will usually be sent to the Client within 4 weeks of the date of the Agreement.
- 7.2. Should the Client request changes to the documents which amount to a variation of the Agreement (which may in particular be a change to the performance criteria for the Goods) then the Company shall treat this as a variation to the Agreement which may be subject to an increase in the Price. The provisions of clause 2.1 will apply accordingly. The design report and or technical drawings will be deemed to be approved by the Client where the Client has failed to respond within 2 weeks of the date of submission by the Company or the timeframe detailed in the Quotation (which will prevail).

## 8. Inspection

- 8.1. Where the Client wishes to inspect the Goods before packing and delivery this will be agreed in writing by the parties prior to the date of the Agreement. Where this is agreed the Client shall be responsible for his/their costs of inspecting.
- 8.2. If a certificate of conformity is requested by the Client this will be subject to an additional charge by the Company.
- 8.3. Times for notification of readiness for inspection will be agreed in writing and the Company shall provide any notification of readiness for inspection within the agreed time frame. The Client shall provide immediate written confirmation on inspection of any non-compliance with the Agreement. If no written confirmation is given the Goods will be deemed compliant.
- 8.4. If the Client requires a change to the Goods which amounts to a variation of the Agreement (which may in particular be a change to the performance criteria for the Goods) then the Company shall treat this as a variation to the Agreement which may be subject to an increase in the Price. The provisions of clause 2.1 will apply accordingly.

## 9. Installation and Commissioning

- 9.1. Where the Client is responsible for installation the Client shall comply strictly with:
- the installation manual and any other manuals provided by the Company
  - all other relevant material provided by the Company whether in email correspondence or otherwise in writing.
- 9.2. The Company accepts no responsibility for any failure of the Goods to perform in accordance with this Agreement where the Client has failed to comply with installation requirements.
- 9.3. Where the Company has agreed to provide commissioning as related Services the Client will be responsible for any wasted travel time and expenses and other wasted time at the Company's usual rates where these are caused by failure of the Goods or inability to commission the Goods (in whole or part) due to non-compliance by the Client (or anyone for whom the Client is responsible) with the installation requirements.

## 10. Delivery

- 10.1. Insurance and delivery responsibilities are detailed in the Quotation.
- 10.2. Where the Company accepts responsibility for the delivery:
- 10.2.1 The timescales are dependent on the capacity of the Company at the time of conclusion of the Agreement. The Company may provide details in writing of the expected date of shipment but will not

be held responsible for any delays where these are out of the reasonable control of the Company. In particular, but without limitation, the Company shall not be responsible for delays caused by customs or the provision of an export licence.

10.2.2 The Company may require the Client to sign a delivery note as evidence of delivery but will be able to demonstrate delivery through documentation provided by the Company's freight forwarder or shipping agent.

Where delivery is to port, the Company will provide the necessary paperwork to the Client to enable the Client to collect from port in a timely fashion.

10.2.3 The Client is responsible for insuring the Goods from the point of delivery for their full replacement value and risk will pass at the point of delivery unless otherwise stated in the Quotation.

10.2.4 The Client shall notify the Company immediately where the Goods have been damaged in transit and provide photographic evidence of damage. Any damage which is not notified to the Company in compliance with this clause within 3 days of the date of delivery shall be the responsibility of the Client.

10.3. Where the Client accepts responsibility for the delivery:

10.3.1 The Client will arrange for collection from the Company's premises at a time and date to be agreed in writing by the parties.

10.3.2 The Client will sign a delivery note on collection and risk in the Goods shall pass at the time of delivery.

## 11. Storage of the Goods and other assumptions

11.1. Prior to installation the Goods will be stored in accordance with the Company's instructions.

11.2. Damage to the Goods caused by incorrect storage or exposure to humidity or water or extreme environmental conditions will not be accepted by the Company save where these have been specifically agreed and accepted by the Company in writing.

11.3. Any assumptions detailed within the Quotation in relation to the storage or use of the Goods shall apply.

## 12. Access to Client site

12.1. Where Services are to be provided on the Client site the Client shall comply with the following:

- Access will be provided to the Company to undertake the Services at reasonable times free of charge
- An electrical supply (compatible with that required for running the Goods, where relevant) will be provided free of charge
- The site will be safe and without risk to the health and safety of the Company's staff
- The latest Health and Safety legislative requirements.

12.2. The Client hereby indemnifies the Company and the employees of the Company from and against all regulatory proceedings personal injury property damage liability cost and expense arising from failure to comply with this clause.

