

TERMS & CONDITIONS FOR SUPPLY OF GOODS & SERVICES

August 2013 Edition

These conditions apply to the provision of goods and services by the Company. If you, the Buyer are only purchasing goods from the Company, then the provisions of clauses 7 to 9 will not apply. Clauses 7 to 9 only apply to the provision of Services.

1. INTERPRETATION

1.1 In these Terms:

- "Buyer"** means the person whose order (written or oral) for the Goods and/or Services is accepted by the Company whose details are specified in the Order;
- "Company"** means BOGE Compressors Limited (CRN No: 3009782) whose registered office is at Rastrick Common, Brighouse, West Yorkshire HD6 3DR
- "Contract"** means the contract for the purchase of Goods and Services comprising these Terms and the Order;
- "Force Majeure"** means, in relation to either party, any circumstances beyond the reasonable control of that party including, without limitation, any fire, flood, lightening, storm, act of God, epidemic, strike, lock-out, or other industrial action, shortage of material or equipment, riot, civil commotion, war, enemy action or compliance with any government or governmental authority;
- "Goods"** means the goods (including any instalment of the goods; any part of them; any parts; and/or excess materials) which the Company is to supply to the Buyer in accordance with these Terms;
- "Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- "Normal Working Hours"** means the hours of 8.30 a.m. to 5.00 p.m. (inclusive) on any Working Day;
- "Order"** the Order for the Goods and/or Services to be agreed by the Company and the Buyer;
- "Terms"** means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company;
- "Working Day"** means any day other than Saturday or Sunday or a Bank or Public Holiday in England and Wales;

1.2 The following definitions are only applicable where the Buyer is being supplied with Services:

"Equipment" means the equipment, the description and location of which are shown in the Order;

"Location" means the location of the Equipment shown in the Order, or any other location agreed from time to time between the parties in writing;

"Services" means the repair and maintenance services to be provided by the Company to the Buyer as detailed in the Order.

1.3 Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. **BASIS OF CONTRACT**

2.1 The Company shall sell and the Buyer shall purchase the Goods and/or Services detailed in the Order when the Order is accepted by the Company. The Company will accept the Order either by dispatching its standard order acknowledgement or if no such acknowledgement is sent, by supplying the Goods and/or Services to the Buyer, subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms to which any such order is made or purported to be made, by the Buyer. Each Order is accepted by the Company entirely at its discretion and shall constitute an individual contract between the Company and the Buyer.

2.2 No variation to these Terms shall be binding unless signed by an authorised representative of the Company.

2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing and signed by a duly authorised representative of the Company. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

3. **THE GOODS**

3.1 The Goods are described in the Order.

3.2 The Company reserves the right to amend any specification relating to the Goods if required by any applicable statutory or regulatory requirement.

4. **DELIVERY**

4.1 The Company will use its reasonable endeavours to supply the Goods on the date or dates specified in the Order, but any dates given for supply of the Goods are approximate only and are not guaranteed by the Company. The Company shall not be liable for any delay in delivery of the Goods however caused and any failure of the Company to supply the Goods by a specified date or dates shall not entitle the Buyer to repudiate or cancel the contract. Time for supply shall not be of the essence of the Contract. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

- 4.2 Where the Goods are to be supplied in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 4.3 Delivery of the Goods shall be deemed to have taken place:
- 4.3.1 upon the physical handing over by the Company of the Goods to the Buyer or his designated carrier or agent;
 - 4.3.2 upon consignment of the Goods by the Company to the Post Office at the request of the Buyer for delivery in the normal course of post;
 - 4.3.3 upon the removal of the Goods from the Company's premises where the Company has, at the request of the Buyer, agreed to transport the Goods by its own transport or by carrier designated by the Company;
 - 4.3.4 upon despatch of the Goods to storage facilities either at the request of the Buyer or due to his failure or refusal to accept delivery.
- 4.4 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- 4.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage;
 - 4.4.2 storage and insurance of the Goods shall be at the Buyer's risk and expense; or
 - 4.4.3 if the Buyer fails to take delivery of the Goods within fourteen days of notification that they are ready for delivery the Company shall have the right to sell, dispose of or otherwise deal with the Goods and the Buyer shall be liable to the Company for all loss (including loss of profits) or damage which the Company shall suffer in consequence of the Buyer's failure to take supply of the Goods or of such sale.
- 4.5 Non-delivery of the Goods shall be notified to the Company by the Buyer within seven days of the date of delivery indicated by the Company.
- 4.6 The Company and (where relevant) any carriers must be notified within three days of delivery of any damage or shortage of the Goods and the Buyer must retain for inspection any damaged Goods and packaging.
- 4.7 The Company shall incur no liability whatsoever if the Buyer fails to notify the Company within the time limit specified in clauses 4.5 and 4.6 of non-supply, damage or shortage as above.

