

Niftylift Ltd

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GENERAL TERMS AND CONDITIONS OF PURCHASE OF NIFTYLIFT LIMITED

I. Definitions

(1) In these Conditions:

- (a) **“Conditions”** means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Supplier and us
- (b) **“Contract”** means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services
- (c) **“Delivery Address”** means the address stated on the Order and, in the absence of any such address means Fingle Drive Stonebridge Milton Keynes MK13 0ER, England
- (d) **“Goods”** means the goods (including any instalment of the goods or part of them) (if any) described in the Order
- (e) **“Order”** means our purchase order to which these Conditions are annexed or which appears on the reverse of these Conditions or to which these Conditions otherwise apply
- (f) **“Price”** means the price of the Goods and/or the charge for the Services
- (g) **“Services”** means the services (if any) described in the Order
- (h) **“Specification”** includes any plans, drawings, data or other information relating to the Goods or Services
- (i) **“we”, “us” or “our”** means the company first named above
- (j) **“Working Hours”** means 8 a.m. to 5 p.m. Monday to Friday except on a Bank or Public Holiday in England and Wales

(2) Any 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.

(3) The headings in these Conditions are for convenience only and shall not affect their interpretation.

II. Scope of application

(1) These Conditions apply to all our orders, declarations relating to legal transactions and purchase contracts. They apply exclusively. Adverse or differing terms and conditions are hereby specifically excluded. These Conditions also apply if we accept deliveries unreservedly, pay for them or otherwise are silent about the Supplier's differing terms and conditions even if we are aware of those differing terms and conditions.

(2) All agreements entered into by the Supplier and Niftylift for the purpose of implementing the Contract must be confirmed by us in writing in order to be valid.

(3) In the event of an ongoing business relationship, these Conditions shall apply to all future transactions with the Supplier, unless differing terms and conditions are explicitly agreed upon by us in writing. Furthermore, these Conditions also apply to all agreements arising as a consequence of a concluded purchase contract, such as servicing or repair contracts.

III. Specification

(1) The quantity, quality and description of the Goods and/or the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable specification supplied by us to the Supplier or agreed in writing by us.

(2) In no circumstances shall the Supplier alter the Specification of the Goods or Services at any time after the date of the Order save insofar as is necessary to comply with any amended Specification



- (3) supplied by us to the Supplier.
- (4) Buyer reserves the right to make at any time changes to drawings and or specifications. This will be done via an Engineering Change document which will be forwarded to the Supplier for implementation. If the Supplier desires to make any change to a part or service provided written acceptance must be sought and received from the Buyer. All costs and responsibilities associated with such changes shall be covered by the Supplier, see note 1V (5)
- (5) The Supplier will provide prototype support to the Buyer at no cost and will supply prototype parts at production pricing.

IV. Conclusion of the Contract

- (1) An Order placed by us may be accepted by the Supplier within 7 days of the date of such Order. Any acceptance by the Supplier after such 7 day period shall be treated as a new offer by the Supplier.
- (2) The provision of Goods or Services may be contracted wholly or in part to third parties only with our prior written consent.
- (3) Orders, Specifications, requests for delivery of goods ordered, supplements and amendments thereto may also be effected by data transmission or by mechanically readable data carriers.
- (4) Offers, projects, etc. to be drawn up by the Supplier are prepared free of charge for us. Estimates are binding and are not remunerated unless explicitly agreed otherwise by us in writing.
- (5) We may request modifications to Specifications, Goods or Services even after the signing of the Contract, provided this is reasonable for the Supplier. With this amendment to the Contract, both Parties have to give appropriate consideration to the consequences, particularly with regard to increased or reduced cost and delivery dates

