

**[PRYME GROUP LIMITED]  
TERMS AND CONDITIONS OF SALE**

These **TERMS AND CONDITIONS OF SALE** ("**Terms and Conditions**") shall apply to all Orders regarding the rental of goods, the sale and purchase of goods, and/or the provision of services which are concluded between the Customer (as defined below) and **[PRYME GROUP LIMITED]**, a company incorporated in [Scotland] (Company Number [SC484451]) and having its registered office at [11 Tom Johnstone Road, West Pitkerro Industrial Estate, Dundee, Tayside, DD48XD] ("**Pryme**"), or any Affiliate (as defined below) of Pryme.

## 1 DEFINITIONS

These Terms and Conditions shall use the following definitions:

- 1.1 "**Affiliate**" means any subsidiary or holding company of any company or any other subsidiary of such holding company. For the purposes of this definition, "subsidiary" and "holding company" shall have the meanings assigned to them under Section 1159 of the Companies Act 2006;
- 1.2 "**Claim**" means claims, liens, judgments, penalties, awards, remedies, debts, liabilities, damages, demands, costs, losses, expenses (including without limitation legal costs and expenses) or causes of action, of any nature whatsoever;
- 1.3 "**Consequential Loss**" means:
- (i) indirect or consequential loss under English law; and
  - (ii) loss and/or deferral of production, loss of product, loss of use and loss of revenue, profit or anticipated profit (if any) whether direct or indirect, to the extent that these are not included in (i), whether or not foreseeable at the date of the Order;
- 1.4 "**Contract Price**" means the price agreed between the Parties to be payable by the Customer in relation to the performance of an Order by Pryme;
- 1.5 "**Co-Venturer**" means any co-venturer of the Customer which from time to time has an interest in the licence under which Work is being performed and the successors and assignees of such co-venturer;
- 1.6 "**Customer**" means the organisation or individual which has agreed with Pryme that Pryme shall supply Sale Goods, Rental Equipment or perform Services in accordance with the Order;
- 1.7 "**Customer Group**" means the Customer, its Affiliates, and its and their customers of any tier, Co-Venturers, partners, contractors and subcontractors of any tier (other than any member of the Pryme Group), and the officers, directors, shareholders, consultants, personnel (including agency personnel) and employees of all of the foregoing;
- 1.8 "**Designated Location**" means the location where the Customer instructs Pryme to perform Services and/or to deposit Sale Goods and/or Rental Equipment;
- 1.9 "**Intellectual Property Rights**" means any patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in

get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, confidential information (including know-how and trade secrets) in any form, and any 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, these 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;

- 1.10 **"Other Contractor"** shall mean any other contractor engaged by the Customer to perform work at the Designated Location or another site and which has entered into contract(s) with the Customer;
- 1.11 **"Other Contractor Group"** shall mean the Other Contractor, its subcontractors, its and their Affiliates, its and their respective directors, officers and personnel (including agency personnel) but shall not include any member of the Customer Group or the Pryme Group;
- 1.12 **"Order"** means an order in any form which is concluded between Pryme and the Customer;
- 1.13 **"Party"** means each of the Customer and Pryme and **"Parties"** means the Customer and Pryme collectively;
- 1.14 **"Pryme Group"** means Pryme, the Subcontractors, its and their Affiliates, and its and their respective officers and personnel (including agency personnel), but shall not include any member of the Customer Group;
- 1.15 **"Rental Equipment"** means any goods and / or equipment to be supplied by Pryme to the Customer on a rental basis in accordance with the terms of the Order;
- 1.16 **"Rental Period"** means the period of time commencing and expiring on the respective dates stipulated on the Order;
- 1.17 **"Sale Goods"** means any goods and / or equipment to be sold to the Customer in accordance with the terms of the Order;
- 1.18 **"Services"** means services performed by Pryme Group in accordance with the requirements of the Order;
- 1.19 **"Special Conditions"** means the special conditions that the Parties have mutually agreed in relation to any Order;
- 1.20 **"Subcontractors"** means all subcontractors of any tier who are performing work in connection with the Order, their respective Affiliates and their respective directors, officers and employees (including any agency personnel);
- 1.21 **"Tax"** means any tax, duty or charge including any interest or penalty thereon which may be properly and lawfully assessed upon Pryme by any appropriate governmental authority upon, or measured by or incident to the performance of the Customer's duties under any Order;
- 1.22 **"Technical Information"** means all such information provided by or caused to be provided by the Customer in connection with the Order;
- 1.23 **"Third Party"** means any individual, entity or party which is not a member of the Customer Group or Pryme Group; and

