

**PLASTIC OMNIUM URBAN SYSTEMS LTD**

**GENERAL CONDITIONS OF SALE**

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## **PLASTIC OMNIUM URBAN SYSTEMS LTD - GENERAL CONDITIONS OF SALE**

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### **INTERPRETATION**

The definitions and rules of interpretation in this clause apply in these Clauses.

**Contract:** The Purchase Order and the Supplier's acceptance of it.

**Customer:** The person, firm or company who makes an offer to Purchase Goods from the Supplier which is accepted by the Supplier.

**Goods:** The goods, materials, products or services agreed in the Contract to be purchased by the Customer from the Supplier (including any part of it)

**Head Office:** 51 Hainge Road, Tividale, Oldbury, West Midlands B69 2NF.

**Intellectual Property Rights:** Patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation 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.

**Invoice:** The document(s) relating to a specific delivery made under the Clauses of the Contract.

**Purchase Order:** The Customer's written instruction to the Supplier requesting supply of Goods, incorporating these Clauses.

**Supplier:** Plastic Omnium Urban Systems Limited, a registered company in England and Wales, registration number 03276158.

### **1. GENERAL APPLICATION OF CLAUSES**

1.1. These Clauses shall:

1.1.1. Apply to and be incorporated in the Contract; and

1.1.2. Prevail over the terms or Clauses contained in or referred to in the Customer's quotation, the Customer's terms and conditions, acceptance, correspondence, elsewhere or implied by law, trade custom, practice or in the course of dealing.

1.2. No addition to, variation of, exclusion or attempted exclusion of these Clauses or any of them shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

1.3. Where a Purchase Order is for more than one item, it shall (following acceptance by the Supplier) be regarded as a single Contract for all Goods supplied pursuant to that Purchase Order.

1.4. This Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

### **2. PAYMENTS**

2.1. Time for payment shall be of the essence and the Customer shall have no right to set-off, statutory or otherwise.

2.2. All payments due for the Goods shall be made no more than 30 days from date of invoice;

2.3. Unless agreed in writing by the Customer and the Supplier all payments shall be made for the full value of Goods and services invoiced.

2.4. The Supplier may at any time require the Customer to pay cash or provide security for payment.

2.5. Should payment not be made within the time limit set out at Clause 2.2 then all further deliveries of goods from the Supplier shall be suspended.

2.6. The Supplier will bear no responsibility for any liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Customer as a result of the Customer's non-compliance with Clause 2.2.

### 3. INTEREST

3.1. Interest shall be due and payable on all overdue amounts at the rate of 4% p.a above the base lending rate of The Royal Bank of Scotland plc from the due date for payment.

### 4. SPECIFICATION

4.1. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any Contractual force.

4.2. Unless specifically agreed in writing and prior to the signing of the Contract, the Goods supplied will be to the Supplier's standard specification in force at the time of manufacture.

4.3. Notwithstanding Clause 4.2: The Supplier maintains a policy of continual product improvement. On that basis the Supplier reserves the right to modify or alter the specification of the Goods without notice.

### 5. DELIVERY

5.1. Delivery shall be deemed to have taken place and shall be considered to be completed

when the Goods are delivered to the location specified by the Customer at the time of formation of this Contract, or after collection by an independent carrier or by the Customer or agents of the Customer, whichever shall first happen.

5.2. At all times, the Supplier reserves the right to charge for packing materials.

5.3. In addition, the Supplier reserves the right to charge the Customer's account for any expenses incurred in relation to:

5.3.1. Preparing the Goods for transport

5.3.2. Any orders below a minimum specified value or quantity - This value will be stipulated by the Supplier on request and is subject to change without notice.

5.4. Time of delivery is not of the essence and the Supplier shall not be liable for any loss or damage whatsoever suffered by the Customer as a result of any delay in delivery or failure to deliver.

5.5. The Supplier reserves the right to make delivery by more than one instalment, as an exception to Clause 1.3, each delivery shall constitute a separate Contract and the Customer shall not be entitled to refuse delivery of any instalment or to treat the Contract as repudiated.

5.6. The Supplier shall ensure that;

5.6.1. Each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

5.7. If requested, the Customer shall make any such packaging materials used in performance of the Contract available for collection at such times as the Supplier shall reasonably request.

5.7.1. Subject to performance of Clause 5.6, return of packaging materials shall be at the Supplier's expense.

5.7.2. If the preceding Clause is not adhered to, the Supplier reserves the right to charge the costs incurred with the return and replacement of these materials to the Customer's account.

5.8. If the Customer fails to accept or fails to take delivery of the Goods within 7 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused the Supplier's failure to comply with its obligations under the Contract in respect of the Goods then;

5.8.1. Delivery of the Goods shall be deemed to have been completed at 9.00 am on the 8<sup>th</sup> day following the date on which the Supplier notified the Customer that the Goods were ready; and

5.8.2. The Supplier shall store the Goods until delivery takes place, and charge the Customer for all related and incurred costs and expenses (including insurance).

