

Altek Melting Solutions Ltd.

TERMS AND CONDITIONS OF CONTRACT OF SALE (Effective from 14th September 2020) (EDITION 2020/1)

1. GENERAL

The following terms and conditions ('**Conditions**') apply to all contracts entered into by ALTEK MELTING SOLUTIONS LIMITED incorporated in England (Company number 12360427) whose registered office is at Harsco House Regent Park, 299 Kingston Road, Leatherhead, Surrey, England KT22 7SG (the '**Seller**') for the sale of Goods and/or the provision of Services. All other conditions, representations and documents including any proposed by the Buyer as well as any variation purported to be made to these Conditions shall be excluded save as expressly agreed in writing by the Seller.

2. DEFINITIONS

In these Conditions:

'Buyer' shall mean the person, firm, company or body to whom the Seller agrees to sell Goods to or to provide Services to in accordance with these Conditions.

'Confidential Information' shall mean any commercial, financial or technical information relating to the Seller, its products, services, personnel, suppliers, plans, intellectual property, know-how or trade secrets, information relating to the Goods and/or Services and other information which, given its nature or circumstances of disclosure, reasonably ought to be treated as confidential or has been identified as such whether or not such information is made available prior to or pursuant to the Contract;

'Contract' shall mean the agreement between the Seller and the Buyer for the sale and purchase of the Goods and/or Services incorporating these Conditions, the Specification and the Order;

'Goods' shall mean the parts, goods, materials or equipment specified or referred to in the Contract.

'Handover / Acceptance Certificate' shall mean a document signed by both parties confirming that the Goods and Services have been provided in accordance with the Specification.

'Installation' shall mean installing and commissioning the Goods by the Seller at the Buyer's site as identified on the Order.

'Intellectual Property Rights' shall mean all intellectual property rights owned or used by the Seller in connection with the manufacture, marketing and supply of the Goods (including the Specification) or provision of Services, including copyright, rights related to copyright, patents, rights in inventions, know-how, trademarks, service marks, business names, goodwill and the right to sue for passing off, domain names, and rights in relation to Confidential Information, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of 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' shall mean an order for Goods and/or Services from the Seller placed by the Buyer in the form of a purchase order or scope of supply supplied by the Seller to the Buyer;

'Services' shall mean any work or service specified or referred to in the Contract other than the supply of goods (including Installation and Training).

'Specification' shall mean the technical specification of the Goods and/or Services set out or referred to in the Order.

'Training' shall mean training provided by the Seller to personnel of the Buyer in relation to the safe operation and maintenance of the Goods.

A reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time. Headings in these Conditions are for convenience only and shall not affect their interpretation. The words 'includes', 'including' or 'in particular' where they appear after a word or phrase shall not operate to restrict or limit the generality of such preceding word or phrase.

3. **CONTRACT FORMATION**

3.1 These Conditions apply to and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of purchase or supply.

3.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase conditions, purchase order, confirmation of order, specification or other document provided by the Buyer shall form part of the Contract except to the extent that the Seller otherwise agrees in writing.

3.3 No variation of these Conditions, an Order, or the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.

3.4 Each Order by the Buyer to the Seller shall be an offer to purchase the Goods and/or Services subject to these Conditions.

3.5 If the Seller is unable to accept an Order, it shall notify the Buyer as soon as reasonably practicable.

3.6 The Seller may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods and/or Services shall arise, until the earlier of:

- (a) the Seller's written acceptance of the Order; or
- (b) the Seller dispatching the Goods or notifying the Buyer that they are available for collection (as the case may be), or
- (c) the Seller commencing to perform the Services.

3.7 Rejection by the Seller of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Buyer.

3.8 The Seller may issue quotations to the Buyer from time to time. Such quotations are not an offer to supply the Goods and are incapable of being accepted by the Buyer.

4. **PRICE**

The price for the Goods and/or Services (the **'Price'**) shall be specified or referred to in the Seller's quotation and (subject to Clause 3 above) confirmed in the Contract.

5. **VARIATIONS**

The Seller shall supply the Goods and/or Services in accordance with the Contract. Any variation shall only be effective if agreed to in writing by the Seller, which written agreement shall include any increase or decrease in the Price or programme of Services as necessary.