1.24 **"Work"** means collectively the supply by Pryme of the Sale Goods, the Rental Equipment and/or the performance of the Services as specified in the Order.

## 2 **PREAMBLE**

2.1 The Special Conditions set out within any Order shall take precedence over these Terms and Conditions.

2.2 The Customer shall comply with all terms set forth in these Terms and Conditions and in the Order, to which these Terms and Conditions are attached, including amendments, specifications, and other documents which may be referred to in either or both of the Order or these Terms and Conditions.

2.3 No terms and conditions endorsed upon, delivered with or contained in any Customer's documentation relating to the Order will be incorporated in any Order and the Customer waives any rights which it might otherwise have to rely on such terms and conditions.

2.4 The terms incorporated in any Order may not be amended unless expressly agreed by the Parties in writing.

2.5 Any acceptance or acknowledgement of an Order by the Customer, even if containing or referencing terms inconsistent with or in addition to the terms of the Order, shall be deemed as a full acceptance by the Customer of the Order, and the inconsistent or additional terms shall be deemed ineffective unless they were specifically and expressly accepted by Pryme in writing.

## 3 **THE CUSTOMER'S OBLIGATIONS**

3.1 Pryme will not be liable for any loss or damage resulting from the failure of the Customer to use the Sale Goods and/or Rental Equipment in accordance with any specific operating conditions set out in the Order or otherwise provided to the Customer by Pryme.

3.2 Where Rental Equipment is provided as part of the Work, the Customer must:-

3.2.1.1 ensure that Rental Equipment is stored in a safe and hazard free environment; and

3.2.1.2 comply with Pryme's operating instructions regarding any Rental Equipment.

## 4 **PRYME'S OBLIGATIONS**

4.1 Pryme shall:

4.1.1 supply the Sale Goods, the Rental Equipment and/or the Services which are required to be supplied under the Order in accordance with the terms of each Order;

4.1.2 ensure that all Sale Goods and Rental Equipment supplied pursuant to any Order are free from defects and are of good quality and workmanship;

4.1.3 carry out all Work with the skill to be expected of a reputable supplier experienced in the type of Work to be carried out under the Order; and

4.1.4 comply with all applicable laws and regulations when performing its obligations under the Order.

