

Terms and Conditions



GRUNDFOS SERVICE LTD

CONDITION OF SALE AND SERVICE

The Customer's attention is particularly drawn to the provisions of condition 11 (Warranty and Limitation of Liability)

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these Conditions.

Agreement: the contract between the Supplier and the Customer for the supply of Equipment and/or Services in accordance with the Order and these Conditions

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

Conditions: these terms and conditions as amended from time to time in accordance with condition 17.

Customer: the person, firm or company who purchases Equipment and/or Services from the Supplier.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly by the Supplier in the supply of the Services.

Delivery Location: the location set out in the Order for delivery of the Equipment and/or Services or such other location as the parties may agree.

Equipment: all equipment, materials, goods and/or products, or any part or parts thereof, supplied by the Supplier to the Customer under this Agreement.

Event of Default: any occurrence of the events set out in condition 15.1 or 15.2.

Force Majeure Event: as defined in condition 16.

Grundfos: Grundfos Pumps Limited (Company No: 00805960) whose registered office is at Grovebury Road, Leighton Buzzard, Bedfordshire LU7 4TL.

In-put Material: all documents, information, tools and materials of the Customer required by the Supplier for the proper provision of the Services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Maintenance Schedule: the maintenance schedule attached to the Order setting out the Services to be supplied by the Supplier to the Customer.

Order: the service support agreement or SVRF (whichever is applicable) including any schedules attached to the service support agreement or SVRF.

Payment Schedule: the payment schedule attached to the Order setting out the charges applicable for the provision of the Services by the Supplier to the Customer.

Premium Service: the service package in accordance with the Supplier's terms as set out in the Order.

Retail Price Index: means the Retail Prices Index as published by the Office for UK Office for National Statistics or any official index replacing it.

Services: the services to be provided by the Supplier under this Agreement as set out in the Order or SVRF together with any other services which the Supplier provides, or agrees to provide, to the Customer.

Supplier: Grundfos Service Limited (Company No: 02028784) whose registered office is at Grovebury Road, Leighton Buzzard, Bedfordshire LU7 4TL.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

SVRF: the Supplier's Site Visit and Commissioning Request Form, or the equivalent internet log, which the Customer completes.

Time and Materials Rate: the rates set out in the Order.

Warranty: (Subject to condition 5.5) the warranty provided by the Supplier in respect of the Services as set out in condition 7.4 and Equipment as set out in condition 5.1 of these Conditions (as applicable).

Warranty Period: the warranty period shall be 24 months from the date of installation or 30 months from the date of manufacture, up to a maximum period of 30 months.

1.2 Headings in these conditions shall not affect their interpretation.

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

1.4 The schedules and annexes form part of this Agreement.

1.5 A reference to **writing** or **written** includes any method of reproducing words in a non-transitory form.

1.6 Any obligation in this Agreement on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.7 References to schedules and annexes are to the schedules and annexes of the Order.

2. **Basis of Agreement**

2.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when:

(a) an authorised representative of the Supplier issues written acceptance of the Order; or

(b) the Supplier delivers the Equipment and/or commences providing Services to the Customer in line with the Order,

at which point and on which the date this Agreement shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the catalogues or brochures of the Supplier or Grundfos are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. No warranty or guarantee is given for their accuracy and they shall not form part of this Agreement or have any contractual force.

2.4 These Conditions shall:

(a) apply to and be incorporated into this Agreement;

(b) prevail over any other terms that the Customer seeks to impose or incorporate; and

(c) prevail over any terms or conditions implied by law, trade custom, practice or course of dealing between the Supplier, the Customer or otherwise.

2.5 These Conditions are subject to any terms, conditions and/or provisions set out in the Order. In the event of any conflict between the terms of these Conditions and the terms of the Order, the provisions of the Order shall prevail but any special terms granted in respect of any one Order are not applicable to any subsequent Order without the express consent in writing by the Supplier.

2.6 Any quotations given by the Supplier are given on the basis that no Agreement shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date (unless otherwise agreed by the Supplier), provided that the Supplier has not previously withdrawn it.

2.7 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

3. **Equipment**

3.1 Unless confirmed in writing by the Supplier, the Supplier makes no representation as to the suitability of the Equipment for the Customer's particular purpose. The Customer will be responsible for ensuring that the Equipment is suitable for its particular purpose and the Supplier shall have no liability to the Customer if the Equipment is not suitable for the Customer's particular purpose (so far as legally possible).