5.8.3. Should acceptance of the Goods not occur within 14 days of the Supplier notifying the Customer that the Goods are ready then the Supplier reserves the right to rescind the Contract and charge all expenses incurred as well as retain any deposit paid to the Supplier. In addition the Supplier reserves the right to consider legal remedy.

## **6. RISK AND TITLE**

6.1. The Supplier warrants that it has title and the rights to sell the Goods.

6.2. The Goods will remain the property of the Supplier until all amounts including retentions are paid

6.3. The risk in the Goods shall pass to the Customer on completion of delivery.

6.4. Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other Goods or Services that the Supplier has supplied to the Customer in respect of which payment has become due and the Supplier has provided written confirmation of the above.

6.5. The Supplier reserves the right to repossess any good delivered and not fully paid for at any time after 60 calendar days from the date of invoice. In addition;

6.5.1. The Customer agrees to allow the Supplier unrestricted access to the Supplier's Goods and the Customers or third parties' premises for this purpose.

6.6. The Customer is licensed by the Supplier to sell the Goods in the ordinary course of business provided that the proceeds of sale are held in trust for the Supplier and always identifiable, and provided also that the Customer's power of sale may be revoked at any time by the Supplier and shall automatically cease if the Customer becomes insolvent or enters into administration, receivership or winding up or if any other event listed under Clause 14 occurs.

6.7. Until title to the Goods passes to the Customer, the Customer shall on demand from the Supplier or by nominated agents of the Supplier deliver up the Goods to the Supplier, which is hereby irrevocably authorised to enter the Customer's premises and those of the Customer's nominated third party agents for that purpose

6.8. Until title to the Goods has passed to the Customer, the Customer shall:

6.8.1. Hold the Goods as a fiduciary agent and bailee for the Supplier

6.8.2. Store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.8.3. Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.8.4. Maintain the Goods in satisfactory Clause and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

6.8.5. Notify the Supplier immediately if it becomes subject to any of the events listed in Clause 14.

6.8.6. Give the Supplier such information relating to the Goods as the Supplier may request.

6.9. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 14, then, without limiting any other right or remedy the Supplier may have, The Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; in addition to this;

6.9.1. The Supplier may at any time require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and;

6.9.2. If the Customer fails to comply with Clause 6.8.1 within 7 calendar days, the Customer permits the Supplier or its nominated agents to enter any premises of the Customer or of any third party where the Goods are stored in order to recover them. and;

6.9.3. All expenses relating to the recovery of these Goods will be met by the Customer.

## **7. PRICE**

7.1. All prices are net, exclusive of VAT and do not include carriage/delivery charges and are to be paid in Sterling unless otherwise stated in writing.

7.2. Unless otherwise agreed in writing prior to delivery, the price of the Goods shall be that ruling on the date of delivery.

7.3. Unless previously and distinctly agreed in writing, the Supplier shall be entitled to increase the price of the Goods or Transport of the Goods if applicable without notice at any time prior to delivery in the event of an increase in (but not exclusively to) the cost of materials, labour or production.

7.4. The charges for Services if required shall be on a time and materials basis:

7.4.1. The charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the quotation issued before work commenced The Supplier's standard daily fee rates for each individual person are calculated on

the basis of an eight-hour day from [8.00 am to 5.00 pm] worked on Business Days;

7.4.2. The Supplier shall be entitled to charge an overtime rate of Thirty Three percent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in the preceding clause and;

7.4.3. The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

## **8. CANCELLATION AND RETURN OF GOODS**

8.1. Goods delivered by the Supplier in good faith to the location specified by the Customer, will not be accepted back by the Supplier.

8.2. The Supplier reserves the right to waive the aforementioned Clause. Where the Supplier decides to waive this Clause, for whatever reason, the Customer will be responsible for the return of the Goods in merchantable Clause.

8.2.1. Any transportation charges, related charges, and remuneration for any damage to the Goods or their packaging will be to the Customer's account.

8.3. The Supplier will not accept rejection or return of the Goods under any circumstances for:

8.3.1. Variation in weight and dimensions due to the use of different moulds and machines for similar Goods.

8.3.2. Variation in appearance of colour and other aesthetic changes of similar Goods.

## 9. WARRANTY

9.1. No representation or warranty is given as to the sustainability or fitness of the Goods for any purpose even though that purpose may be known.

9.2. The Supplier upon request will assign the Customer the benefit of any warranty it has in respect of Goods manufactured by a third party and supplied by the Supplier

9.3. The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery, the Goods shall:

9.3.1. Conform in all material respects with their description and any applicable Goods Specification;

9.3.2. Be free from material defects in design, material and workmanship;

9.3.3. Be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

9.3.4. Be fit for any purpose expressly stated by the Supplier.

9.4. This Clause does not apply to consumable Goods, including but not restricted to:

9.4.1. Fuses, or;

9.4.2. Batteries or Power Cells, or;

9.4.3. RAM Cards, or;

9.4.4. Any other consumable Good.

9.5. Subject to clause 9.6, if:

9.5.1. The Customer gives notice in writing during the warranty period within 7 days of discovery that some or all of the Goods do not comply with the warranty set out in Clause 9.4 and;

9.5.2. The Supplier is given a reasonable opportunity of examining such Goods; and

9.5.3. The Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

9.5.4. The Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. The Customer shall not be entitled to disproportionate remedy and the total

cost of any application by the Supplier under this Clause shall not at any time exceed the price of the Goods as stated in the Invoice for the Goods.