## 13. Software supplied with the Goods

13.1. Where relevant any software supplied with the Goods is subject to the licence terms provided to the Client.

13.2. The Company may agree to provide software support. Where applicable details will be included in the Quotation. Where support is provided this is subject always to the hardware upon which the software runs being supported by the hardware manufacturer.

## 14. Cancellation of the Agreement and Client responsibilities

14.1. The Client shall not be entitled to cancel the Agreement or any part of the Agreement (including any variations or amendments to the same) except with the Company's agreement in writing and on condition that the Client will indemnify the Company in full against all loss (including loss of profits) costs damages and expenses incurred by the Company as a result of cancellation.

14.2. The Client will make available to the Company all information data documents and assistance which the Company reasonably requires and / or is detailed in the Quotation as required for the delivery of the Goods and completion of any Services. All decisions, approvals and comments will be provided in a timely manner by the Client. Unless otherwise agreed by the parties, the Company may rely without verification on all information, data and documents provided by the Client or by third parties on behalf of the Client.

## 15. Confidentiality

15.1. For the purpose of this clause 15 "Confidential Information" shall mean all trade secrets and confidential or proprietary information including but not limited to data, instructions, information concerning products, customers, business accounts, financial or contractual arrangements or other dealings, transactions or affairs of either party, whether or not the same are specifically identified as being confidential to that party.

15.2. Each party hereby acknowledges and agrees that it shall:

- keep in strict confidence and in safe custody any Confidential Information belonging to the other party
- not use, copy or reproduce any Confidential Information of the other party except to the extent strictly necessary to enable it to perform its obligations under the Agreement
- not disclose any Confidential Information of the other party without prior written agreement from that party to any third party except to those of its employees who have a need to know the Confidential Information to perform that party's obligations under the Agreement.

15.3. Clause 15.2 shall not apply to any information which:

- either party is required by law to disclose; or

- is in the public domain other than as a result of a breach by the party disclosing the Confidential Information of any of its obligations under the Agreement.

15.4. The obligations of confidentiality in this clause 15 shall continue without time limit and shall survive the termination of the Agreement.

## 16. Warranties and limitation of liability

- 16.1. The Company warrants that the Goods will perform in accordance with clause 5.1 and that any ancillary Services will be provided with reasonable skill and care. This warranty does not extend to any batteries included with the Goods. The Company will repair (or at the discretion of the Company) replace free of charge Goods and related Services which fail to comply with this warranty within 18 months from the date of shipment of the Goods or (where the Company is responsible for commissioning) 12 months from the date of completion of the commissioning of the Goods, whichever is the earlier unless stated otherwise in the Quotation. The Client will promptly comply with the Company's reasonable instructions relating to fault reporting and testing.
- 16.2. The Company will be under no liability under the above warranty due to:
- any failure by the Client to follow the Company's instructions including storage instructions, installation requirements and user instructions
  - any failure by the Client to examine or test the Goods or delay in notifying the Company of any defect. It is the Client's responsibility to ensure that the Goods are fit for the purpose required by the Client.
- 16.3. All other warranties, whether express or implied by statute, contract or otherwise, are hereby expressly excluded to the fullest extent permitted by law.
- 16.4. Where the Goods fail to comply with the warranty the Client will promptly notify the Company of the failure. Any notification which is provided orally will be confirmed in writing within 2 working days.
- 16.5. The Company can usually rectify problems by the provision of remote support. For this purpose the Client needs to provide the Company with access via TeamViewer software. The Company will make arrangements with the Client (subject to the provision of no less than 24 hours prior notice by the Client) to provide remote support. The Client will ensure that an appropriate person is present at the Client facility when the remote support is to be provided. The Company reserves the right to charge for lost time should the Client fail to honour arrangements made for the provision of remote support.
- 16.6. If the Company is unable to resolve the failure by the provision of remote support the Company may either (at the discretion of the Company) request the return of the Goods (if this is reasonable and practicable) in which case the provisions of clause 16.7 shall apply or may provide support at the Client site in which case the provisions of clause 16.8 shall apply.
- 16.7. If the Goods are returned the following will apply:
- the Client will be responsible for packaging the Goods in accordance with the Company's requirements including the inclusion of such document and RMA number (to be provided by the Company) as the Company may reasonably request
  - the Client will insure the Goods for their full replacement value
  - the Client will be responsible for the costs of insurance and transportation to the Company's premises
  - the Company shall reimburse the Client's costs for packaging, insurance and transportation subject to satisfactory evidence of these costs being provided if there has been a breach of warranty by the Company. Should the Company discover that the fault is not due to breach of warranty the Company shall not be responsible for reimbursement of these costs and the Client shall be responsible for the similar costs associated with the return of the Goods to the Client
  - the Client shall not under any circumstances return the Goods to the Company without the Company's prior written agreement
  - the Client will be responsible for any re-import procedures involved.
- 16.8. If the Company provides support at the Client site the following will apply:
- the Client will provide at the cost of the Client reasonable access to the Client site and such reasonable facilities including access to utilities (electricity and water) as the Company representative shall reasonably require
  - the Client will reimburse the Company's travel and associated costs on the provision of receipts or other evidence that the costs have been incurred should the Company discover that the fault is not due to breach of warranty
  - In both cases (return of Goods and on-site support) the Company may charge at the Company's usual rates for all time spent (including travel time) where it is discovered that the fault is not due to breach of warranty.
- 16.9. This clause 16 sets out the entire liability of the Company (including any liability for the acts and omissions of those people detailed in clause 16.13) in respect of any breach of this Agreement (including repudiatory breach whether intentional or not) and any representation statement of tortious act or omission including negligence arising under or in connection with this Agreement.
- 16.10. Nothing in the Agreement shall in any way exclude or limit the Company's liability for death or personal injury caused by the Company's negligence or for fraud, fraudulent misrepresentation or any other liability which cannot be limited or excluded by law.  
The Company shall not be liable for any of the following losses or damage (whether such losses or damage were foreseen, direct, foreseeable known or otherwise):
- A loss of revenue