V. Prices, terms and conditions of payment

- (1) The Price of the Goods and/or Services shall be as stated in the Order and is fixed. No increase in the Price may be made without our prior written consent, but we shall be entitled to a discount in the Price to reflect fully any decrease in the costs of the Supplier occurring between the date of the Order and the completion of the delivery of the Goods or provision of the Services. The same applies to long-term contracts for deliveries.
- (2) Unless otherwise agreed, all prices shall be inclusive of packaging, packing, shipping, insurance, payment of duties, carriage to the Delivery Address and unloading of the Goods at the Delivery Address.
- (3) The Price shall be exclusive of any applicable value added tax, which shall be payable by us subject to receipt of a VAT invoice.
- (4) We shall be entitled to the maximum discounts for prompt payment, bulk purchase or volume of purchase granted by the Supplier to any of its other customers and the total purchases of Our Group (as defined in VI(1)) shall be aggregated for the purpose of calculating such discount.
- (5) Unless otherwise stated in the Order, we shall pay the Price of the Goods and the Services on receipt by us of a proper invoice issued on a minimum 90 day net end of month in accordance with V(6) below or, if later, after acceptance of the Goods or Services in question by us subject to separate agreement. The Supplier shall be entitled to invoice us only on or at any time after delivery of the Goods or performance of the Services, save in respect of Goods delivered as referred to in VII (7) in which case the invoice for such goods may only be delivered upon the specified delivery date for such Goods or their earlier use by us. Each invoice shall quote the number of the Order along with the Niftylift part number if applicable.
- (6) Insofar as material testing is agreed, the respective certificates shall form an integral component of the delivery and must be sent to us together with the delivery.
- (7) Payments are deemed neither acknowledgement of proper performance according to the Contract, in particular the absence of defects in deliveries and performances rendered, nor acknowledgement of due and proper invoicing.
- (8) We shall not be deemed to be in default with payment until we have received a written reminder from the Supplier.

VI. Rights of set-off, retention and assignment

- (1) Without prejudice to any other rights (whether under the Contract or otherwise) we shall be entitled to set-off against the Price (including any applicable VAT payable) any sums whatsoever owed to us by the Supplier whether under the Contract or otherwise.
- (2) The Supplier shall be entitled to set-off and make retentions against sums owed by it to us only if its counterclaims are finally established in law, uncontested or acknowledged by us.

- (3) The Supplier's claims against us may be assigned only with our prior consent in writing.

VII. Delivery and transfer of risk

- (1) The Goods shall be delivered to, and the Services shall be performed at the Delivery Address during Working Hours on the date or within the period stated in the Order, unless otherwise agreed in writing by us and at the Supplier's expense and risk. Where the date of delivery of the Goods or performance of the Services is to be specified after the placing of the Order, the Supplier shall give us reasonable notice of the specified date. The Supplier is required to pack and to appropriately insure the goods to be delivered at its own expense. Environmentally friendly packing materials are to be given preference. Any loss, damage or other detriment arising from a failure to comply with this provision shall be borne by the Supplier. Deliveries of products and or services are to be made in the quantities specified in the delivery schedule or order placed by the Buyer. Over shipment of product shall if requested by the Buyer be returned at the suppliers risk and expense. Unless agreed otherwise, the Supplier shall take transport packing back free of charge.
- (2) Goods being delivered to the delivery address shall be accompanied by a delivery note indicating the Order number, the date of the Order, the quantity and our material/part number. The values ascertained during our checking of incoming goods for numbers of items, weights and measures shall be definitive. Our material/part number must be stamped on parts as specified in the relevant drawing. Larger parts must be stencilled with the material/part number and the Supplier's name the agreed delivery date is binding on the Supplier and is of the essence of the Contract. Deviations there from require our prior written consent.
- (3) Notwithstanding the provision in VII. (3), the Supplier is obliged to give our purchasing department placing the order immediate written notice of anticipated delays in delivery.
- (4) Our unrestricted acceptance of a late delivery of Goods or Services shall not imply that we waive any rights or remedies available to us.
- (5) The Supplier may cite the absence of essential documents we are to supply only if the Supplier has sent a written reminder about the documents and has not received them within a reasonable period of time.
- (6) If Goods are delivered earlier than the delivery date stated in the Order or otherwise agreed, we reserve the right to send them back at the Supplier's expense. If Goods delivered early are not sent back, they shall be stored at our premises at the expense and risk of the Supplier until the agreed delivery date. If Goods are delivered early, we reserve the right not to pay for them until the agreed date of payment as stated in V (5) and (6) above. We accept part deliveries only if expressly agreed in advance.
- (7) If the Supplier's manufacturing base is outside of the European Union the Supplier agrees to maintain and finance a minimum of 4 weeks buffer stock within the EU.
- (8) The Supplier is responsible for any special freight costs including airfreight to ensure that the Buyers delivery schedules are met and the Supplier is in default of the agreed delivery date
- (9) Risk of damage to or loss of the Goods shall pass to us upon delivery to us in accordance with the Contract dependent on the Inco terms agreed.

VIII. Invoicing

The invoice must contain exact details of the quantity, Order number, date of Order and our material/part number, if this last number is known to the Supplier. The invoice shall be addressed to the invoice address specified in the Order and not attached to the consignments.

