

Darchem Engineering Ltd - Terms & Conditions of Purchase
Version – April 2019

1. Interpretation

The following definitions and rules of interpretation apply in this Contract.

1.1 Definitions:

Background IPR: any Intellectual Property Rights owned by or licensed to a party to this Contract, except Foreground IPR.

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

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Contract: the contract between Darchem and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Control: shall be defined as in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Counterfeit Work: means Goods that are or contain unlawful or unauthorised reproductions, substitutions or alterations that been knowingly mismarked, misidentified or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity. Unlawful or unauthorised substitutions include used Goods represented as new, or the false identification of grade, serial number, lot number, date code or performance characteristics.

Darchem Materials: has the meaning set out in clause 5.3(j).

Darchem: Darchem Engineering Ltd of Ironmasters Way, Stillington, Stockton on Tees, TS21 1LB or Eastbrook Road, Eastern Ave, Gloucester GL4 3DB

Deliverables: all documents, Goods and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Foreground IPR: all Intellectual Property Rights (a) created as a result of work undertaken under or in connection with this Contract by the Supplier, its suppliers, subcontractors or agents; or (b) that is a development to or enhancement of any design or specification provided by Darchem.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by Darchem and the Supplier.

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 or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

Order: Darchem's order for the supply of Goods and/or Services, as set out in in Darchem's purchase order form, or in Darchem's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by Darchem and the Supplier.

Supplier: the person or firm from whom Darchem purchases the Goods and/or Services.

Suspected Counterfeit Work: means Goods for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the Goods are authentic.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

2.1 The Order constitutes an offer by Darchem to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods except where the application to one or the other is specified.

3. Supply of Goods

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Darchem, expressly or by implication, and in this respect Darchem relies on the Supplier's skill and judgement;
- (c) where they are manufactured Goods, be free from defects in design, materials and workmanship and remain so for 24 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
- (e) be free from foreign objects, including substances, debris or articles that are alien to the product (for example, alumina grit, glass beads, swarf, burrs, fibres, resins, powders etc.)

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 Darchem may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing Darchem considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, Darchem shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Darchem may conduct further inspections and tests after the Supplier has carried out its remedial actions.

3.6 The Supplier shall not deliver Counterfeit Work or Suspect Counterfeit Work to Darchem under the Contract or Order.

3.7 The Supplier shall maintain counterfeit risk mitigation processes in accordance with industry recognised standards and with any other specific requirements identified in the Contract or Order.

3.8 The Supplier shall immediately notify Darchem if the Supplier becomes aware that it has delivered Counterfeit Work or Suspect Counterfeit Work. When requested by Darchem, the Supplier shall provide documentation that authenticates traceability of the affected items. The Supplier, at its expense, shall provide reasonable cooperation to Darchem in conducting any investigation regarding the delivery of Counterfeit Work or Suspect Counterfeit Work under the Contract or Order.

3.9 In the event that Goods delivered under the Contract or Order constitutes or includes Counterfeit Work, the Supplier shall, at its expense, promptly replace such Counterfeit Work with genuine Goods conforming to the requirements of the Contract and Order. Notwithstanding any other provision in the Contract or Order, the Supplier shall be liable for all costs relating to the removal and replacement of Counterfeit Work, including without limitation Darchem's costs of removing Counterfeit Work, of installing replacement Goods and of any testing necessitated by the reinstallation of Goods after Counterfeit Work has been exchanged. The remedies contained in the paragraph are in addition to any remedies Darchem may have at law, equity or under any other provision of the Contract or Order.

4. Delivery of Goods

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special

storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (c) it states clearly on the delivery note any requirement for Darchem to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 7 days of the date of the Order;
- (b) to Darchem's premises at:
 - (i) Ironmasters Way, Stillington, Stockton on Tees, TS21 1LB UK for Orders generated from Darchem's Stillington office; or
 - (ii) Eastbrook Road, Eastern Ave, Gloucester GL4 3DB for Orders generated from Darchem's Gloucester office
- (c) or such other location as is set out in the Order or as instructed by Darchem before delivery (**Delivery Location**); and
- (d) during Darchem's normal hours of business or as instructed by Darchem.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier:

- (a) delivers less than 100% of the quantity of Goods ordered, Darchem may reject the Goods; or
- (b) delivers more than 100% of the quantity of Goods ordered, Darchem may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Darchem accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without Darchem's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Darchem to the remedies set out in clause 6.1.