3.2 The Supplier (and/or its subcontractors, suppliers or agents) reserves the right to:

(a) change the design, construction or composition of the Equipment or the materials or equipment used in the Equipment as it shall think fit; and

(b) amend the specification of the Equipment if required by any applicable statutory requirements,

and shall, in any case, notify the Customer of any such changes (if such changes are effected after this Agreement has come into existence but before the Equipment and/or Services have been fully performed).

4. Delivery of Equipment

4.1 The Supplier shall deliver the Equipment to the Delivery Location.

4.2 Delivery of the Equipment shall be completed on:

(a) the completion of unloading of the Equipment at the Delivery Location or (in the absence of any specified Delivery Location by the Customer) upon the Supplier informing the Customer that the Equipment is ready; or

(b) (if the Customer or its agents and/or representatives elect to unload the Equipment themselves) upon the Supplier placing the Equipment at the disposal of the Customer, its agents or representatives at the agreed point.

4.3 The Supplier's obligation under condition 4.1 is limited to delivering the Equipment only as near to the Delivery Location as a safe hard road permits. The Customer is to provide to the Supplier, free of charge, reasonable assistance with unloading (unless the Customer elects to unload the Equipment itself).

4.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay (or any additional costs arising out of the delay) in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.5 The Equipment may be delivered in advance of the quoted delivery date upon giving reasonable notice to the Customer.

4.6 If the Customer fails to take delivery of the Equipment or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Supplier's sole fault) then, without prejudice to any other right or remedy available to the Supplier:

(a) delivery of the Equipment shall be deemed to have been completed at 9.00am on the next Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and

(b) the Supplier may:

(i) store the Equipment until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance) of such storage; or

(ii) sell the Equipment at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price payable by the Customer for the Equipment and Services (as applicable) under this Agreement.

4.7 The Supplier may deliver the Equipment by instalments.

5. Quality of Equipment

5.1 For the duration of the Warranty Period, the Supplier warrants that the Equipment shall:

(a) (subject to conditions 5.3 and 5.4) conform in all material respects with their description; and

(b) be free from defects in design, material and workmanship.

5.2 Subject to condition 5.3, if:

(a) the Customer gives notice in writing during the Warranty Period within 14 days of discovery that some or all of the Equipment does not comply with the Warranty set out in condition 5.1;

(b) the Supplier is given a reasonable opportunity to examine such Equipment; and

(c) the Customer (if reasonably asked to do so by the Supplier) returns such Equipment to the Supplier (at the Supplier's cost),

then the Supplier shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full. Repairs shall only be carried out between 8am and 5pm on Business Days agreed between the Supplier and Customer.

5.3 The Supplier shall not be liable for the Equipment's failure to comply with the Warranty if:

- (a) the Customer makes any further use of such Equipment after giving a notice in accordance with condition 5.2 unless otherwise approved by the Supplier (such approval not to be withheld unreasonably);
- (b) the defect arises because the Customer failed to follow the Supplier's or manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Equipment specification supplied by the Customer;
- (d) the Customer alters, dismantles or repairs such Equipment without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this condition 5, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the Warranty.

5.5 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier under condition 5.2 but for the avoidance of doubt, the Warranty Period for any repaired or replaced Equipment shall be for a maximum of 30 months from the date of manufacture of the Equipment (and not the date of delivery of the repaired or replaced Equipment).

6. Title and Risk

6.1 The risk in the Equipment shall pass to the Customer on completion of delivery in accordance with condition 4.

6.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment and any other equipment or goods that the Supplier has supplied to the Customer in respect of which payment has become due in which case title to the Equipment shall pass at the time of payment of all such sums.

6.3 Until title to the Equipment has passed to the Customer, the Customer shall:

- (a) hold the Equipment (or any receipts received from the Customer where the Customer has sold the Equipment) on a fiduciary basis as the Supplier's bailee;
- (b) store the Equipment separately from all other goods held by the Customer (where possible) so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment (unless reasonably required for the functioning use of the Equipment by the Customer);
- (d) maintain the Equipment in satisfactory condition and keep it insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (e) notify the Supplier immediately if the Customer becomes subject to any Event of Default; and
- (f) give the Supplier such reasonable information relating to the Equipment as the Supplier may require from time to time.
- (g) give the Supplier at least 30 day's notice of its intention to move or relocate the Equipment to a new location. The Supplier may (at the Supplier's sole discretion) supervise the dismantling and removal of the Equipment, and inspect and reinstall the Equipment at the new location. Any supervision and work undertaken in respect of the relocation shall be charged at the prevailing Time and Material Rates and is payable by the Customer in accordance with condition 10.