IX. Transfer of Ownership

- (1) The property in the Goods shall pass to us upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to us once payment has been made and the Goods have been appropriated to the Contract.
- (2) Title to rejected Goods shall pass to the Supplier only when we have recovered in full the Price under the Contract for such Goods together with all other sums due to us resulting from the Supplier's breach of the Contract.

X. Force Majeure

A *force majeure* event shall release the affected Party from its performance obligations for the duration of the disruption and to the extent of their impact. The Parties are obliged to immediately give notice in writing to the other of such circumstances and to adapt their obligations to the change in circumstances. We are released from the obligation to take delivery of the whole or part of the Goods ordered and are entitled to cancel the Contract to the extent that we are no longer able to use



the Goods and/or Services the subject of the Contract, taking commercial/financial aspects into account, owing to the delay caused by the *force majeure* event. For the purposes of this clause X, a "force majeure event" shall include, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

XI. Quality

(1) The Supplier acknowledges that the Goods and/or Services supplied under the Contract are for use in connection with and/or are to be incorporated in safety critical machines to be manufactured by us and that we are relying upon the expertise of the Supplier in determining whether the Goods and/or Services to be supplied are fit for any purpose held out by the Supplier or made known to the Supplier at the time the Order is placed. All new parts supplied must unless agreed in writing be subject to first off inspection approval using our ISIR process. All sample parts must be correctly labelled with Niftylift Limited blue sample tag and addressed to our Quality Manager. The Supplier warrants and guarantees that the Goods and Services strictly and entirely comply with the Specification or samples and the agreed technical data, are made of the agreed materials/the materials specified in the documentation, are free of any defects, e.g. in design, material and manufacturing, fulfil entirely the agreed functions, are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and do not have faults that nullify or reduce the value or suitability for the customary or contractually stipulated use. If no materials have been agreed, the Goods must be made of the best-suitable materials and services rendered must comply with highest standards.

The Supplier further warrants and guarantees that the Goods and Services comply with all applicable statutory requirements and regulations, including all applicable British Standards and relevant EC regulations (whether or not applicable in the United Kingdom) relating to the sale of the Goods and the supply of the Services and are state-of-the-art.

In addition, the Supplier warrants and guarantees that the Goods and Services comply with all other applicable national and international statutory and official provisions, regulations for the prevention of accidents and recognised quality regulations.

- (2) Before effecting the delivery of the Goods and/or Services the Supplier must check and demonstrate to us that the aforementioned requirements are complied with by means of suitable state-of-the-art quality testing.
- (3) The Supplier is required to check carefully the documents sent to the Supplier for the implementation of the Contract. If the Supplier becomes aware of any indications that the whole or part of the Contract cannot be complied with in terms of scope, or that the Order cannot be achieved wholly or in part, the Supplier is required to communicate these reservations immediately to us in detail before commencing the performance of the Contract.
- (4) The Supplier shall enter into a quality assurance agreement with us upon terms satisfactory to us should we deem this necessary.

XII. Claims in the event of defects of quality and defects in title

- (1) Our rights under these Conditions are in addition to the statutory conditions implied in our favour by the Sale of Goods Act 1979.
- (2) If goods are received which are found to be at variance to our agreed specification, the Supplier will issue a credit note for the non conforming parts within 5 days. The Supplier will replace the goods and invoice. If the latter cannot be done within the Buyer's time frame then the Supplier will carry out the recovery of the goods within the Buyer's premises or the Buyer will repair the parts and invoice the Supplier. The minimum invoiced cost will be £100 and the maximum invoiced cost may not exceed 75% of the value of the parts whichever is the greater. Production time lost due to non conforming parts will be charged at £50 per hour. All non conforming parts requested to be returned by the Supplier to the Supplier will be at the Suppliers cost. A written report concerning corrective and preventive measures is required to be sent to the Buyer's Quality Manager within two weeks.
- (3) Without prejudice to any other remedy, if any Goods or Services are not supplied in accordance with the Contract (including in particular and without prejudice to the generality of the foregoing if any defect in design, material or quality shall become apparent in the Goods during the first two years in which the machinery is operated by the end user or, where the Goods have been used in conformity with their intended purpose during the first five years in which the machinery is operated by the end user), then we shall be entitled:
- (a) At the Supplier's expense (including all costs of goods, labour and despatch), to require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with

the Contract within seven days. For the avoidance of doubt, if it is necessary to open up or dismantle any other works or assemblies to permit such repair or replacements then the Supplier shall bear the cost of such opening up or dismantling and of re-assembly and making good after repair, replacement and testing have been completed to our reasonable satisfaction; or