5. **QUALITY AND ACCEPTANCE**

- 5.1 The Company warrants that on delivery the Goods shall:
- 5.1.1 conform in all material respects with their description; and
 - 5.1.2 be free from material defects in design, material and workmanship.

- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Buyer gives notice in writing within seven days of delivery of the Goods that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 the Company is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost,
- the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.3.1 the Buyer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 5.3.3 the defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Buyer;
 - 5.3.4 the Buyer alters or repairs such Goods without the written consent of the Company;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 5.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
 - 5.3.7 there is a defect in the Goods and that is not notified to the Company within two months of the delivery of the Goods to the Buyer, or if the defect is so slight that it would be unreasonable for the Buyer to reject or claim damage in respect of that defect;
 - 5.3.8 the total price for the Goods has not been paid by the due date for payment;
 - 5.3.9 the parts, materials or equipment have not been manufactured by the Company. In such cases the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company;
 - 5.3.10 the Goods are found not to be fit for purpose unless that purpose is one for which the Company commonly supplies the Goods or is specified in the Contract.
- 5.4 Except as provided in this clause 5, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 5.2.

- 5.6 If the Goods are supplied at the same time as Goods of a different description, the Buyer shall be entitled to accept the Goods of one description and reject Goods of a different description, but not to reject the entire consignment.
- 5.7 If the Buyer does not notify any defect to the Company within seven days of supply, the Buyer shall be deemed to have accepted them.
- 5.8 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

6. **TITLE AND RISK**

- 6.1 The risk in the Goods shall pass to the Buyer:
 - 6.1.1 in the case of Goods to be collected from the Company's premises at the time when the Company notifies the Buyer that the Goods are available for collection; or
 - 6.1.2 in the case of the Goods to be delivered otherwise than at the Company's premises, at the time of delivery as specified in clause 4.3 above or, if the Buyer fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 6.2 Title to the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of:
 - 6.2.1 the price of the Goods; and
 - 6.2.2 the price of all other goods and services agreed to be sold or supplied by the Company to the Buyer for which payment has become due.
- 6.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall:
 - 6.3.1 hold the Goods as the Company's fiduciary agent and bailee;
 - 6.3.2 keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
 - 6.3.5 notify the Company immediately if it becomes subject to any of the events listed in clause 20.1.2 to clause 20.1.11; and
 - 6.3.6 give the Company such information relating to the Goods as the Company may require from time to time,but the Buyer may resell or use the Goods in the ordinary course of its business.
- 6.4 Until such time as the property in the Goods passes to the Buyer, (and provided that the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company. The Buyer grants the Company, its agents,

representatives and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, and/or to ensure that the Buyer is complying with its obligations in clause 6.3 or, where the Buyer's right to possession has terminated to recover them.

- 6.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the goods has not passed from the Company.
- 6.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all moneys owing by the Buyer to the Company shall (without limiting any other right or remedy of the Company) forthwith become due and payable.
- 6.7 In the event of certain Goods having been paid for by the Buyer and other Goods not having been so paid for the onus of proof shall be on the Buyer to show that any Goods remaining in its possession are Goods for which the Company has been paid.
- 6.8 Where the Company is unable to determine whether any Goods are the Goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all Goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7. **SUPPLY OF THE SERVICES**

Clauses 7 to 9 are only applicable where the Buyer is purchasing Services from the Company.