- B loss of actual or anticipated profits (including without limitation loss of profits on contracts)
  - C downtime of services or facilities
  - D loss of anticipated savings
  - E loss of business
  - F loss of damage to or corruption of data
  - G indirect, special or consequential loss or damage howsoever caused whether or not that loss or damage is covered in those losses listed in A to F above
  - H any losses arising as a result of any third party bringing a claim in respect of any of the above types of loss.
- 16.11. Subject to clauses 16.9 and 16.10 above the total aggregate of liability of the Company (including liability for any physical damage to the premises or any other tangible property of the Client resulting from the Company's negligence and any third party claims made against the Client) arising out of or in connection with this Agreement whether for negligence or for breach of contract (including repudiatory breach whether intentional or not) or howsoever otherwise arising shall in no event exceed the Price (excluding VAT or any local taxes which may apply). For the avoidance of doubt the provisions of clauses 16.9, 16.10 (including all the subsections of this clause) and clause 16.11 shall each be construed as a separate limitation of liability.
- 16.12. In the case where the Client is not the sole person for whose benefit or ultimate benefit the Goods are to be performed, the Client warrants that it is authorised by all such persons to accept, in consideration of the Company entering into the Agreement with the Client, the limitations and exclusions of liability contained herein on behalf of and so as to bind all such persons.
- 16.13. The benefit of the restrictions and exclusions in this clause 16 shall extend to all the directors and employees agents consultants and sub-contractors engaged by the Company and any member or members of the HR Wallingford Group of companies concerned with the performance of the work under the Agreement, who shall each be entitled to every defence, exemption or limitation of liability to which the Company is entitled hereunder. For this purpose only, the Company contracts as agent for and on behalf of all such directors and employees agents consultants group members and sub-contractors as well as on its own behalf. The permission of the persons entitled to the benefit of this clause shall not be required to any variation to the Agreement.

## 17. Termination

- 17.1. The Agreement may be terminated immediately by either party by written notice to the other if the other party commits any repudiatory or continuing breach of any of the terms of the Agreement and in the case of a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied:
- an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other party
  - the other party makes a voluntary arrangement with its creditors or becomes subject to an administration order
  - the other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under this contract); or
  - the other party ceases, or threatens to cease, to carry on business.
- 17.2. On termination of the Agreement, the Client shall immediately pay all sums due to the Company.
- 17.3. Termination of the Agreement shall be without prejudice to any accrued rights or obligations of either party. The provisions of the Agreement (including but without limitation those in clauses 15 and 16) which by their nature are intended to survive the termination of the Agreement shall continue to apply and survive following its termination. The Company makes no warranty and has no continuing obligations in respect of deliverables which are incomplete at the date of termination.

## 18. Governing law and jurisdiction

The terms of the Agreement shall be governed by English Law.

