

**Darchem Engineering Ltd  
General Conditions of Sale  
Goods and Services: Projects (2 April 2019)**

**NOTICE:** Sale of any Goods or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance.

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## 1. Definitions

- 1.1. "**Buyer**" means the entity to which Seller is providing Goods or Services under the Contract.
- 1.2. "**Contract**" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Goods or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.
- 1.3. "**Contract Price**" means the agreed price stated in the Contract for the sale of Goods and Services, including adjustments (if any) in accordance with the Contract.
- 1.4. "**Hazardous Materials**" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United Kingdom ("UK") or the country of the Site.
- 1.5. "**Insolvent/Bankrupt**" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.
- 1.6. "**Goods**" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.
- 1.7. "**Seller**" means Darchem Engineering Ltd providing Goods or performing Services under the Contract.
- 1.8. "**Services**" means the services Seller has agreed to perform for Buyer under the Contract.
- 1.9. "**Site**" means the premises where Goods are used or Services are performed, not including Seller's premises from which it performs Services.
- 1.10. "**Terms and Conditions**" means these "Terms and Conditions for Sale of Goods and Services", together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

## 2. Payment

- 2.1. Buyer shall pay Seller for the Goods and Services by paying all invoiced amounts in GBP (Pounds Sterling), without set-off for any payment from Seller not due under this Contract, within thirty (30) days from the invoice date. The Seller shall issue invoices upon shipment of Goods and as Services are performed. The Seller reserves the right to invoice progress payments for Goods and Services. For each calendar month, or fraction thereof, that payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.
- 2.2. If requested by Seller, Buyer shall at its expense provide payment security in the form of an irrevocable, unconditional, letter of credit or bank guarantee allowing for pro-rata payments as Goods are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment Security"). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least sixty (60) days prior to both the earliest scheduled shipment of Goods and commencement of Services, and (d) remain in effect until the latest of ninety (90) days after the last scheduled Product shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten (10) days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract.
- 2.3. Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments or acceptable Payment Security, Seller shall be entitled to a matching extension of the schedule. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

### **3. Taxes and Duties**

Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Seller Taxes ("Buyer Taxes"). The Contract Price does not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

### **4. Deliveries; Title Transfer; Risk of Loss; Storage**

4.1. Seller shall deliver Goods to Buyer FCA Seller's facility or warehouse (Incoterms 2010). Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges. Partial deliveries are permitted. Seller may deliver Goods in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Goods delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten (10) days after receipt.

4.2. Title to Goods shall pass to Buyer upon delivery in accordance with Section 4.1 for shipments within the UK. For all other shipments, title to Goods shall pass to Buyer the earlier of (i) immediately after Goods have been cleared for export or (ii) immediately after each item departs from the territorial land, seas and overlying airspace of the sending country. When Buyer arranges the shipment, Buyer will provide Seller evidence of shipment acceptable to the relevant tax and custom authorities.

4.3. Risk of loss shall pass to Buyer upon delivery pursuant to Section 4.1, except that for export shipments from the UK, risk of loss shall transfer to Buyer upon title passage.

4.4. If any Goods to be delivered under this Contract cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Goods and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Goods into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Goods and repaired equipment available to Buyer for delivery.

### **5. Warranty**

5.1. Seller warrants that Goods shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

5.2. The warranty for Goods shall expire one (1) year from first use or eighteen (18) months from delivery, whichever occurs first. The warranty for Services shall expire one (1) year after performance of the Service.

5.3. If Goods or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall (i) at its option, repair or replace defective Goods and (ii) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Goods and Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

5.4. Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, re-installation and transportation of defective Goods to Seller and back to Buyer.

5.5. The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Goods, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Goods or Services

only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear.

5.6. This Article 5 provides the exclusive remedies for all claims based on failure of or defect in Goods or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort, strict liability or otherwise. The warranties provided in this Article 5 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**

## **6. Confidentiality and Data Protection**

6.1. Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within twenty (20) days after the oral or visual disclosure. In addition, prices for Goods and Services shall be considered Seller's Confidential Information.