- 7.1 During the period of the Contract the Company shall provide the Buyer with the Services specified in the Order.
- 7.2 The Services shall be carried out by one of the Company's suitably qualified and duly authorised representatives attending at the Location at such times during Normal Working Hours as may be agreed in advance in writing between the Company and the Buyer from time to time.
- 7.3 If the Company's representative discovers a defect in or malfunction of the Equipment in the course of carrying out the Services, the Company's representative shall notify the Buyer giving details of the defect and malfunction. The Company's representative shall take instructions from the Buyer as to whether the Buyer wants the defect or malfunction to be remedied by the Company's representative. If the Buyer instructs the Company's representative to remedy the defect or malfunction it shall confirm its instructions in writing. The Company's representative will then use reasonable endeavours to repair it at the Location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Normal Working Hours), the Company's representative will seek to make suitable arrangements with the Buyer for:
 - 7.3.1 a further visit to be made to the Location during Normal Working Hours for the repair of the defect or malfunction; or
 - 7.3.2 if the Equipment is inoperative as a result of the defect or malfunction, its repair at the Location outside Normal Working Hours; or
 - 7.3.3 if it is not reasonably practicable for the defect or malfunction to be repaired otherwise, the removal of the Equipment (or, where practicable, the part of the Equipment in question) for the purposes of repair.

- 7.4 If the Buyer reports a defect in or malfunction of the Equipment during Normal Working Hours, the Company shall use its reasonable endeavours to ensure that one of the Company's suitably qualified and duly authorised representatives attends at the Location, during Normal Working Hours, at such times as may be agreed in advance between the Company and the Buyer. The Company's representative shall investigate the problem and notify the Buyer of the specific details of the defect and malfunction. The Company's representative shall take instructions from the Buyer as to whether the Buyer wants the defect or malfunction to be remedied by the Company's representative. If the Buyer instructs the Company's representative to remedy the defect or malfunction it shall confirm its instructions in writing. The Company's representative will use reasonable endeavours to repair the defect or malfunction at the Location, but if that is not reasonably practicable (or is not reasonably practicable in the time available during Normal Working Hours), the Company's representative shall seek to make such arrangements with the Buyer as are detailed in clause 7.3.
- 7.5 All reports of defects in or malfunctions of the Equipment must be made by telephone or in writing, as appropriate, by a representative of the Buyer and otherwise in such a manner as the Company may reasonably require from time to time.
- 7.6 The Buyer shall not unreasonably withhold its agreement to Equipment being moved to any other location in order for the Company to carry out the Services.
- 7.7 The Company shall ensure that its representatives comply with all safety and security regulations in force at the Buyer's premises which are brought to the attention of such representatives.
- 7.8 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Buyer in any such event.
- 7.9 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 7.10 Unless agreed otherwise in writing, time spent by the Company's representatives travelling to and from the Location to provide the Services will be charged by the Company, in addition to the price paid for the Services, at the Company's standard rates in force from time to time.

8. **CONSUMABLES AND REPLACEMENT PARTS**

- 8.1 In this clause, "Consumables" shall mean oil, filters and cleaning materials.
- 8.2 The Company shall use reasonable endeavours to supply the Buyer with all Consumables required to maintain the Equipment in good working order. No extra charge will be made for the supply of the Consumables.
- 8.3 All Consumables supplied by the Company shall become part of the Equipment.
- 8.4 Any parts and components removed from the Equipment shall become the Company's property, unless otherwise agreed in writing between the parties.

9. **SERVICES NOT INCLUDED**

- 9.1 Items which are not included in the Services are any design defect in the Equipment, or any defect or malfunction which is due to faulty materials or workmanship in manufacture, or which in the Company's opinion has arisen as a result of:

- 9.1.1 electrical work external to the Equipment;
 - 9.1.2 transportation or relocation of the Equipment not performed by or on behalf of the Company;
 - 9.1.3 any error or omission relating to the operation or daily and weekly maintenance of the Equipment as specified in clause 10.1.11;
 - 9.1.4 any modification, adjustment or repair to the Equipment made by a third party without the written consent of the Company;
 - 9.1.5 the subjection of the Equipment by the Buyer to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure or fluctuation of electrical power, air conditioning, humidity control;
 - 9.1.6 other environmental controls;
 - 9.1.7 any other cause (except fair wear and tear) which is not due to the neglect or default of the Company; or
- 9.2 If the Company is required by the Buyer to provide the Services outside Normal Working Hours, the Company reserves the right to make an additional charge for such Services.
- 9.3 If on investigation the Company reasonably determines that any defect in or malfunction of the Equipment is the result of any of the matters referred to in clause 9.1, the Buyer shall be liable for all costs incurred by the Company in making the investigation and determining its cause.
- 9.4 If any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through the Company's fault (as to whether either of which events has occurred the Company's decision shall be final and binding on the Buyer) the Company reserves the right to terminate the Contract with immediate effect, by giving written notice to the Buyer, in respect of the whole or any part of the Equipment which can no longer be maintained, in which case the Company shall repay to the Buyer a fair proportion of any charges for the Services which have been paid in advance by the Buyer.
- 9.5 Except as expressly provided in this Contract or as agreed between the parties in writing, the Company shall have no obligation to provide any Services to the Buyer outside Normal Working Hours.