## 5 **DEFECTS CORRECTION**

- 5.1 Pryme warrants that it shall perform the Work in accordance with the provisions of the Order, and all Work shall be free from defects.
- 5.2 If the Customer notifies Pryme of any defects in the Sale Goods within twelve (12) months from the date upon which the Sale Goods were delivered to the Customer, Pryme shall carry out all works necessary to correct any defects in the Sale Goods.
- 5.3 If any Rental Equipment ceases to operate properly during any Rental Period, Pryme shall carry out all works necessary to correct any defects in the Rental Equipment arising from any default of Pryme.
- 5.4 If the Customer notifies Pryme of any defects in the Services, or any defects correction work carried out by Pryme, which arise within twelve (12) months of the completion of the Services to be performed pursuant to the Order, Pryme shall carry out all works necessary to correct such defects in the Services.
- 5.5 For the purposes of Clauses 5.2, 5.3 and 5.4, Pryme shall not be liable to the Customer for the costs of helicopter transport of personnel between the shore-based heliport and offshore or for the costs of offshore accommodation and messing.
- 5.6 Pryme's warranty in Clause 5.1 shall exclude liability for defects arising from improper use, use of unapproved spares, unauthorised modification or alteration of the Works, normal wear and tear and/or the failure of the Customer to provide proper storage, installation, operation and/or maintenance in accordance with the instructions provided by Pryme or otherwise good industry practice.
- 5.7 The Rental Period commences on the date specified in the Order and shall expire on the date specified in the Order, unless the Parties agree to the contrary.
- 6 TAXES**
- 6.1 Pryme shall pay all Taxes for which Pryme is liable as imposed by any appropriate governmental authority whether of the United Kingdom or elsewhere
- 6.2 If the activities in performance of any Order are carried out on the UK Continental Shelf and in the UK Territorial Waters, Pryme shall use reasonable endeavours to obtain an exemption certificate pursuant to paragraph 7 of Schedule 15 of the Finance Act 1973.
- 6.3 To the extent that payments to be made under any Order attract Value Added Tax (or any equivalent tax or charge), the proper amount of such Value Added Tax shall be shown as a separate item on the invoices issued by Pryme. Value Added Tax shall be added to the Contract Price as appropriate.
- 7 INDEPENDENT CONTRACTOR**
- 7.1 Pryme shall perform its obligations under any Order as an independent contractor and not as an employee or agent of the Customer. Pryme shall maintain complete control over its employees.
- 8 INDEMNITIES**
- 8.1 Subject to Clause 9, Pryme shall be responsible for and shall save, indemnify, defend and hold harmless the Customer Group from and against all Claims in respect of:

- 8.1.1.1 loss of or damage to the property of Pryme Group whether owned, hired, leased or otherwise provided by Pryme Group (other than the Rental Equipment) arising from, relating to or in connection with the performance or non-performance of any Order;
- 8.1.2 personal injury including death or disease to any person employed by Pryme Group arising from, relating to or in connection with the performance or non-performance of any Order; and
- 8.1.3 subject to Clause 8.4, personal injury including death or disease sustained by any Third Party or loss of or damage to the property of any Third Party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of Pryme Group.
- 8.2 Subject to Clause 9, the Customer shall be responsible for and shall save, indemnify, defend and hold harmless the Pryme Group from and against all Claims in respect of:
- 8.2.1 loss of or damage to property of the Customer Group and the Rental Equipment arising from, related to or in connection with the performance or non-performance of the Order;
- 8.2.2 personal injury including death or disease to any person employed by the Customer Group arising from, relating to or in connection with the performance or non-performance of the Order; and
- 8.2.3 subject to Clause 8.4, personal injury including death or disease sustained by any Third Party or loss of or damage to the property of any Third Party to the extent that any such injury is caused by the negligence or breach of duty of the Customer Group.
- 8.3 Commencing from the effective date on which any Other Contractor became bound by a clause effectively containing the same undertaking as this Clause 8.3, in any contract which any Other Contractor has entered into with the Customer, and for the duration that the Other Contractor remains bound by the provisions of such clause, Pryme shall save, indemnify, defend and hold harmless the Other Contractor Group from and against all Claims in respect of:
- (a) loss of or damage to property of the Pryme Group whether owned, hired, leased or otherwise provided by the Pryme Group arising from or relating to the performance of the Order; and
- (b) personal injury including death or disease to any person employed by the Pryme Group arising from or related to the performance of the Order; and
- (c) any Consequential Loss sustained by the Pryme Group.
- 8.4 All exclusions and indemnities given under this Clause 8 (save for those under Clauses 8.1.3 and 8.2.3) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any Claim in tort, under contract or otherwise at law.
- 8.5 If either Party becomes aware of any incident likely to give rise to a Claim under the above indemnities, they shall notify the other Party and both Parties shall co-operate fully in investigating the incident.
- 9 CONSEQUENTIAL LOSS**
- 9.1 Pryme shall save, indemnify, defend and hold harmless the Customer Group from any

Consequential Loss suffered by Pryme Group arising from, relating to or in connection with the performance or non-performance of any Order.