6. **DRAWINGS AND SPECIFICATIONS**

All descriptions, specifications, drawings and any particulars of weights and dimensions included in the Seller's proposal are approximate only and such material as is contained in the Seller's catalogues and other advertising matter is intended merely to illustrate the Goods described therein and will not form part of the Contract unless otherwise agreed in writing. The Seller reserves the right to make such reasonable changes as it considers necessary either before or during the course of the Contract provided

that the Goods and/or Services meet the specifications set out in the Specification.

7. CONFIDENTIALITY

7.1 The Buyer shall keep confidential all Confidential Information of the Seller and shall only use the same as required to perform or exercise its rights under the Contract and shall not disclose or reveal the Seller's Confidential Information, except in so far as expressly permitted in accordance with this Clause 7.

7.2 The provisions of this Clause 7 shall not apply to disclosure of information:

(a) which was in the public domain at the date of the Contract or which comes into the public domain, other than as a consequence of any breach of the Contract or any related agreement by the Buyer;

(b) any information which can be shown to have been independently known to or developed by the Buyer without reference to the Seller's Confidential Information; or

(c) that the Buyer is compelled to disclose by a court or regulatory authority, in which case (where lawfully permitted) it will inform the Seller of any actual or potential disclosure of its Confidential Information as soon as possible.

7.3 The Buyer may disclose or make the Seller's Confidential Information available to the Buyer's directors, officers, employees, authorised representatives and advisers in so far as such disclosure is necessary in connection with the Contract or its enforcement but on the condition that those parties are themselves subject to binding confidentiality obligations in respect of such Confidential Information that are at least as restrictive as those hereunder

7.4 This Clause 7 shall survive termination or expiry of the Contract.

7.5 The Buyer shall not make any public announcement regarding the Contract,

Goods or Services, except with the Seller's prior written agreement.

8. INSPECTION AND PACKAGING

All Goods shall be inspected by the Buyer within three working days of delivery. Unless the Buyer notifies the Seller within three working days of the date of delivery of its refusal to accept the Goods, stating the reason for such refusal, the Buyer shall be deemed to have accepted the Goods and, except for any mandatory rights it has under applicable law that cannot be so contractually limited or excluded or as otherwise expressly set out hereunder, the Buyer shall have no right thereafter to reject the Goods or any part thereof.

9. DELIVERY AND RISK

9.1 Delivery of the Goods and provision of the Services shall be made to the Buyer in such manner and at the place specified in the Contract. The risk in all Goods shall pass to the Buyer at the specified point of delivery.

9.2 The Seller will normally notify the Buyer in writing that the Goods are ready for delivery seven days in advance of delivery. Where the Buyer fails to confirm the due date of delivery within such period or requests that the date of delivery be delayed the Seller shall be at liberty to arrange for storage of the Goods at the Buyer's sole risk and expense until the delayed delivery date. In those circumstances, upon delivery into storage by the Seller, risk in the Goods shall pass to the Buyer accordingly.

9.3 Where the Contract provides for the supply of two or more items of Goods then each supply shall be treated as distinct from other supplies and no defect, default or delay in or omission from any one supply shall give rise to any right on the part of the Buyer to reject or refuse to accept any other supply provided that this clause will not affect any title or right of the Seller over the Goods or any part thereof prior to supply.

10. **INSTALLATION AND TRAINING**

- 10.1 The Seller shall undertake the Installation and the Training during normal business hours.
- 10.2 The details for the Installation and timing for the Training shall be set out in the Specification, or as otherwise agreed in writing between the parties prior to the Installation.
- 10.3 The Installation and Training shall be complete within three months of delivery of the Goods, and unless the parties agree an extension or any delays are solely due to the Seller's default, the Seller shall be under no obligation to provide the Installation or Training, or any part thereof, after expiry of the three month period but the Buyer will remain liable for any fees in relation to the same.
- 10.4 The Buyer undertakes to obtain all necessary licences, consents and permissions (including insurances) and ensure that any other requirements of a statutory nature in respect of the Goods and their Installation have been obtained and complied with.
- 10.5 The Buyer shall ensure that the ground, bases and/or other means of support for the Goods are in all respects in a suitable state of repair and condition, for the effective and safe Installation of the Goods in accordance with good practice and any specific requirements notified by the Seller to the Buyer.
- 10.6 Without prejudice to any other rights the Buyer may have arising under any conditions herein contained the Buyer shall fully and effectually indemnify the Seller in respect of any loss, claim, liability and expense incurred by the Seller due to any failure or delay of the Buyer to fulfil its obligations under Clauses 10.4 and 10.5.