6.4 If before title to the Equipment passes to the Customer the Customer becomes subject to an Event of Default, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:

- (a) reasonably require the Customer to deliver up all Equipment in its possession; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer where the Equipment is stored in order to recover them; and
- (c) the Customer shall pay the Supplier's reasonable costs (including legal costs) for any recovery of the Equipment pursuant to condition 6.4(b).

7. Supply of Services

- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Maintenance Schedule in all material respects and in accordance with the duration and timescales specified in the Order.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in this Agreement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. If the Supplier requests a change for any other reason, the Customer shall not unreasonably withhold or delay consent to it.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

8. Maintenance Service Times

- 8.1 Services will be carried out during the working times as specified in the Maintenance Schedule.
- 8.2 The Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day between 8.00am and 5.00pm on Business Days. The Supplier shall be entitled to charge for any Services undertaken outside of these hours at the Time and Materials Rate in effect at the relevant time.
- 8.3 The Supplier shall use reasonable endeavours to attend the Delivery Location, but if the Supplier is prevented by any reason outside his control or under the control of the Customer, from installing the Equipment or carrying out the Services at the time of the visit, it shall not constitute a material breach of this Agreement. If additional visits are required to the Delivery Location which are not accounted for in the Maintenance Schedule, the Supplier reserves the right to charge the Customer at the Time and Materials Rate for all additional time incurred.

9. Customer's obligations

- 9.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to this Agreement;
 - (b) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services and/or deliver the Equipment;
 - (c) prepare the Customer's premises (or the location where the Services are to be performed) for the supply of the Services and/or the Equipment;
 - (d) provide adequate lighting, heating, power and ventilation as per the Supplier's reasonable requirements;
 - (e) inform the Supplier's engineer or representative on each visit about any unsatisfactory running or irregular performance of the Equipment or equipment in respect of which the Services are undertaken.
 - (f) ensure the Equipment is installed and kept in suitable premises and under suitable conditions, permit only trained and competent personnel to use it and follow any operating instructions as the Supplier may give from time to time;
 - (g) provide an SVRF to the Supplier in respect of any Services to be carried out by the Supplier, its agents, subcontractors, consultants or employees (as the case may be);
 - (h) provide to the Supplier, in a timely manner, such In-put Material and other information as the Supplier may require and ensure that it is accurate in all material respects;
 - (i) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services and/or Equipment, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services and/or Equipment at those premises;
 - (j) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;

(k) ensure that all In-Put Materials are in good working order and suitable for the purposes for which it is used in relation to the Services; and

(l) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Equipment and the use of In-put Material in all cases before the date on which the Services are to start.

9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer (including its agents, subcontractors, consultants or employees) or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations under this Agreement to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 9.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

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

9.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this Agreement to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee of the Supplier in the provision of the Services.

10. Charges and Payment

10.1 The price for the Equipment shall be the price set out in the Order or, if no price is quoted, the price set out in the published price list of the Supplier (or Grundfos as the case may be) as at the date of delivery. Unless otherwise stated in the Order, the price of the Equipment is exclusive of all costs and charges of packaging, insurance, transport of the Equipment, which shall be paid by the Customer when it pays for the Equipment.

10.2 The charges for Services shall be set out in the Payment Schedule.

10.3 The Supplier reserves the right to:

(a) increase its standard daily fee rates for the Services. The Supplier will give the Customer reasonable notice in writing of any such increase before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 14 days of the date of the Supplier's notice and either of the Supplier or the Customer shall have the right, without limiting its other rights or remedies, to terminate this Agreement by giving 14 days' written notice (or any other reasonable notice period if performance of the Order is due to commence within 14 days) to the Supplier or Customer (as applicable); and

(b) increase the price of the Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to the Supplier that is due to:

(i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment specification; or

(iii) any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Equipment.

10.4 In respect of Equipment, the Supplier shall invoice the Customer on or at any time after completion of delivery. If delivery of the Equipment is made in instalments, the Supplier may invoice the Customer in instalments. In respect of Services, the Supplier shall invoice the Customer in accordance with the Payment Schedule.

10.5 The Customer shall pay each invoice submitted by the Supplier:

(a) before the date stated on the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of this Agreement.

10.6 All amounts payable by the Customer under this Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). The Customer shall pay any VAT which is chargeable on the supply of the Services and/or Equipment at the same time as payment is due for the supply of the Services and/or Equipment.

10.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

(a) charge interest on such sum from the due date for payment at an annual rate equal to the set rate of interest provided under the Late Payment of Commercial Debt (Interest) Act 1998 as varied from time to time accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand;

(b) charge compensation for late payment at a set rate depending on the size of the debt in accordance with the Late Payment of Commercial Debt Regulation's Act 2002 (SI 2002 No 1674). The minimum charge applicable is £40.00, the maximum applicable is £100.00; and

(c) suspend the provision of further Services until payment has been made in full.