## 19. Settlement of disputes

- 19.1. Any dispute or difference arising out of the Agreement shall at first instance be dealt with through the dispute mechanism procedure detailed below:
- 19.2. If there is a dispute between the Company and the Client relating to the Goods then the people who are the representatives of each of the parties for the purpose of performing the Goods will discuss the matter in dispute and make all reasonable efforts to reach an agreement.
- 19.3. If no agreement is reached within 14 days of the date when the matter is first discussed then the matter will be referred to the Finance Director of the Company and an equivalent person within the Client, to be nominated by the Client promptly on request by the Company. Such persons can be replaced by the party which nominated them by written notice to the other party at any time.
- 19.4. If no agreement is reached by the persons referred to in paragraph 2 above within 28 days of the date of referral to those people, then the matter will be immediately escalated to the Chief Executive of the Company and the Managing Director, Senior Partner, Chief Executive or equivalent of the Client.
- 19.5. If no agreement is reached within 7 days (or such extended period as may be agreed by both parties in writing) of referral to the people detailed in clause 16.13, then the parties may decide to refer the matter to alternative dispute resolution which procedure will be agreed by the parties.



- 19.6. At all stages the parties will make all reasonable efforts to reach an agreement and will meet / speak and discuss the matter in a timely and co-operative manner.
- 19.7. Full written details of the dispute will be provided by the party who makes a claim in respect of the Goods. A clear written summary of the facts on which the claim (or any counter claim) is based will be provided including the principal contractual (or other statutory) terms which are relied upon and the nature of the relief claimed. Where a claim (or counter claim) is rejected then full reasons will be supplied by the party rejecting the claim (or counterclaim).
- 19.8. Compliance with clause 19 is a condition precedent to the referral of the dispute to arbitration. If the dispute is not resolved following the completion of the procedure detailed above then it shall be referred to the arbitration of a person to be agreed upon between the Client and the Company or, failing agreement, such person to be nominated by the President of the Chartered Institute of Arbitrators.

## 20. Miscellaneous

- 20.1. The Company shall not be responsible for any delays in performing, or for any failure to perform, any of its obligations hereunder if the delay or failure was due to any cause beyond the Company's reasonable control including but not limited to natural occurrences, disruption of power supply, inadequate services or facilities for the proper operation of the Goods (including but without limitation contaminated water supplies) or government advice against travel.
- 20.2. The Company shall be entitled to sub contract any of its duties and responsibilities arising under the Agreement.
- 20.3. No waiver by the Company of any breach of the Agreement by the Client shall constitute or imply a waiver of any subsequent breach of the same or any other provisions.
- 20.4. If any provision of the Agreement is declared by any judicial or any other competent authority to be void, voidable, illegal or otherwise unenforceable or a written notice to that effect is received by either party from any Counsel (jointly instructed by the Company and the Client) specialising in the point at issue then that provision shall be amended limited or eliminated to the minimum extent necessary whilst preserving the overall commercial intent of the Agreement. The Agreement shall otherwise remain in full force and effect and enforceable.
- 20.5. Each party acknowledges this contract contains the whole agreement between the parties and that the Client has not relied upon any oral or written representations made to it by the Company or its employees or agents.
- 20.6. The Agreement supersedes any prior agreement between the parties whether written or oral.
- 20.7. Any notice required or permitted to be given by either party under the Agreement shall be deemed to have been validly given if served personally upon that party or is sent by first class pre-paid post to the last known address of that party and addressed to the Finance Director in the case of the Company and a suitably senior person of the Client in the case of the Client. If sent by first class pre-paid post the notice shall be deemed to have been received 2 working days after the date of posting. If any such notice or other information is given by means of email or other immediate form of communication, then notice shall be deemed to have been received on the same day, provided it is sent within normal working hours and provided that the notice is also dispatched by first class pre-paid post on the same day in accordance with the provisions of this clause.

## 21. Other information

- 21.1. The company's VAT number is GB 570 039 752
- 21.2. Any complaints to be sent to the Operations Director at HR Wallingford Ltd, Howbery Park, Wallingford, OX10 8BA, UK, +44 (0)1491 835 381
- 21.3. The Company holds appropriate Professional Insurance to cover its potential liabilities.

## 22. Definitions

In these terms and conditions the following words have the following meanings:

**Goods;** the goods and equipment detailed in the Quotation

**Services;** services (if any) which are ancillary to the provision of the Goods, which may include design consulting, installation and/or commissioning and which are detailed in the Quotation

**Quotation;** the quotation or the technical proposal provided to the Client by the Company in respect of the Goods

**Client Specification;** the specification and any other Client requirements contained in any document provided by the Client to the Company prior to the date of the contract

**Client;** the Company's client detailed in the Memorandum of Agreement and/or the Quotation

**Price;** the price for the Goods and any applicable Services.