11. **COMPLETION DATES**

- 11.1 The Seller shall use its reasonable endeavours to perform its obligations by the date(s) mutually agreed with the Buyer but time is not of the essence of

any date or period specified in the Contract in relation to the Seller's obligations.

- 11.2 The Seller shall not be liable for any delay in or failure of delivery of Goods and/or Services caused by the failure of the Buyer or its subcontractors to provide the Seller with adequate instructions, prepare and make available the delivery and/or installation location, or by the Buyer or its subcontractors providing the Seller with inaccurate or incomplete instructions. In such circumstances, the Seller shall be given an appropriate extension of time for completion to take account of such delay or failure by the Buyer.

12. **DELAY**

If as a result of the instructions of the Buyer, or by any delay or failure of the Buyer, or any of its sub-contractors in giving any instructions or information necessary for the progress of design or manufacture of the Goods, the progress of design, manufacture or delivery is delayed, the Seller shall be entitled to an appropriate extension of time for completion to take account of such delay or failure. If the circumstances causing the delay of performance of the Contract continue for more than 30 days the Seller shall be entitled to suspend the work on the Contract until the circumstances delaying performance cease to obtain.

13. **SUSPENSION**

- 13.1 In the event of any suspension as aforesaid under Clause 12 or by reason of instructions of the Buyer then the Buyer shall pay to the Seller all expenses incurred by the Seller arising out of such delay or suspension in addition to the Price. The certificate of the Seller's auditors shall be forwarded if required and shall be accepted as final.

14. **FORCE MAJEURE**

In the event that the Seller's performance of the Contract is delayed by any cause beyond the Seller's reasonable control, including but not limited to, war (whether war has been declared or not), invasion,

act of foreign enemy, hostilities, revolution or military or usurped power or by statutes, rules, regulations or orders issued by any Government or other duly constituted authority, including the imposition of restrictions or quotas or levies on the exportation or importation of the Goods or from strikes, lockouts, labour disputes, breakdown, natural catastrophe, fire or accident to the plant of the Seller, or of a relevant supplier of the Seller, the Seller shall be relieved of any liability under the Contract wherever the fulfilment of such obligation is affected, or delayed as a consequence of any such event.

15. TITLE TO GOODS

15.1 Notwithstanding risk in the Goods passing in accordance with Clause 9 hereof, legal ownership in and the right to dispose of the Goods shall not pass to the Buyer until the Seller has received the Price in full and all other amounts due and payable to it under the Contract from the Buyer.

15.2 Until title has passed to the Buyer, the Buyer shall hold the Goods as the Buyer's agent and shall:

- (a) store the Goods separately from other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- (b) not deface or remove any identifying labels or marks from the Goods that identify them as belonging to the Seller;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) immediately notify the Seller if any of the events in Clause 19.1(c) take place; and
- (e) give the Seller such information relating to the Goods as the Seller may require from time to time.

15.3 Before title has passed to the Buyer in accordance to Clause 15.1, the Buyer is

not entitled to resell or dispose of any of the Goods and, without prejudice to any of its other rights, the Seller shall be entitled to enter the premises of the Buyer or wherever the Goods shall be stored and to repossess the Goods or any part thereof.

16. PAYMENT

16.1 All payments due to the Seller under the Contract shall be made in full by the Buyer to the Seller without any deduction or set-off on the date of the Seller's invoice unless otherwise prescribed in the Contract. Payment shall be made in pounds sterling by wire transfer to the Seller's nominated bank account, unless the Seller agrees in writing otherwise.