4.6 Title and risk in the Goods shall pass to Darchem on completion of delivery.

5. Supply of Services

5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to Darchem in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that Darchem notifies to the Supplier and time is of the essence in relation to any of those performance dates.

5.3 In providing the Services, the Supplier shall:

- (a) co-operate with Darchem in all matters relating to the Services, and comply with all instructions of Darchem;
- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that Darchem expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Darchem, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of Darchem's premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by Darchem to the Supplier (**Darchem Materials**) in safe custody at its own risk, maintain Darchem Materials in good condition until returned to Darchem, and not dispose or use Darchem Materials other than in accordance with Darchem's written instructions or authorisation;

- (k) not do or omit to do anything which may cause Darchem to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Darchem may rely or act on the Services;
- (l) comply with any additional obligations as set out in the Service Specification.

6. Darchem remedies

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Darchem shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by Darchem in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by Darchem which are in any way attributable to the Supplier's failure to meet such dates.

6.2 If the Goods are not delivered by the applicable date, Darchem may, at its option, claim or deduct 5% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 20% of the total price of the Goods. If Darchem exercises its rights under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery.

6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, Darchem shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by Darchem in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by Darchem arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.5 Darchem's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

7. Darchem's obligations

7.1 Darchem shall:

- (a) provide the Supplier with reasonable access at reasonable times to Darchem's premises for the purpose of providing the Services;
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

8. Charges and payment

8.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Darchem.

8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Darchem, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of the Goods, the Supplier shall invoice Darchem on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Darchem on completion of the Services. Each invoice shall include such supporting

information required by Darchem to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

- 8.4** In consideration of the supply of Goods and/or Services by the Supplier, Darchem shall pay the invoiced amounts within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5** All amounts payable by Darchem under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Darchem, Darchem shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6** The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Darchem to inspect such records at all reasonable times on request.
- 8.7** Darchem may at any time, without notice to the Supplier, set off any liability of the Supplier to Darchem against any liability of Darchem to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Darchem may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Darchem of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 9. Intellectual property rights**
- 9.1** Nothing in this Contract shall transfer ownership of Background IPR from or to any party. No rights or licences in IP are granted save as expressly set out herein.
- 9.2** All Foreground IPR will, as of its creation, vest in and become the absolute property of Darchem. The Supplier will transfer, or will ensure the transfer of, any Foreground IPR to Darchem with full title guarantee and the Supplier will take all necessary actions, or will ensure that the necessary actions are taken (including signing any documents) to ensure that such Foreground IPR vests in Darchem.
- 9.3** Darchem grants to the Supplier a non-exclusive, non-transferable, personal license to use Darchem's Intellectual Property Rights (including Foreground IPR) to the extent necessary for fulfilling Supplier's obligations under this Contract.
- 9.4** The Supplier hereby grants to Darchem a non-exclusive, perpetual, irrevocable, worldwide, paid-up, sublicensable licence of the Supplier's IP to use and enjoy the Goods supplied to it hereunder for any purpose whatsoever. The foregoing licence includes the right to use, market, sell, keep, import, repair, maintain, develop and overhaul the Goods, and the right to use and incorporate them with or in any other product or service.
- 9.5** The Supplier will not use any of Darchem's IPR (including Foreground IPR) for any purpose other than fulfilling its obligations to Darchem under this Contract.
- 9.6** The Supplier will not, nor directly or indirectly assist any other person to do or omit to do anything to diminish the Intellectual Property Rights belonging to, or provided to the Supplier by, Darchem or impair any registration of such Intellectual Property Rights.
- 9.7** The Supplier represents and warrants to Darchem that the Goods, and the use of the Goods by Darchem and any subsequent owner of the Goods, shall not infringe any third party Intellectual Property Rights connected with the method of manufacture of the Goods. The Supplier indemnifies Darchem for breach of this warranty. On demand the Supplier will provide to Darchem all information on licenses by third parties to the Supplier where the Supplier uses the third party Intellectual Property Rights in order to, manufacture and/or deliver the Goods.
- 10. Indemnity**
- 10.1** The Supplier shall indemnify and keep Darchem indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Darchem arising out of or in connection with:
- (a) any claim made against Darchem for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding Darchem Materials);
 - (b) any claim made against Darchem by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
 - (c) any claim made against Darchem by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.
- 10.2** This clause 10 shall survive termination of the Contract.