10.8 The Customer shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10.9 All sums payable to the Supplier under this Agreement shall become due immediately on its termination, despite any other provision. This condition 10.9 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.

11. Warranty and Limitation of Liability

THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO THIS CONDITION

11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

(e) defective products under the Consumer Protection Act 1987.

11.2 Subject to condition 11.1:

(a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, turnover, data, business opportunity, anticipated savings, any indirect or consequential loss or any damage to goodwill arising under or in connection with this Agreement; and

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 10 million Danish Krone.

11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

11.4 This condition 11 shall survive termination of this Agreement.

11.5 The Customer shall indemnify the Supplier for any costs suffered by the Supplier for claims from any third party which arise by virtue of the Customer having resold the Equipment (unless such claim arises solely from the Supplier's negligence).

12. Confidentiality and the Supplier's property

12.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under this Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this condition as though they were a party to this Agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12.2 For the purposes of condition 12.1, the Supplier and the Customer shall each be a party.

13. Intellectual Property Rights

13.1 (Subject to condition 13.2) all Intellectual Property Rights in or arising out of or in connection with:

(a) the Equipment;

(b) the Services;

(c) the Supplier's Equipment; or

(d) any manuals or documentation given by the Supplier to the Customer,

shall be owned by the Supplier and nothing in this agreement shall transfer or assign any such Intellectual Property Rights to the Customer.

13.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier first obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

14. Data protection

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the supply of the Equipment and/or the Services.

15. Termination

15.1 Without limiting its other rights or remedies, the Supplier or Customer may terminate this Agreement with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under this Agreement and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of written notice to do so;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party 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 (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of the other party;

(d) a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

(e) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

(f) an application is made to court, or an order is made, 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 the other party (being a company);

- (g) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 15.1(b) to condition 15.1(h) (inclusive);
- (j) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

15.2 Without limiting its other rights or remedies, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer (being an individual) is the subject of a bankruptcy petition or order;
- (b) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation;
- (c) there is a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001); or
- (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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

15.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Equipment under this Agreement or any other agreement between the Customer and the Supplier if the Customer becomes subject to an Event of Default, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15.5 On termination of this Agreement for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier's materials and any deliverables which have not been fully paid for and which have not been installed as part of a bigger system. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry;
- (d) conditions which expressly or by implication have effect after termination shall continue in full force and effect; and
- (e) the Supplier shall have a lien over all of the Customer's property in the Supplier's possession in respect of all sums due at any time from the Customer to the Supplier. Provided that the Supplier gives at least 14 days' prior written notice, the Supplier shall be entitled to use, sell and dispose of such property as agent for and at the expense of the Customer and apply the proceeds towards the payment of monies due and outstanding from the Customer to the Supplier. Thereafter, the Supplier shall be discharged of any liability in respect of the Customer's property.

15.6 On termination of this Agreement (however arising), the following conditions shall survive and continue in full force and effect:

- (a) condition 1 (Interpretation);
- (b) condition 6 (Title and Risk);
- (c) condition 10 (Charges and Payment);
- (d) condition 11 (Warranty and Limitation of Liability);
- (e) condition 12 (Confidentiality and the Supplier's Property);
- (f) condition 13 (Intellectual Property Rights);

(g) condition 15 (Termination);

(h) condition 19 (Severance); and

(i) condition 25 (Governing Law and Jurisdiction).

16. Force majeure

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from, or delayed in performing, its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving any supplier, contractor or agent of the Supplier or any other party beyond its reasonable control), failure of a utility service or transport network, act of God, war or threat of war, sabotage, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, import or export embargoes, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, difficulties in obtaining raw materials, labour, fuel, parts or machinery (**Force Majeure Event**).

17. Variation

Except as provided in these Conditions, no variation of this Agreement or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

18. Waiver

18.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

18.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

19. Severance

19.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19.2 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20. Entire agreement

20.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

20.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in this Agreement.

20.3 Nothing in this condition shall limit or exclude any liability for fraud.

21. Assignment

21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

21.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

21.3 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person. No partnership or agency

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

22. Rights of third parties

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

23. Notices

23.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the registered office or the address stated in the Order (or as otherwise notified to the other party in writing).

23.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the correct address or, if sent by pre-paid first-class post or recorded delivery, at 9.00am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

23.3 This condition 23 shall not apply to the service of any proceedings or other documents in any legal action.

23.4 A notice required to be given under this Agreement shall also be validly served if sent by e-mail.

24. Governing law and jurisdiction

24.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

24.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims).