9.2 The Customer shall save, indemnify, defend and hold harmless Pryme Group from any Consequential Loss suffered by the Customer Group arising from, relating to or in connection with the performance or non-performance of any Order.

## 10 **INSURANCE**

10.1 Pryme shall procure and maintain during the period of performance of the Order, the following insurances.

10.1.1 employer's liability insurance which complies with all applicable legislation; and

10.1.2 third party liability insurance sufficient to ensure Pryme's obligations in Clause 8 can be met.

10.2 Pryme's insurances shall be endorsed to provide that underwriters waive any rights of recourse including in particular subrogation rights against the Customer Group.

## 11 **HEALTH, SAFETY AND ENVIRONMENT**

11.1 Pryme shall comply with all of the Customer's safety rules and procedures which are intimated to Pryme in writing.

11.2 If, in the reasonable opinion of Pryme, the Designated Location or any part thereof, or any aspects thereof, fail to comply with any reasonable safety standards, including but not limited to applicable rules and regulations on health and safety in force from time to time, or would be reasonably likely to cause an accident or incident or would prevent Pryme from ensuring a safe working environment for its employees, representatives, agents and Subcontractors, Pryme shall, on giving written notice to the Customer, be immediately entitled to:

(a) postpone commencement of the Work; and/or

(b) suspend all or any part of the Work that has been commenced and remove its employees, representatives, agents and Subcontractors from the Designated Location;

until such time as the Customer has met such reasonable safety standards.

## 12 **TERMINATION**

12.1 The Customer may cancel all or any part of the Work at any time by notice in writing to Pryme in which case the Customer shall make payment for any Work performed in accordance with the Order up to the date of cancellation together with such reasonable costs as agreed between the Parties at the time of termination of the Order. This shall be in full and final settlement of any payments due under the Order.

12.2 Either Party may terminate any Order or any part thereof in the event that the other Party becomes bankrupt or makes a composition or arrangement with its creditors or a winding-up order of such Party is made, or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional liquidator, receiver, administrator or manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 of the Insolvency Act 1986, or possession being taken by or on behalf

of the holders of any debenture secured by a floating charge of any property comprised in or subject to the floating charge, or any equivalent act or thing being done or suffered under any applicable law.

### 13 **FORCE MAJEURE**

13.1 Neither Party shall be liable to the other or be deemed to be in breach of its obligations by reason of any delay in performing any obligations arising under any Order, if the delay or failure was due to any force majeure occurrence which was caused by an occurrence which is beyond the Party's reasonable control which the Party promptly notifies the other Party in writing. Without limitation, the following shall be regarded as "force majeure occurrences" but only to the extent that they are beyond either parties' reasonable control and which by the exercise of reasonable diligence either Party is unable to provide against: act of god, epidemic, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, or civil disturbance; changes to acts, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; official strikes, lock-outs or other official trade disputes.

### 14 **DELIVERY**

14.1 Delivery of any Sale Goods and/or any Rental Equipment to be supplied under any Order shall be made to the Designated Location specified in the Order (or any such other alternative location which is agreed between the Parties) by the relevant date(s) specified in the Order.

14.2 The type and route of shipment of any Sale Goods and / or any Rental Equipment shall be agreed between the Parties.

14.3 Unless otherwise stated in the Order, if Pryme fails to deliver the Sale Goods and/or any Rental Equipment and/or complete the Services as scheduled, Pryme shall pay liquidated damages to the Customer calculated in accordance with the rates set out in the Order. The Parties agree that such amounts are a reasonable pre-estimate of the damages which the Customer may suffer as a result of delay based on circumstances existing at the time the Order was issued and are to be assessed as liquidated damages and not as a penalty.

14.4 The liquidated damages provided for in Clause 14.3 shall be the Customer's sole and exclusive remedy in the event of any delay in the supply of the Works under the Order.

### 15 **TITLE AND RISK**

15.1 Title and risk in any Sale Goods to be supplied hereunder to the Customer shall pass to the Customer upon delivery of the Sale Goods to the Designated Location in accordance with the relevant date of delivery in the Order.