10. **BUYER'S OBLIGATIONS**

- 10.1 The Buyer shall:
- 10.1.1 ensure that the terms of the Order and (if submitted by the Buyer) any specification for the Goods and/or Services are complete and accurate;
 - 10.1.2 co-operate with the Company in all matters relating to the Services;
 - 10.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;

- 10.1.4 provide the Company with such information and materials as the Company may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;
- 10.1.5 prepare the Buyer's premises for the supply of the Goods and/or Services;
- 10.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 10.1.7 keep and maintain all materials, equipment, documents and other property of the Company ("**Company Materials**") at the Buyer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
- 10.1.8 at all times keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;
- 10.1.9 not move the Equipment from the Location without obtaining the prior Written consent of the Company;
- 10.1.10 use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by the Company;
- 10.1.11 carry out daily and weekly maintenance routines in accordance with the original manufacturer's operating manuals; and
- 10.1.12 notify the Company immediately of any increase in running hours, unusual noises, vibrations and other occurrences in relation to the Equipment.
- 10.2 The Buyer shall ensure that the Company's representatives have full and free access to the Equipment and to any records of its use kept by the Buyer to enable the Company to perform its duties.
- 10.3 The Buyer shall provide the Company with such information concerning the Equipment, its application, use, location and environment as the Company may reasonably request to enable it to carry out its duties.
- 10.4 The Buyer shall take all such steps as may be necessary to ensure the safety of any of the Company's representatives who visit any premises of the Buyer.
- 10.5 If the Company's performance of any of its obligations in respect of the Goods and/or Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):
 - 10.5.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services and/or delivery of all further Goods until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;

10.5.2 the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 10.5; and

10.5.3 the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

11. **PRICE**

11.1 The price of the Goods and/or Services shall be the price specified in the Order, or, where no price has been specified in the Order (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of delivery of the Goods and/or Services. All prices quoted are valid for 60 days only, after which time they may be altered by the Company without giving notice to the Buyer.

11.2 The Company reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company in the costs of labour, materials or other costs of manufacture such as without limitation, any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions. The giving of such notice shall bind both parties to the new price.

11.3 Except as otherwise stated in writing by a duly authorised representative of the Company all prices for the Goods are given by the Company on an ex works basis, and where the Company agrees to supply any Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.

11.4 If the Buyer requests the Company's Services without reasonable justification or requires the Company to repair a defect in or malfunction of the Equipment which is due to causes not covered by this Contract, the Buyer shall be liable to pay for such Services separately, at the Company's standard charges from time to time in force.

11.5 The Company reserves the right to make additional charges if arrangements have been made between the parties to carry out the Services on a specific date and the Company's representative is not allowed to carry out the Services on arrival.

11.6 There shall be added to the price for the Goods and/or Services any value added tax and any other tax or duty relating to the manufacture, transportation, sale or delivery of the Goods (whether initially charged on or payable at a later date by the Buyer to the Company).

11.7 Prices are quoted exclusive of trade or quantity discounts which will only apply to the Contract with prior written agreement of a duly authorised representative of the Company.

11.8 If the Buyer cancels an Order placed with the Company more than three Working Days after the Order has been accepted by the Company, the Company reserves the right to charge the Buyer a cancellation fee of 20% of the value of the Order, to cover costs incurred by the Company in relation to the Order.

12. **TERMS OF PAYMENT**

12.1 If the Company has granted the Buyer credit terms, payment for the Goods and/or Services shall fall due 7 days after the date of the invoice or as otherwise agreed by the parties in writing.