6.2. Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Goods and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

6.3. The obligations under this Article 6 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

6.4. Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Buyer nor Seller shall make any public announcement about the Contract without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Article 6 shall expire five (5) years after the date of disclosure. Article 6 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

6.5. In relation to any personal data provided or made available to the Buyer by the Seller, the Buyer must (a) process the personal data only in accordance with the Seller's lawful instructions; (b) take appropriate technical and organisational measures against unauthorised or unlawful processing and against accidental loss of the personal data; (c) not disclose the personal data to any party who carries on business outside the European Economic Area (EEA) and the UK if the personal data originated in the EEA and the UK; and (d) cooperate fully with the Seller to enable the Seller to adequately discharge its responsibility as a data controller including assisting with data subject access requests.

6.6. The Seller may obtain individually identifiable data about individuals ("personal data") in connection with the provision of Goods or services to the Buyer (e.g., contact and other limited information about Customer employees or other individuals who interact with us). Unless the Seller specifically agrees otherwise, the Buyer

acts as the owner/controller of such personal data, and retains responsibility to address data protection laws to the extent applicable to it. The Seller typically does not obtain or receive access to sensitive personal data about such individual Buyer contacts (e.g., social security number (or non-US equivalent), financial account numbers, and credit or debit card numbers (with or without any required security code, access code, personal identification number or password), health or medical information, criminal history or background, race or ethnic origin, religion, information about sex life or sexual orientation, political affiliation, or trade union membership), and expects the Buyer to specifically notify the Seller before sending such sensitive personal data. The Seller implements standard contractual clauses and other measures to address cross-border data transfer restrictions in data protection laws and provides notice of its data privacy practices (including information about disclosures or transfers of personal data) with regard to such Buyer personal data via its website.

## **7. Intellectual Property**

7.1. Any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) in the Goods and/or Services or in any moulds, tools, designs, drawings, or data owned by the Seller or created by the Seller in the course of the performance of the Contract or otherwise used in the manufacture of the Goods and/or the provision of the Services shall remain the Seller's property unless otherwise expressly agreed in writing by the Seller. The Seller grants, on full payment for the Goods and Services the non-exclusive right for the Buyer and bona fide purchasers from the Buyer to use, for the operation of the Goods or Services for their intended purpose only, (a) any software supplied with, or embedded in, the Goods and Services, and (b) technical manuals and instructions relating to operation and maintenance of the Goods and Services. The Buyer hereby grants to the Seller, a non-assignable non-exclusive, royalty-free licence to use any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) owned by the Buyer to the extent necessary for the Seller to supply the whole or any part of the Goods and/or Services in accordance with the Contract. Except as expressly stated herein, nothing in the Contract shall be deemed to have given the Buyer a licence or any other right to use any of the intellectual property rights of the Seller unless otherwise expressly agreed in writing by the Seller..

## **8. Indemnity**

Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller's indemnity obligation, no part of the Goods or Site is considered third party property.

## **9. Insurance**

During the term of the Contract, Seller shall maintain for its protection the following insurance coverage: (i) Employer's Liability and other statutory insurance required by law with respect to work related injuries or disease of employees of Seller in such form(s) and amount(s) as required by applicable laws; and (ii) Public Liability insurance for bodily injury and property damage with a combined single limit of £5,000,000.00. If required in the Contract, Seller shall provide a certificate of insurance reflecting such coverage.

## **10. Excusable Events**

Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labour disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. If an excusable event occurs, the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment.

## **11. Termination and Suspension**

11.1. Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) becomes insolvent or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to

terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.

11.2. If Buyer terminates the Contract pursuant to Section 11.1, (i) Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Contract Price allocable to Goods completed, (b) lease fees incurred, and (c) amounts for Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.

11.3. Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Buyer providing Payment Security, making any payment when due, or fulfilling any payment conditions.

11.4. If the Contract (or any portion thereof) is terminated for any reason other than Seller's default under Section 11.1, Buyer shall pay Seller for all Goods completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.

11.5. Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event (as described in Article 10) lasting longer than one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable under Section 11.4.

11.6. Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

## **12. Compliance with Laws, Codes and Standards**

12.1. Seller shall comply with laws applicable to the manufacture of Goods and its performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Goods and Services.

12.2. Seller's obligations are conditioned upon Buyer's compliance with all UK, E.U. and U.S. and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Goods other than in and to the ultimate country of destination declared by Buyer.