15.2 In respect of Rental Equipment, the Customer will be responsible for risk of loss or damage to such Rental Equipment during the entire Rental Period.

### 16 **INTELLECTUAL PROPERTY RIGHTS**

16.1 To the extent any Intellectual Property Rights are created or otherwise arise in connection with:

- (a) developments by Pryme Group which are based wholly on data, equipment, processes, substances and the like in the possession of Pryme Group at the date of the Order or otherwise wholly produced outside of the Order; or

- (b) enhancements of or in the existing Intellectual Property Rights of Pryme Group, such rights shall vest in Pryme or another company within Pryme Group as the case may be.
- 16.2 To the extent any Intellectual Property Rights are created or otherwise arise in connection with:
- (a) developments by the Customer Group which are based wholly on data, equipment, processes, substances and the like in the possession of the Customer Group at the date of the Order or otherwise produced outside of the Order; or
- (b) enhancements of or in the existing Intellectual Property Rights of the Customer Group,
- such rights shall vest in the Customer or its Affiliates as the case may be.
- 16.3 Except as provided in Clauses 16.1 and 16.2, any Intellectual Property Rights arising or otherwise created in connection with the provision of the Work shall vest in Pryme.
- 16.4 Pryme shall save, indemnify, defend and hold harmless the Customer Group from all Claims of every kind and nature for, or arising out of, any alleged infringement of any Intellectual Property Right of any nature, arising out of or in connection with the performance of the obligations of Pryme under the Order, except where such infringement necessarily arises from the Technical Information and/or the Customer's instructions. The above indemnity is conditional on the Customer not making any admissions or statement which might have a negative effect in relation to any infringement Claims, on the Customer giving Pryme the earliest possible notice in writing of any Claim being made or action threatened against the Customer and on the Customer permitting Pryme at his own expense to conduct any litigation that may ensue and all negotiations for the settlement of the Claim.
- 16.5 The Customer shall save, indemnify, defend and hold harmless the Pryme Group from all Claims of every kind and nature for, or arising out of, any alleged infringement of any Intellectual Property Right of any nature arising out of or in connection with the performance of the obligations of the Customer under the Order or the use by the Pryme Group of Technical Information or materials or equipment supplied by the Customer.
- 17 **ASSIGNMENT**
- 17.1 Each Party agrees not to assign or transfer any Order in whole or in part, except with the prior written consent of the other Party, not to be unreasonably withheld.
- 18 **PAYMENT**
- 18.1 The Customer shall be liable for payment for Services performed by or on behalf of Pryme at the rate specified in the Order.
- 18.2 Pryme shall invoice the Customer on a monthly basis. Payment of undisputed amounts shall be made within thirty (30) calendar days after receipt of Pryme's invoice.
- 18.3 Any dispute shall be resolved without delay and any amounts agreed to be payable shall then be settled promptly.
- 18.4 Interest for the late payment of any correctly prepared invoices shall be charged at a rate that is equal to the current Bank of England Base Rate plus three percent (3%).



**19 LIMITATION OF LIABILITY**

- 19.1 Pryme's total cumulative liability to the Customer arising out of or related to the performance of the Order, whether by way of indemnity, for breach of contract, warranty or guarantee obligations or by reason of any tort, statute or otherwise, shall in no event exceed [one hundred percent (100%)] of the Contract Price. This Clause 19 shall survive any termination, default, cancellation or any other discontinuance of the Order.
- 19.2 Any exclusion or limitation of liability under the Order shall exclude or limit such liability not only in contract but also in tort or otherwise at law.
- 19.3 Subject to the provisions of Clause 9, this Clause 19 shall apply notwithstanding any provisions to the contrary elsewhere in the Order or these Terms and Conditions.
- 19.4 The limitation of liability contained in Clause 19.1 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of Pryme or any other entity or party and shall apply irrespective of any Claim in tort, under contract or otherwise at law.