- (b) at our sole option, and whether or not we have previously required the Supplier to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.
- (4) The Supplier shall indemnify us in full against all liability, loss, damages, costs (including costs of labour, replacement parts and despatch) and expenses (including legal expenses) awarded against or incurred or paid by us as a result of or in connection with:
 - (a) breach of any condition or warranty (whether express or implied) given by the Supplier in relation to the Goods or the Services;
 - (b) any claim that the Goods or Services infringe, or their importation, use or resale, infringes the patent, copyright, design right, trade mark or other intellectual property rights ("IPR") of any other person, except to the extent that the claim arises from the compliance with any Specification supplied by us;
 - (c) any liability under the Consumer Protection Act 1987 arising in respect of or due to the Goods;
 - (d) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods;
 - (e) any act or omission of any of the Supplier's personnel in connection with the performance of the Services; and
 - (f) Any claim or liability against us by any of our customers or any third party arising out of any breach whatsoever by the Supplier of the Contract or any defect in the Goods or Services.
- (5) If a general quality control procedure above and beyond the customary scale of the incoming goods control should be necessary, the Supplier shall bear the costs incurred.
- (6) Regarding defects in title, the Supplier shall indemnify us for costs associated with and hold us harmless from any third-party claims.
- (7) For repaired or replaced parts of the Goods, a new period of limitation commences from the time the Supplier has fully satisfied our claims for rectification.
- (8) If we should be obliged to take back Goods manufactured and/or sold by us in consequence of the Supplier's defective deliveries and services, or if the purchase price we charged for those goods was reduced or if another claim was made against us, the Supplier is obliged to indemnify us and hold us harmless from any claims resulting there from as well as all costs and expenses associated therewith.
- (9) We are entitled to claim from the Supplier compensation for expenses incurred by us in relation to claims of our customers against us for expenses required for the purpose of rectification, in particular transportation and travelling expenses, and costs of labour and materials.
- (10) If a defect in quality should appear within 6 months of the transfer of risk, it is assumed that the defect was already in existence at the time of the transfer of risk, unless this assumption is incompatible with the type of Goods made and services rendered or the defect occurred.
- (11) It is expected that the Supplier will be accredited with an ISO Quality system or another internationally recognised equivalent. If the vendor does not have ISO accreditation he will need to demonstrate how his operation is controlled and to prove to the Buyer that these controls are sufficient to meet the Buyer's requirements.

XIII. Product liability and Recall Insurance

- (1) If the cause of damage to property or bodily injury resulting from defective Goods is established to have been due to an act or omission of the Supplier, the Supplier shall be liable in respect of any claims made by third parties relating to such act, omission or defect and shall indemnify us for all costs and expenses incurred and hold us harmless from any third-party claims resulting there from upon first demand. A copy of said insurance certificates to be provided to Niftylift for record purposes.
- (2) In this context, the Supplier is obliged to reimburse any expenses arising out of or in connection with a recall campaign conducted by us. We shall inform the Supplier in advance of the content and scope of the recall measures to be implemented and give the Supplier the opportunity to comment, provided there is no case of urgency and such prior consultation is possible and reasonable in the circumstances.
- (3) The Supplier shall insure itself appropriately and commensurately against all risks arising from product liability, including the risk of recall, and shall present the insurance policy for inspection upon



request.

- (4) The Supplier shall effect with reputable insurers insurance in such sum as may be prudent in the light of the intended incorporation of the Goods into safety critical machines to be manufactured by us and as we shall approve in respect of any and all liability (howsoever and whensoever arising) in respect of any claim that any death, injury, loss or damage suffered by any person or thing has arisen out of the faults and defects in the Goods.
- (5) The Supplier shall adequately insure against all liability and third party risks, including professional indemnity, employer's liability and third party fire risks arising out of or in connection with the performance of the Services.
- (6) The Supplier will cover by insurance the Goods against all risks until risk passes to us in accordance with VII. (8) Above.