16.2 The Seller's invoice(s) in respect of Goods will be submitted and shall be payable by the Buyer as follows unless otherwise agreed in the Order (which may refer to acceptance of a letter of credit):

- (a) 40% of Price of Goods (down payment): invoice submitted on receipt of Order, payable immediately;
- (b) 20% of Price of Goods: invoice upon issue of design pack drawings, payable within 30 days;
- (c) 30% of Price of Goods: invoice prior to dispatch, payable within 30 days; and
- (d) 10% of Price of Goods: invoice on delivery of Goods, (with the date of delivery being the date specified in the Order) payable within 30 days.

16.3 The Seller's invoice(s) in respect of Services will be submitted and shall be payable as follows unless otherwise agreed in the Order (which may refer to acceptance of a letter of credit):

- (a) 50% of Price of Services: invoice submitted on receipt of Order, payable immediately; and

- (b) 50% of Price of Services: invoice on completion of commissioning, payable within 30 days.
- 16.4 All amounts payable by the Buyer (unless stated otherwise) are exclusive of:
- (a) packaging, transport, freight and insurance;
 - (b) customs, handling, import and/or export duties; and
 - (c) value added tax or other applicable taxes due on such amount

which shall be payable by the Buyer in addition thereto. In the event that any withholding tax or any other tax (other than income tax applicable to the Buyer) has the effect of reducing the amount of money which the Seller would have been entitled to receive but for such tax, the Buyer will be liable to pay to the Seller an additional sum to make up for such reduction.

- 16.5 The Seller reserves the right to charge interest on all overdue accounts at 4% above the base rate from time to time of Santander UK plc compounded on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 16.6 Where the Seller and Buyer agree that payment shall be made by a letter of credit this shall be a confirmed irrevocable letter of credit in a form acceptable to the Seller.

17. SUPPLY OF INFORMATION AND ASSISTANCE TO SELLER

The Buyer shall promptly provide to the Seller whenever requested, with all further information and assistance that the Seller may reasonably require under the Contract.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 The Buyer acknowledges that any Intellectual Property Rights in relation to the Goods or Services belong to the Seller or its licensors ('**Seller's Intellectual Property Rights**').

18.2 The Buyer accepts that:

- (a) it is only permitted to use the Seller's Intellectual Property Rights for the purpose of receiving the benefit of the Goods or Services as contemplated under the Contract or only as authorised by the Seller in writing;
- (b) save as provided for immediately above, it has and shall have no right to use or to allow others to use the Seller's Intellectual Property Rights in whole or in part. It shall not seek to assert or register any right or interest in the Seller's Intellectual Property Rights without the Seller's express consent;
- (c) it shall not use (or authorise the use of) any trademarks, trade names or get-up which resemble the Seller's own trademarks, trade names or get-up which would therefore be likely to confuse or mislead the public or any section of the public;
- (d) it shall not remove, alter or otherwise tamper with any of the Seller's trademarks, trade names, logos, numbers or other means of identification on the Goods or the packaging therefor which come into the Buyer's possession, custody or control, and shall not place any trade mark or trade name of its own on the Goods or any packaging or other materials used in connection therewith; and
- (e) it shall not do or omit to do, or authorise any third party to do or to omit to do, anything which could invalidate or be inconsistent with the Seller's or its licensors' ownership of or the validity and enforceability of the Seller's Intellectual Property Rights.

19. TERMINATION

- 19.1 Without prejudice to its other rights hereunder or in law, the Seller shall be

entitled to terminate at any time by giving written notice to the Buyer if:

- (a) the Buyer fails to pay the Price in accordance with the Contract; or
- (b) the Buyer breaches any of the provisions of the Contract; or
- (c) the Buyer has a receiver, administrator or manager appointed over its undertakings or assets or if a petition is presented against it for the appointment of an administrator or liquidator or if it passes a resolution for its own winding up or enters into any composition or arrangement with its creditors or if a similar event to any of the foregoing occurs under the laws of the country in which the Buyer is established; or
- (d) the Buyer ceases or threatens to cease to carry on its business or any part of its business.

19.2 On termination of the Contract under Clause 19.1, the Buyer shall pay the Seller for all work performed and materials bought up to and including the date on which the Contract is terminated plus a sum equal to total out of pocket expenses incurred by the Seller in connection with the Contract, including but not limited to any charges made to the Seller by suppliers for termination, plus a reasonable sum for overhead expenses and lost profits as determined by the Seller which the Seller may submit an invoice for, which invoice shall be payable immediately on receipt.