**20 RECORDS AND AUDITS**

- 20.1 Pryme shall maintain true and correct records in connection with the Order and shall retain all such records for at least twenty four (24) months after completion of the Order. The Customer may from time to time and at any time after the date of the Order until twenty four (24) months after performance of the Order, upon reasonable prior written notice to Pryme, make an audit of all records held by Pryme in connection with the specific Order.

**21 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

- 21.1 Except to the extent that the indemnified parties shall be entitled to enforce Clause 8, Clause 9 and Clause 16.4, the parties intend that no provision of any Order shall, by virtue of the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") confer any benefit on, nor be enforceable by any person who is not a party to any Order, which Order may be rescinded, amended or varied without notice to or the consent of any third party even if, as a result, that third party's right to enforce a term of any Order may be varied or extinguished.

**22 CONFIDENTIALITY**

- 22.1 Pryme agrees to hold strictly confidential and not (without the prior written consent of and in accordance with any conditions imposed by the Customer) to disclose to any third party any information provided by the Customer for a period of five (5) years following completion of the performance of the Order. This Clause 22.1 shall not apply where the information was in the public domain before it was furnished to Pryme or, after it was forwarded to Pryme, entered into the public domain otherwise than as a result of (i) a breach by Pryme Group of this Clause 22.1 or (ii) a breach of a confidentiality obligation by the disclosure where the breach was known to Pryme Group; or where disclosure is necessary in order to comply with an order of a court of competent jurisdiction, applicable legislation or regulatory requirements.

**23 ANTI-CORRUPTION OBLIGATIONS**

- 23.1 Each Party represents and warrants that it will comply with all applicable laws in respect of the performance of its obligations under these Terms and Conditions and any relative Orders including without limitation all applicable laws and regulations relating to taxation, exchange controls, customs matters, anti-corruption, anti-trust, anti-money laundering, trade

sanctions and criminal matters. In particular, the Parties shall fully comply with the provisions of the Bribery Act 2010 (as enacted in the United Kingdom and as amended, supplemented and / or replaced from time to time) and each Party represents and warrants that it will not do anything which could contravene the Bribery Act 2010 or cause the other Party to contravene the Bribery Act 2010. Furthermore, each Party represents and warrants that it will not receive, make payment of or offer to make payment of or receive any inducement, improper payment or bribe in relation to the Work.

- 23.2 Each Party undertakes not to give or receive (either directly or indirectly) any money, personal services or any other thing of value (with the exception of customary promotional materials and occasional reasonable business entertainment) to influence the award of any contract. Each Party also undertakes not to engage in any activity which may reasonably be deemed by the other Party to be a corrupt practice. Each Party represents and warrants that no portion of the money paid to it and no proportion of any other benefit provided to it pursuant to the Terms and Conditions or any relative Orders has been or shall be directly or indirectly granted, paid, offered or promised for the purpose of influencing the award or retention of business from the other Party.
- 23.3 The Parties shall each ensure that neither it nor anyone acting on its behalf, including any third party retained by it to provide services directly or indirectly to the other Party pursuant to any Order, either directly or indirectly makes, offers, promises or authorises payment of a bribe or an improper payment to any government official or officer in connection with the Order.
- 23.4 Each Party will promptly report to the other Party if it becomes aware that any bribe or improper payment has been paid in relation to the Work or if it has reasonable grounds to believe that any such bribe or improper payment has been paid. In such a circumstance, such Party shall also cooperate in good faith with any investigations which the other Party may seek to initiate in order to determine whether any such bribe or improper payment has been paid.

## 24 **ENTIRE AGREEMENT**

- 24.1 Once agreed, an Order supersedes all prior agreements, understandings and commitments, whether oral or in writing between the Parties concerning the subject matter.

## 25 **GENERAL**

- 25.1 No modifications to any Order shall be binding unless agreed in writing between the authorised representatives of both Parties.
- 25.2 Should any provision of these Terms and Conditions or the Order be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic legal and commercial objectives of the invalid or unenforceable provision.
- 25.3 The warranties set forth in this Order are exclusive and in lieu of all other warranties and guarantees (including any warranty of merchantability or fitness for purpose for use for the purpose intended) whether written or oral or implied in fact or in law and whether based on statute, warranty, contract, tort (including negligence of any nature whether sole or concurrent), or otherwise.