11. Insurance

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Darchem's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. Confidentiality

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

- (a) to its parent company, employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. Termination

13.1 Without affecting any other right or remedy available to it, Darchem may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of Control of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in Darchem's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of clause 5.3(h); or
 - (iv) the Supplier cannot demonstrate its prices are competitive,
- (b) for convenience by giving the Supplier one month's written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

14. Consequences of termination

14.1 On termination of the Contract, the Supplier shall immediately deliver to Darchem all Deliverables whether or not then complete, and return all Darchem Materials. If the Supplier fails to do so, then Darchem may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

15. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for one month, the party not affected may terminate this Contract by giving 14 days' written notice to the affected party.

16. Anti-Bribery

16.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010 and will enforce them where appropriate; and
- (d) promptly report to Darchem any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract.

16.2 The Supplier shall ensure that any person associated with the Supplier who is performing Services or providing Goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 16. The Supplier shall be responsible for the observance and performance by such persons of those terms, and shall be directly liable to Darchem for any breach by such persons.

16.3 Breach of this clause 16 shall be deemed a material breach.

16.4 For the purpose of this clause 16, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 16 a person associated with the Supplier includes any subcontractor of the Supplier.

17. General

17.1 Assignment and other dealings.

- (a) Darchem may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Darchem.

17.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by fax, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17.6 Entire Contract. The Contract constitutes the entire Contract between the parties and supersedes and extinguishes all previous Contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.7 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

- 17.8 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 17.9 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 18. Export Control.**
- 18.1** The Supplier acknowledges that any information provided to or received by it in accordance with or in relation to an Order may be subject to export control laws and regulations including, without limitation the United States Department of State International Traffic in Arms Regulations ("ITAR") and the United States Department of Commerce Export Administration Regulations ("EAR"). The Supplier agrees that it will strictly comply with all applicable requirements under such laws and regulations. The Supplier warrants and undertakes that it will not use or permit the use of, export or transfer (by any means, electronic means or otherwise), any information or Goods which are subject to export control laws and regulations without complying in all respects with the applicable export control laws and regulations including, without limitation, all codes of conduct, relevant export licence(s), guidelines, notices and instructions in relation to any use, export or transfer of information or Goods.
- 18.2** The Supplier agrees to afford Darchem and any competent governmental department or other governmental administrative body access to Supplier's premises, for the purpose of auditing Supplier's compliance with the requirements of 18.1 above and to provide all necessary facilities and assistance for such audit to take place.
- 18.3** Where the Goods to be provided by the Supplier pursuant to any Order include the provision of services to be performed for or on behalf of Darchem and which will, or may, involve Supplier's employees having or having the potential to gain access to information which is subject to export control laws and regulations; the Supplier will comply with i) all applicable export control laws and regulations including, without limitation, all codes of conduct, relevant export license(s), Contracts, guidelines, notices and instructions in relation to any use, export or transfer of information and ii) all requests and requirements of Darchem for the same purpose.
- 18.4** In the event the Supplier breaches any of the provisions of this clause 18 the Supplier shall indemnify Darchem with respect to all losses, damages, claims, compensation, awards, expenses (including without limitation legal fees), fines and judgments incurred by Darchem as a result or as a consequence of such breach.