XIV. Providing materials, parts and tools

- (1) All materials, moulds, patterns, parts, tools and any equipment whatsoever ("the Materials") we provide to the Supplier for the purpose of executing the Contract shall remain our property. They may be used only in accordance with their contractually intended use. The Supplier will ensure that the materials are maintained in good working order and are clearly marked as the property of the Buyer and are referenced with photographic evidence in accordance with the requirement of ISO 9001. The Supplier agrees to permit the Buyer or its designee to inspect the material with suitable agreed notice. No material will be disposed of without the written authority of the Buyer.
- (2) The Supplier shall use the Materials supplied by us solely for the manufacture of the Goods and performance of the Services the subject of the Contract. The Materials shall not be used or copied for use in the manufacture of any goods, or supply of any services for any third parties and the Supplier shall adequately insure (at its own expense for the original value against loss or damage through fire, water, theft and all other types of loss or damage) and will be fully responsible for and will indemnify us against any loss or damage thereto no matter how caused until such time as the Materials are returned to the Delivery Address.
- (3) Materials shall be processed and parts assembled on our behalf. We become co-owners of products manufactured using our Materials and parts in proportion of the value of the material and parts we have provided to the value of the total product. The Supplier shall take the necessary steps to safeguard our property right.
- (4) If the materials or parts provided by us should be inseparably intermixed with other goods not pertaining to us, we shall acquire co-ownership of the newly-manufactured product in proportion of the value of what we provided to the total value of the intermixed goods at the time they were intermixed. Should they be inter-mixed in such a way that the Supplier's goods are to be regarded as the main goods, it is agreed that the Supplier assigns to us pro rata co-ownership; the Supplier shall preserve the sole ownership or co-ownership for us free of charge by taking appropriate measures.
- (5) If the Supplier should manufacture Materials at our expense, the production is on our behalf, with the consequence that upon production we acquire ownership of the respective Goods or Materials.
- (6) The Supplier shall have any necessary servicing and inspection work to the Materials carried out on time at its own expense. The Supplier is required to notify us immediately of any abnormal occurrences in relation to such Materials.
- (7) The Materials we have supplied to the Supplier shall be returned to us at the Delivery Address unless otherwise stated upon first demand, but no later than upon the termination of the business relationship.

XV. Rights of use and commercialisation; intellectual property rights

- (1) Inasmuch as admissible in law, the Supplier grants us at no extra charge the rights of use and commercialisation of all Goods, Services and technical documentation and assigns to us all associated IPR.
- (2) The Supplier guarantees that no third-party IPR are infringed by the manufacture, distribution or use of its Goods and Services.
- (3) The guarantee in XV(2) does not apply if the Goods are made and the Services are rendered solely in accordance with our Specifications and the Supplier neither knew nor ought to have known that the manufacture of the Goods or the rendering of the Services constituted an infringement of rights as defined above.
- (4) If the Supplier is deemed to be responsible for the infringement of IPR according to XV. (2) And a third party raises a claim against us; the Supplier shall indemnify us for and hold us harmless from these claims upon first demand. The Supplier's duty to indemnify us encompasses all costs and expenses we incur arising out of or in connection with a third-party claim.

- (5) The Supplier shall upon demand provide details of all the applications for IPR the Supplier uses in connection with the Goods and Services. If the Supplier should ascertain the infringement of IPR or applications for IPR, the Supplier is required to notify us thereof immediately without a request therefor being made by us.

XVI. Secrecy

- (1) The Supplier is obliged to maintain strict secrecy regarding any illustration, drawing, calculation and other document or information received, including Specifications and to disclose them to third parties only with our express prior consent in writing irrespective if they have or have not completed our confidentiality agreement. The obligation to maintain secrecy also applies after the termination of the Contract. It ceases, however, to apply as soon as and insofar as the production know-how contained in the illustrations, drawings, calculations and other documents becomes part of the public domain.
- (2) The aforementioned documents and information furnished to the Supplier remain our property and must automatically be returned to us free of charge as soon as they are no longer required for the fulfilment of the Contract.
- (3) Products manufactured in accordance with Specifications and documents drawn up by us or with our know how or using our Materials or reproduced Materials may be used by the Supplier for test purposes only, but not be offered or delivered to third parties. The same applies analogously to the Supplier's standard products modified according to our specifications.

XVII. Data protection

We are entitled to store and process for our own purposes all data regarding the Supplier received in connection with the fulfilment of the Contract in compliance with the provisions of the Data Protection Act 1998.