19.3 In addition to any amounts due under Clause 19.2, on termination or expiry of the Contract the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of the Goods and Services delivered but for which no invoice has been submitted, the Seller may submit an invoice, which shall be payable immediately on receipt. In no circumstances shall the Seller be required to refund amounts paid by the

Buyer to the Seller prior to date of termination or expiry.

20. **GUARANTEE**

20.1 Without prejudice to the provisions of Clause 8, the Seller agrees that it shall make good, by repair or, at its option, by replacement, any defect in the Goods of which it receives notification in writing within 12 months from signature of the Handover/ Acceptance Certificate or three months from such signature in the case of Goods supplied as reconditioned or used (except where another period has expressly agreed to by the Seller in the Specification) provided in all cases that the defect arises solely from faulty design, materials or workmanship on the part of the Seller and that the Buyer shows to the satisfaction of the Seller that the Goods have been properly stored, used and maintained in accordance with the operating and maintenance manuals of the Goods.

20.2 Any Goods or parts repaired or replaced under this Clause 20 will be subject to the guarantee contained herein only during the balance of the original guarantee period of 12 months as aforesaid and any parts of Goods removed by the Seller shall remain or become the property of the Seller. The Seller shall have no liability whatsoever under this Clause 20 if: the Buyer shall not promptly comply with the requests of the Seller for the purposes of assessing the defect and how it arose; or, if the Goods or any part thereof have then been subjected to improper storage, abnormal conditions or have been involved in any accident; or, the Goods have been used for a purpose other than that for which they were designed; or, an attempt has been made to alter or repair the Goods other than by the Seller or fully in accordance with the Seller's written directions.

20.3 On the Seller's request the defective Goods or part thereof shall be returned to it for examination and, if appropriate, repair in accordance with the guarantee hereunder. Where repairs are agreed to be carried out at the Buyer's premises,

- the Buyer shall ensure that adequate safe access is made available to the Seller, its agents and employees at all times for the purposes of inspecting the Goods and effecting the necessary repairs.
- 20.4 Auxiliary parts and components in the Goods that are manufactured by third party suppliers are supplied subject only to the terms and conditions of that relevant third party supplier's normal guarantee.
- 20.5 The delivery or making available to the Buyer of a defective part of the Goods properly repaired or a part in replacement thereof shall constitute fulfilment by the Seller of the Seller's obligations under the guarantee in this Clause 20. Such guarantee constitutes the Buyer's sole remedy in respect of any defects arising in respect of the Goods and is in substitution of any other warranties, terms, conditions, undertakings or liabilities, express or implied by law, trade custom or otherwise in respect of the quality, design or fitness for any particular purpose of the Goods, which are hereby excluded to the fullest extent legally permitted.
21. **LIMITATION OF LIABILITY**
- 21.1 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other liabilities which cannot be excluded or limited under applicable law.
- 21.2 Except as expressly stated in the Contract, and subject to Clause 21.1, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 21.3 Other than as expressly provided in Clause 20, and subject to clause 21.1,
- the Seller shall not be liable in contract, tort or otherwise for: any defect, failure or unsuitability for any purpose of the Goods or Services or any part thereof (whether or not due to any act, omission, or negligence of the Seller or its officers, employees, or contractors); or any damage expense or loss of whatever kind sustained by the Buyer or any other person which is directly or indirectly attributable to any such defect, failure or unsuitability of the Goods or to any work done in connection herewith.
- 21.4 Subject to Clauses 19.2 and 21.1, neither party shall be entitled to make any claim against the other which is not expressly provided for in these Conditions, including but not limited to loss of revenue or profits, loss of contracts, loss of the use of capital, loss of production, loss of opportunity, loss of savings, or harm to reputation or loss of goodwill (whether any of the foregoing are direct or indirect).
- 21.5 Subject to Clauses 19.2 and 21.1, neither party shall be liable for consequential, indirect or special losses.
- 21.6 Subject to Clause 21.1, the Seller's total aggregate liability in respect of the Goods or Services supplied hereunder or otherwise arising in relation to the Contract or the Seller's performance hereunder shall not exceed the total amount payable under the Contract.
22. **SUB-CONTRACTING**
- 22.1 The Seller shall be entitled to sub-contract any of its obligations under the Contract.
- 22.2 The Buyer shall not be entitled to transfer, assign or encumber any of its rights or delegate any of its obligations under the Contract without the Seller's prior written consent.
- 22.3 Either party, where it sub-contracts or delegates any obligations hereunder remains fully responsible for the acts or omissions of its sub-contractors.