12.3. Notwithstanding any other provision, Buyer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfilment of Buyer's obligations, except that Seller shall obtain any license or registration necessary for Seller to generally conduct business and visas or work permits, if any, necessary for Seller's personnel. Buyer shall provide reasonable assistance to Seller in obtaining such visas and work permits.

## **13. Environmental, Health and Safety Matters**

13.1. Buyer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out procedures or a mutually agreed upon alternative method.

13.2. Buyer shall advise Seller in writing of all applicable Site-specific health, safety, security and environmental requirements and procedures on reasonable prior notice. Without limiting Buyer's responsibilities under Article 13, Seller has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site.

13.3. If, in Seller's reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, under threat from security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, and/or remotely perform or supervise work. Any such occurrence shall be considered an excusable event. Buyer shall reasonably assist in any such evacuation.

13.4. Operation of Buyer's equipment is the responsibility of Buyer. Buyer shall not require or permit Seller's personnel to operate Buyer's equipment at Site.

13.5. Buyer will make its Site medical facilities and resources available to Seller personnel who need medical attention.

13.6. Seller has no responsibility or liability for the pre-existing condition of Buyer's equipment or the Site. Prior to Seller starting any work at Site, Buyer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Buyer's equipment or the Site that Seller may encounter while performing under this Contract. Buyer shall disclose to Seller industrial hygiene and environmental monitoring data regarding conditions that may affect Seller's work or personnel at the Site. Buyer shall keep Seller informed of changes in any such conditions.

13.7. Seller shall notify Buyer if Seller becomes aware of: (i) conditions at the Site differing materially from those disclosed by Buyer, or (ii) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and schedule shall be made.

13.8. If Seller encounters Hazardous Materials in Buyer's equipment or at the Site that require special handling or disposal, Seller is not obligated to continue work affected by the hazardous conditions. In such an event, Buyer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Seller's work under the Contract may safely proceed, and Seller shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in Seller's cost of, or time required for, performance of any part of the work. Buyer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.

13.9. Buyer shall indemnify Seller for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present in or about Buyer's equipment or the Site prior to the commencement of Seller's work, (ii) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on Site by parties other than Seller.

#### **14. Changes**

14.1. Each party may at any time propose changes in the schedule or scope of Goods or Services. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

14.2. The scope, Contract Price, schedule, and other provisions will be adjusted to reflect additional costs or obligations incurred by Seller resulting from a change in Buyer's specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations.

14.3. It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding or new part or version number compared to the part or version number listed in the Contract.

#### **15. LIMITATIONS OF LIABILITY**

15.1. The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Goods or Services, shall not exceed the (i) Contract Price, or (ii) if Buyer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order and ten thousand US dollars (US \$10,000) for all claims not part of any particular order.

15.2. Seller shall not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of replacement power, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers for any of the foregoing types of damages.

15.3. All Seller liability shall end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.

15.4. Seller shall not be liable for advice or assistance that is not required for the work scope under this Contract.

15.5. If Buyer is supplying Goods or Services to a third party, or using Goods or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 15, or (ii) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 15.

15.6. For purposes of this Article 15, the term "Seller" means Seller, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Article 15 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort, extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Seller's liability.

## **16. Governing Law and Dispute Resolution**

16.1. This Contract shall be governed by and construed in accordance with the laws of England without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction (the "Governing Law"). If the Contract includes the sale of Goods and the Buyer is outside the Seller's country, the United Nations Convention on Contracts for the International Sale of Goods shall apply.

16.2. All disputes arising in connection with this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Article 16. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings, depending upon the location of the Buyer, in accordance with the following: (a) if the Buyer's pertinent place of business is in the UK, legal action shall be commenced in England; or (b) if the Buyer's pertinent place of business is outside the UK, the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The number of arbitrators shall be one, selected in accordance with the ICC rules, unless the amount in dispute exceeds the equivalent of U.S. \$1,000,000, in which event it shall be three. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within thirty (30) days, who shall be the Chairman. The seat, or legal place, of arbitration, shall be London, England. The arbitration shall be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

16.3. Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Contract, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in Article 6 and/or the nuclear use restrictions set forth in Section 19.1., or to seek interim or conservatory measures. Monetary damages shall only be available in accordance with Section 16.2.