**26 GOVERNING LAW**

26.1 These Terms and Conditions and all Orders which incorporate these Terms and Conditions (inclusive of all non-contractual rights and claims) shall be governed by and construed according to the laws of England and Wales.

**27 DISPUTES**

27.1 Any dispute, difference, controversy or claim between the Parties in connection with or arising out of these Terms and Conditions or any Order (a "**Dispute**") shall be resolved by means of the following procedure:

- (a) One Party shall send the other Party notice of the Dispute in accordance with Clause 28.
- (b) The Dispute will initially be referred to the authorised representatives of both Parties who shall discuss the Dispute and make all reasonable efforts to reach an agreement on the settlement of the Dispute.
- (c) If no agreement on the settlement of the Dispute has been reached seven (7) days from when the notice of the Dispute is received, then either Party may escalate the Dispute to be considered by a person of appropriate seniority by providing notice of the escalation of the Dispute in accordance with Clause 28.
- (d) Once a Dispute has been escalated, the Parties shall each nominate one (1) person of greater seniority than the representatives of the Parties. These persons must meet within seven (7) days from when the notice of escalation of the Dispute is received, at a place and time determined by the Parties, with the aim of reaching an agreement on the settlement of the Dispute.

27.2 In the absence of any agreement on the settlement of the Dispute being reached after seven (7) days from when the notice of escalation of the Dispute is received, the Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Clause 27.2, in accordance with the following:

- (a) The number of arbitrators shall be three. Each Party shall be entitled to nominate one (1) arbitrator. The arbitrators nominated by the Parties shall meet, agree and nominate the third arbitrator, who shall be the chairman of the Arbitral Tribunal, within five (5) days of the second party-nominated arbitrator's nomination.
- (b) If an arbitrator is not nominated in accordance with the procedure provided in Clause 27.2(a), then the LCIA Court shall appoint that arbitrator.
- (c) The seat, or legal place, of arbitration shall be London, England.
- (d) The language to be used in the arbitral proceedings shall be English.

27.3 The proper law of this Clause 27 (the "**Arbitration Agreement**") shall be the law of England, excluding any choice of law rules which would refer the interpretation of the Arbitration Agreement to the laws of another jurisdiction other than England.

27.4 Notwithstanding the requirements set out in Clause 27.1, a Party may immediately commence arbitral proceedings under Clause 27.2 (without sending a notice of the Dispute

or notice of escalation of the Dispute), but only where doing so is necessary to maintain a claim that would otherwise be time barred due to a contractual or statutory limitations period.

27.5 Nothing in this Clause 27 shall prejudice or prevent any Party's right to apply to any competent state court or other judicial authority for interim or conservatory measures before notice of a Dispute, the formation of the Arbitral Tribunal or thereafter.

## 28 **NOTICES**

28.1 Any notice to be given under any Order shall be in writing and may be delivered by hand, by first class pre-paid post, by recorded delivery or by commercial courier. Delivery by commercial courier shall be regarded as delivery by hand.

28.2 Notices shall be sent to the address of the relevant Party as set out in the relevant Order.

28.3 Any notice shall be deemed to have been received: (a) if delivered by hand, at the time of delivery; or (b) if sent by first class pre-paid post or recorded delivery, two (2) working days after mailing, provided that if the time of such deemed receipt is not during normal hours of business in the time zone of the territory of the recipient, notice shall be deemed to have been received at 10:00am on the next working day in the territory of the recipient.

28.4 Any notice required to be given under these Terms and Conditions or any Order shall not be validly given if transmitted by e-mail. As a convenience and without prejudice to the validity and content of a notice properly given pursuant to this Clause 28, a Party may by e-mail provide the other Party with an electronic copy of any notice sent. Receipt, whether or not acknowledged, of such electronic copy will not affect the date of deemed receipt under Clause 28.3 and may be disregarded by the other Party.