XVIII. Provision of spare parts

- (1) The Supplier guarantees to us at the Supplier's cost the continuing availability of adequate supply of the Goods and all parts and components of the Goods for the purpose of repairing, maintaining and replacing the Goods for a period of 10 years from the latest date upon which the Supplier ceases to supply the Goods to us or ceases to supply goods similar to the Goods to any of its other customers and the Supplier shall at its own cost maintain stocks of the Goods and such parts and components thereof at such levels as we may require from time to time.
- (2) The Supplier will not supply the Buyer's designed parts to any third party unless agreed by the Buyer in writing.
- (3) The Goods and such parts and components shall be supplied at the production price levels prevailing under the Contract (if any) and otherwise at such prices as it would be reasonable for the Supplier to charge during full production thereof. The provisions of this XVIII. (2) Shall survive termination of the Contract.

XIX. Place of performance

The place of performance is the Delivery Address.

XX. Termination

- (1) We shall be entitled to cancel the Order in respect of all or part only of the Goods and/or Services which have not been delivered or supplied to us at the time of cancellation by giving notice to the Supplier at any time prior to delivery or performance, in which event our sole liability shall be to pay to the Supplier the Price for the Goods or Services in respect of which we have accepted delivery at the time of cancellation and we shall not be liable for any loss or damage suffered by the Supplier in relation to the cancelled Goods or Services, except that, subject as hereinafter provided, we shall within a reasonable time after being requested to do so and receiving full details supporting the Supplier's claim pay to the Supplier a reasonable amount in respect of work carried out by the Supplier on the terminated Goods or Services prior to receipt of the termination notice and the price paid or payable by the Supplier for material and parts which prior to such receipt were properly purchased by and delivered to the Supplier for the purpose of being incorporated in the terminated Goods (such reasonable amount being calculated after deducting the value of all salvage realised or reasonably capable of realisation in relation to the terminated Goods or Services) PROVIDED THAT in no event shall we be liable to pay the Supplier a price in excess of that agreed for the terminated Goods or Services and that such exception shall not apply in respect of any Goods or Services the rate of delivery or supply of which is regulated by means of delivery schedules and which are not shown as our firm requirement on such delivery schedules at the time of cancellation.



- (2) Without prejudice to any other right which we may have under the Contract or at law, including the right to recover damages, we shall be entitled to terminate the Contract in whole or in part without liability to the Supplier by giving notice to the Supplier at any time if:
- (a) the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a body corporate) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; or
 - (c) the Supplier ceases, or threatens to cease, to carry on business; or
 - (d) a material change in the ownership, structure or product range of the Supplier occurs; or
 - (e) we reasonably believe that any of the events mentioned above is about to occur in relation to the Supplier and notify the Supplier accordingly; or
 - (f) having regard to market conditions the Price is no longer competitive; or
 - (g) There is any breach whatever by the Supplier of the Contract.
- (3) Upon any termination of the Contract in whole or in part by us, then we shall, without prejudice to any other right we may have under the Contract or in law, including the right to recover damages, have the right to procure elsewhere replacements for the Goods or Services in respect of which the Contract has been terminated and the Supplier shall pay to us the amount (if any) by which the cost of procuring these replacements exceeds the price which would have been payable to the Supplier for these Goods or Services under the Contract.
- (4) In addition to the right to terminate the Contract upon the insolvency or bankruptcy of the Supplier in XX. (2)(a) above, we shall be entitled, upon such insolvency or bankruptcy and where the supply of the Goods or Services the subject of the Contract is sub-contracted by the Supplier to a third party ("the Sub-Contractor"), to make payments directly to the Sub-Contractor in respect of the relevant Goods and/or Services upon the due date for payment of the Price to the Supplier. Payment of such sums to the Sub-Contractor shall discharge our obligation to pay the Price to the Supplier and shall not give rise to any claim by the Supplier against us or the Sub-Contractor for payment to it of any amount in respect of the relevant Goods or Services and the Supplier will be deemed to have waived any claim it may have against us or the Sub-Contractor for such amounts or the Price.

XXI. General

- (1) We may perform any of our obligations or exercise any of our rights hereunder by ourselves or through any other member of our Group, provided that any act or omission of any such other member shall be deemed to be by our act or omission.
- (2) The Supplier shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract without our prior written consent. We may assign the Contract or any part of it to any person, firm or company.
- (3) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
- (4) If any provision of these Conditions is held by any 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 thereby.
- (5) The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

XXII. Place of jurisdiction and applicable law

The Contract shall be governed by the laws of England and the Supplier agrees to submit to the non-exclusive jurisdiction of the English Courts.