23. **GOVERNMENT CONSENTS**

Insofar as any licence, authorisation or consent of any governmental or official authority of any country is required for the lawful performance of the Contract including for the import of the Goods or provision of the Services, the Buyer warrants to the Seller that it has obtained such licence, authorisation or consent and the Buyer further agrees that it shall on request provide a certified copy of the same to the Seller on request. The Buyer at its own cost will provide to the Seller (or where local laws or regulations require the Seller to obtain these, provide full assistance to the Seller in procuring), any documents necessary under applicable laws and regulations for the Seller to export the Goods to the agreed place of delivery in accordance with such laws and regulations.

24. **DUTIES AND TAXES**

All duties, taxes, impositions, levies or other charges made by the government or official authority of the country of the Buyer or of the country to which the Goods are to be delivered or exported are payable in full by the Buyer.

25. **INDEMNITY**

25.1 The Buyer shall keep the Seller fully and effectively indemnified against:

- (a) All loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid to the Seller in settlement of any claim for infringement of any Intellectual Property Rights of any other person resulting from Goods manufactured in accordance with the Buyer's specification or direction; and/or
- (b) All loss, damages, costs and expenses awarded against or incurred by the Seller in respect of the use by the Buyer of the Goods in relation to the manufacture, supply or distribution of any other goods and arising out of such

manufacture, supply or distribution.

25.2 The Buyer shall at all times maintain reasonable insurance cover with a reputable insurer in respect of all and any such liabilities referred to in Clauses 25.1(a) and 25.1(b) above and shall when requested to do so by the Seller provide evidence that all and any such insurance is in force.

26. **SITE FACILITIES**

If under the Contract, the Seller or any of its employees, agents and sub-contractors has to install the Goods and provide any of the Services at the premises of the Buyer or of any third party as agreed hereunder (the 'Site'), the Buyer:

- (a) shall provide a safe and suitable place for Installation of the Goods at the Site and shall provide all necessary foundations for Installation of the Goods;
- (b) shall provide all necessary electricity, fuels, lubricants, water, light, compressed air, power and lifting tackle, other consumables, materials and suitable storage facilities in order to enable the Seller to undertake any obligation the Seller may have to perform at the Site;
- (c) acknowledges and agrees that where commissioning and/or Installation of the Goods at the Site is delayed through no fault of the Seller then the Seller shall be entitled to be paid for additional time spent at Site (and further expenses incurred by the Seller) to enable such commissioning and/or Installation; and
- (d) acknowledges and agrees that the Seller shall not be liable to the Buyer in any way if the physical conditions at the Site or if any consumable at the Site are not of the standard required to operate the Goods or if through no fault of

the Seller damage to the Goods otherwise arises at the Site.

27. **COSTS**

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

28. **ENTIRE AGREEMENT**

28.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

28.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract

28.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

29. **NOTICES**

Any notice to be given by one party to the other may be given by registered post or email and shall be given, in the case of notices given by posting, one working day after being posted to the other party's registered office or, in the case of an individual or firm, to that party's last known address, or, in the case of notices given by email, immediately upon transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30. **SEVERANCE**

If any provision of these Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other

provisions of these Conditions and the remainder of the provision in question shall not be affected.

31. **WAIVER**

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

32. **CONTINUING TERMS**

The rights and obligations contained in Clauses 7, 18, 19.2, 20, 21, 24, 25, 27 to 31, this Clause 32, and Clauses 33 to 37 hereof, and other Clauses that expressly or by implication continue, shall survive the termination or expiry of the Contract.

33. **ANTI-BRIBERY**

33.1 For the purposes of this Clause 33:

(a) "**Bribery Laws**" means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption; and

(b) the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

33.2 The Buyer shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:

(a) all of the Buyer's personnel;

(b) all others associated with the Buyer; and

(c) all of the Buyer's subcontractors;

involved in performing the Contract so comply.