- 12.2 In all other cases, unless expressly agreed otherwise in writing with a duly authorised representative of the Company, payment for the Goods and/or must be received by the Company before supply of the Goods and/or Services.
- 12.3 Where the Goods are to be delivered in instalments, payment in full for all the Goods shall fall due before the delivery of the first instalment unless expressly agreed otherwise in writing with a duly authorised representative of the Company.
- 12.4 The Buyer shall not be entitled to set off or counterclaim any sums in reduction of sums due under the Contract.
- 12.5 If the Buyer fails to pay sums due on the due date for payment the Company shall be entitled to charge the Buyer interest on the amounts due at a rate of 6% above the base lending rate in force from time to time of Barclays Bank plc from the due date for payment until the date of actual payment, before and after judgement.

13. **LIABILITY**

- 13.1 Nothing in these Terms shall limit or exclude the Company's liability for:
- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 13.1.2 fraud or fraudulent misrepresentation;
 - 13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 13.1.5 defective products under the Consumer Protection Act 1987.
- 13.2 Subject to clause 13.1:
- 13.2.1 the Company shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 13.2.2 the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed, in respect of Services, the charges paid for the Services during the preceding year and in respect of the Goods, the value of the Goods purchased under the Contract.
- 13.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.4 This clause 13 shall survive termination of the Contract.

14. **DESIGN AND SPECIFICATION**

- 14.1 Drawings, weights, dimensions, specifications and other descriptive information supplied by the Buyer, whether written or verbal, are warranted by the Buyer to be in all respects accurate, complete and suitable for the Buyer's requirements.
- 14.2 Drawings, weights, dimensions, shipping specifications and other descriptive matters produced by the Company are approximate and are not intended to be binding upon the Company, unless specified otherwise in the contract.
- 14.3 The Company reserves the right to alter the specification of any Goods without prior reference to the Buyer, provided that the Goods comply substantially in all other known respects with the Buyer's requirements.

15. **TESTS AND PERFORMANCE**

- 15.1 If the Buyer has agreed with the Company that the Goods shall be tested, the Buyer shall be liable to pay the Company the costs of those tests.
- 15.2 If the Buyer has requested that it be present and/or represented as such tests, the Company shall give the Buyer seven days' notice of the time and place of the tests. Should the Buyer fail to attend, the tests will proceed in the absence of the Buyer and shall be deemed to have been performed in the Buyer's presence.
- 15.3 If the Goods fail to fulfil any estimated performance figures agreed between the Company and the Buyer, the Buyer shall permit the Company reasonable time to work upon the Goods in order to improve the performance figures to a satisfactory level.

16. **SAMPLES AND RETURNS**

- 16.1 Any samples supplied by the Company to the Buyer must be returned carriage paid, in substantially the same condition as they had been when supplied, within one calendar month of supply, or the Buyer will be liable to pay the Company the full price of those samples.
- 16.2 Return of any Goods sent in accordance with the Buyer's Order cannot be accepted unless the Company has agreed in writing to accept their return. It is a requirement that the Goods be insured and carefully packed by the Buyer.

17. **BUYER'S MATERIALS AND PROPERTY**

- 17.1 The Company undertakes work in accordance with the Buyer's own materials or property on the express understanding that, unless otherwise agreed in writing by a duly authorised representative of the Company, while the Company will endeavour to avoid such, it shall not be liable for any damage to such materials, property and plaster work, brickwork, buildings etc caused by the work howsoever arising.
- 17.2 The Buyer is responsible for insuring its materials or property against all risks while in the possession, power or control of the Company and the Company shall not be liable for loss or damage to such during such time.

18. **INTELLECTUAL PROPERTY**

- 18.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by the Company.

- 18.2 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Buyer.
- 18.3 All Company Materials are the exclusive property of the Company.
- 18.4 The Buyer shall indemnify the Company against all actions costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any Intellectual Property Rights of a third party which arise as a result of the Company complying with the Buyer's instructions, whether express or implied.

19. **CONFIDENTIALITY**

A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 19 shall survive termination of the Contract.