## **17. Inspection and Factory Tests**

Seller will apply its normal quality control procedures in manufacturing Goods. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Goods (if applicable), subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

## **18. General Clauses**

18.1. Unless specifically notified by the Seller to the Buyer, Goods and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use or permit others to use Goods or Services for such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall



indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability. Consent of Seller to any such use, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

18.2. Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) shall be void.

18.3. Buyer shall notify Seller immediately upon any change in ownership of more than fifty percent (50%) of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), and/or (c) put in place special controls regarding Seller's Confidential Information.

18.4. If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavour to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

18.5. The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 18, 19 and 20.

18.6. The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Goods and Services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.

18.7. Except as provided in Article 15 (Limitations of Liability) and in Section 19.1 (no nuclear use), this Contract is only for the benefit of the parties, and no third party shall have a right to enforce any provision of this Contract under the Contracts (Rights of Third Parties) Act 1999.

18.8. This Contract may be signed in multiple counterparts that together shall constitute one agreement.

## **19. US Government Contracts**

19.1. This Article 20 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.

19.2. Unless expressly agreed by the Seller, Buyer agrees that all Goods and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of Goods is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that this Contract is not funded in whole or in part by American Recovery Reinvestment Act funds unless otherwise specifically stated in the Contract. The version of any applicable FAR clause listed in this Article 20 shall be the one in effect on the effective date of this Contract.

19.3. If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

19.4. If Buyer is procuring the Goods or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

## **20. BREXIT**

20.1. Brexit means the UK ceasing to be a member state of the European Union.

- 20.2. A Brexit Trigger Event means any of the following events caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:
- 20.2.1. Change in Law: a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply to a party. For these purposes, Law means any legal provision a party must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
  - 20.2.2. Trade tariff: in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of the Goods or any raw materials or components used by the Supplier to manufacture the Goods or any products into which the Goods are to be incorporated or in conjunction with which the Goods are to be commercially exploited;
  - 20.2.3. Licence or consent: in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by a party to perform the agreement or to commercially exploit the Goods including, but not limited to, export licences;
  - 20.2.4. Currency Fluctuation: a change of more than 5% to the rate of exchange of sterling against US Dollar (USD\$), since the price for the Goods was last agreed. The rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;
  - 20.2.5. Other change: change to the business or economic environment in which a party operates which is not caused by 21.2.1 to 21.2.3 above or by any fluctuation in currency exchange rates.
- 20.3. An Adverse Impact means any one of the following:
- 20.3.1. an adverse impact on the Supplier's ability to perform the agreement in accordance with these terms and the Law;
  - 20.3.2. an increase in the costs incurred by the Supplier in performing the agreement of at least 1% since the price for the Goods was last agreed;
  - 20.3.3. the price of the Goods under this agreement is at least 1% lower than the market value for similar products or services
- 20.4. If a Brexit Trigger Event occurs which has or is likely to have an Adverse Impact, the Supplier may:
- 20.4.1. require the other party to negotiate an amendment to this agreement to alleviate the Adverse Impact; and
  - 20.4.2. if renegotiation fails, terminate this agreement.
- 20.5. The Supplier may initiate a negotiations by a notice (Brexit Notice) giving details of the relevant Brexit Trigger Event and Adverse Impact. On delivery of a Brexit Notice:
- 20.5.1. the parties shall meet within 7 (seven) days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to this agreement;
  - 20.5.2. the Supplier shall comply with all reasonable requests made by the Buyer for additional information and documents relating to the Adverse Impact suffered and the Brexit Trigger Event relied on, always provided that information so disclosed shall be the Supplier's confidential information for the purposes of clause 13 (Confidentiality)
- 20.6. If the parties fail to agree a variation in accordance with clause 5 within 1 month of the date of the Brexit Notice, the Supplier may, without affecting any other right or remedy available to it, terminate this agreement upon written notice to the Buyer.
- 20.7. After delivery of a Brexit Notice, until this agreement is varied or terminated, the parties shall, unless prohibited by law, continue to comply with the terms of this agreement.

Where a party suffers an Adverse Impact as a result of a Brexit Trigger Event, the provisions of this clause shall apply and take precedence over any conflicting express provisions of this agreement.