33.3 Without limitation to Clause 33.2, the Buyer shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any

- such to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 33.4 The Buyer shall immediately notify the Seller as soon as it becomes aware of a breach of any of the requirements in this Clause 33.
34. **ANTI-SLAVERY**
- 34.1 The Buyer understands that the Seller prohibits the Buyer and any of its directors, officers, employees, or any other persons associated with it or anyone for whose acts or defaults they may be vicariously liable or anyone acting on behalf of any of them (including any sub-contractors) from engaging in any servitude, slavery, forced and compulsory labour and human trafficking (**'Modern Slavery Practices'**) within their businesses or their supply chains in connection with the Contract.
- 34.2 The Buyer undertakes, warrants and represents that:
- (a) neither the Buyer nor any of its officers, employees, agents or subcontractors has:
- (i) committed an offence under the Modern Slavery Act 2015 (an **'MSA Offence'**); or
- (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (iii) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- (b) it shall comply with the Modern Slavery Act 2015.
- 34.3 The Buyer shall notify the Seller immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Seller's obligations under Clause 34.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Buyer's obligations.
- 34.4 The Buyer shall take appropriate remedial action, at its own cost, to remove any Modern Slavery Practices found within its supply chain.
- 34.5 The Seller may terminate the Contract with immediate effect by giving written notice to the Seller if the Seller commits a breach of this Clause 34.
35. **DATA PROTECTION**
- 35.1 In this Clause 35:
- (a) **'Data Protection Legislation'** means the Data Protection Act 2018 (**"DPA"**) and (i) unless and until the General Data Protection Regulation (EU) (2016/679) (**'GDPR'**) is no longer directly applicable in England and Wales, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in England and Wales and then (ii) any successor legislation to the GDPR or the DPA; and
- (b) **'Personal Data'** and other terms defined under the DPA as referred to in these Conditions have the meaning given to them thereunder.
- 35.2 In relation to any Personal Data relating to the Seller's directors, officers, employees, individual contractors or other personnel that the Buyer processes in connection with the Contract, the Buyer shall:

- (a) process that Personal Data as a Controller in accordance with all applicable requirements of the Data Protection Legislation;
- (b) notify the Seller without undue delay in event of it becoming aware of a breach in respect of such Personal Data;
- (c) provide reasonable assistance to the Seller in relation to any reports that the Seller needs to make to any supervisory authority or in response to any request that the Seller receives from individuals exercising their rights under Data Protection Legislation;
- (d) at the written direction of the Seller, securely delete or return to the Seller any copies of such Personal Data on termination of the Contract except in so far as the Seller is required to maintain or continue processing such Personal Data under applicable law; and
- (e) maintain complete and accurate documentation to demonstrate compliance with this Clause 35 and provide such documentation on the Seller's reasonable written request.

36. **DISPUTES**

- 36.1 Without prejudice to Clause 36.2, any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration rules (the LCIA Rules), which LCIA Rules are deemed to be incorporated by reference into this Clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.
- 36.2 Nothing in this dispute resolution procedure will prevent the parties from seeking from any court of competent

jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

- 36.3 Save as set out in Clauses 36.1 and 36.2, any dispute or claim between the parties arising out of or in connection with the subject matter of the Contract (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction in that regard.
- 36.4 The language of the Contract is English. All documents, notices, waivers, variations and other written communications relating to the Contract shall be in English.
- 36.5 To the extent permitted by law the Convention on the International Sale of Goods 1980 and all international and domestic legislative (or other) implementations of that Convention; and the Uniform Laws on International Sales Act 1967, will not apply in relation to the Contract.

37. **RIGHTS OF THIRD PARTIES**

- (a) The Contract is and is deemed to be enforceable only by the Buyer and the Seller (or their respective assignees, novatees or transferees) and:
- (b) No other person has or is deemed to have any rights, whether as a named individual, a member of a class, as a described person or otherwise, to enforce any term or provision of the Contract, or to have any right or remedy as a result thereof; and
- (c) Nothing in the Contract confers or is deemed to confer a benefit on a person not a party to the Contract.