20. **DEFAULT AND TERMINATION**

- 20.1 Without limiting its other rights or remedies, where the Buyer:
- 20.1.1 commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing of the breach;
 - 20.1.2 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 20.1.3 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its;
 - 20.1.4 has a petition filed, notice given, a resolution passed, or an order made, for or in connection with the winding up of it;
 - 20.1.5 has a creditor or encumbrancer of it attach or take possession of, or has a distress, execution, sequestration or other such process levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 20.1.6 has an application made to court, or an order made, for the appointment of an administrator or if notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer (being a company);

- 20.1.7 has a floating charge holder over the assets of it (being a company) which has become entitled to appoint or has appointed an administrative receiver;
- 20.1.8 has a person become entitled to appoint a receiver over the assets of it or a receiver appointed over the assets of it;
- 20.1.9 has any event occur, or proceeding taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 20.1.2 to clause 20.1.8 (inclusive);
- 20.1.10 suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 20.1.11 (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
- 20.1.12 the Buyer fails to pay sums due on the due date for payment;

the Company may exercise any of the rights specified in clause 20.2.

- 20.2 If clause 20.1 applies then, without limiting any other right or remedy available to the Company, the Company may:
 - 20.2.1 cancel the Contract or suspend any further deliveries of Goods or the provision of any further Services under the Contract;
 - 20.2.2 if the Goods have been delivered and/or Services supplied but the Buyer has not paid for them, require the price to become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary;
 - 20.2.3 withdraw any credit facility or right to discount from the Buyer;
 - 20.2.4 appropriate any payment made by the Buyer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer);
 - 20.2.5 sell to third parties Goods ordered but not delivered under this or any other contract between the Company and the Buyer; and
 - 20.2.6 terminate immediately the Buyer's right to possession of the Goods and the Company shall be entitled to enforce the provisions of clause 6 and in particular clause 6.4.
- 20.3 In the event of an Order being cancelled by the Company in the circumstances specified in clause 20.1 or being cancelled by the Buyer, the Buyer shall indemnify the Company against all its costs (including loss of profits, labour, materials and overheads) and all expenses and damages incurred by the Company in connection with the order and its cancellation (the Company giving credit for the value of the materials sold or utilised for other purposes).
- 20.4 The Company may terminate the Contract by giving the Buyer one month's notice in writing.

21. **CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- 21.1.1 the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 21.1.2 the Buyer shall return all of the Company Materials. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 21.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 21.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

22. **FORCE MAJEURE**

- 22.1 The Company shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 22.2 If the Force Majeure Event prevents the Company from providing any of the Services and/or Goods for more than six months, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

23. **NOTICES**

- 23.1 A notice or other information required to be given by either party to the other may be given by hand or sent by first class pre-paid post or facsimile transmission to the other party at the address referred to in the Contract.
- 23.2 A notice delivered by hand shall be deemed to have been received at the date and time on which the delivery is received and signed for.
- 23.3 A notice given by post shall be deemed to have been given on the second Working Day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, and sent by first class, pre-paid post, shall be sufficient evidence that such notice or information has been duly given.
- 23.4 A notice or other information sent by facsimile transmission shall be deemed to have been duly sent on the date of transmission, provided that a confirming copy is sent by first class pre-paid post to the other party within 24 hours after transmission.
- 23.5 A notice or other transmission or any legal proceedings concerning or arising out of the Contract shall be addressed to the company secretary of the party in question at its registered office, or to such other officer or at such other address as may be notified by the party in question in writing from time to time, in accordance with this clause 23.

24. GENERAL

24.1 Severance:

24.1.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

24.1.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

24.2 **Waiver:** No failure on the part of either party to the Contract to exercise any rights under the Contract at any time shall constitute a waiver of the Contract nor shall any single or partial exercise of any right under the contract preclude any other or further exercise of any other right. The election by either party of a particular remedy in the event of default by the other party shall not be exclusive of any other remedy and all rights and remedies of the parties hereto shall be cumulative and not exhaustive of any other rights or remedies provided by the law.

24.3 Assignment:

24.3.1 The Buyer shall not without the prior written consent of the Company assign transfer or sub-let the benefit or the burden of the Contract or any part of the Contract.

24.3.2 The Company may assign transfer of sub-contract the Contract or any part of the Contract to any other person or company.

24.4 **Disputes:** Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Institute of Mechanical Engineers and in accordance with the Arbitration Act 1996.

24.5 **Third Parties:** A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

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

24.7 **Governing Law:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.