9.6. The Supplier shall not be liable for the Goods' failure to comply with the warranty in Clause 9.4 if:

9.6.1. The Customer makes any further use of such Goods after giving a notice in accordance with Clause 9.5.1; or;

9.6.2. The Goods are damaged during transport; or;

9.6.3. The defect arises because the Customer failed to follow the Supplier'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; or;

9.6.4. The defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer; or;

9.6.5. The defect arises due to negligence or lack of surveillance or care on the part of the Customer; or;

9.6.6. The Customer alters or repairs such Goods without the written consent of the Supplier; or;

9.6.7. The defect arises as a result of fair wear and tear; or;

9.6.8. Wilful damage; or;

9.6.9. Negligence; or;

9.6.10. Abnormal working Clauses, in particular with reference to excessive strain (including but not limited to strain of a mechanical, chemical, electrical, or thermal nature) exceeding the requirements of the standard of EN 840 part 1-6, EN 13071 part 1-2 and EN 12574 part 1-3; or;

9.6.11. The Goods differ from their description or specification as a result of necessary changes made to ensure compliance with applicable statutory or regulatory standards; or;

- 9.6.12. The defect arises as a result of faulty mounting, assembly, or repair performed by the Purchaser, or of any other third party without the written permission of the Supplier; or;
- 9.6.13. The defect arises as a result of incorrect use; or;
- 9.6.14. The Trademarks, Serial Numbers or seals of the Goods are altered or damaged; or;
- 9.6.15. The Goods are subject to harmful or damaging chemicals; or;
- 9.6.16. The Goods have not been moved or transported with the appropriate care as described in EN 1501-5.
- 9.7.** If the Goods are employed in waste collection then in addition to Clause 9.6 the following will also apply;
- 9.7.1. The waste collection process does not comply with EN 13071 part 1-2 or any alternative user guide provided by the Supplier, or;
- 9.7.2. The waste collection does not comply with the adopted EN 1501-5 and the EN 12574 part 1-3 concerning stationary waste containers for trunnion, double trunnion or pocket lifting device. or;
- 9.7.3. The lifting environment was inadequately secured, or;
- 9.7.4. The waste was collected manually.
- 9.8.** Except as provided in this Clause, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty.
- 9.9.** The terms of these Clauses shall apply to any repaired or replacement Goods supplied by the Supplier under clause this Warranty.
- 10. LOSS OR DAMAGE IN TRANSIT**
- 10.1.** Where the Goods are damaged in Transit otherwise than through an act or omission of the Customer or through an independent carrier, the Supplier shall replace any item lost or damaged beyond economic repair provided that:
- 10.1.1. The Customer has inspected the Goods immediately on completion of delivery, and;

10.1.2. Within 3 days of completion of delivery the Customer has notified the Supplier in writing of any shortage, damage or defect, and;

10.1.3. The Customer has reserved the Goods in question intact and they are readily available for inspection by the Supplier.

**10.2.** Where The Customer fails to comply with the preceding Clause, the Goods shall be deemed to have been delivered in accordance with the Contract.

## **11. LIABILITY**

**11.1.** Nothing in Clause 11 shall exclude or restrict the Supplier's liability for death or personal injury resulting from its negligence.

**11.2.** The Supplier shall not be liable for any failure to deliver or perform the Contract as a result of Force Majeure or any other matter or event outside the Supplier's control.

**11.3.** In the event of any defect of manufacture, materials or workmanship in the Goods (during the period of 12 months from delivery) subject to Clause 9, the Supplier undertakes either to repair the Goods at its own expense or at its option to replace them, provided that the Customer;

11.3.1. Notifies the Supplier in writing of the defect within 7 days of its discovery, and;

11.3.2. Returns the defective item to the Supplier at its own expense.

**11.4.** Nothing in these Clauses shall limit or exclude the Supplier's liability for;

11.4.1. Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors or;

11.4.2. Fraud or fraudulent misrepresentation.

**11.5.** Subject to clause 11.4:

11.5.1. The Supplier shall under no circumstances whatever be liable to the Customer, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any direct, indirect or consequential loss arising under or in connection with the Contract; and

11.5.2. The Supplier's total liability to the Customer 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 the price of the Goods stated within the Invoice.

11.6. 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.

11.7. This Clause shall survive termination of the Contract.

## 12. INDEMNITY

12.1. The Customer shall indemnify the Supplier in respect of any claim made by any third party in connection with the Goods or any use to which the Goods may be put by the Customer

12.2. The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods.

12.3. This Clause shall survive termination of the Contract.

## 13. HEALTH AND SAFETY

13.1. The Supplier has provided the Customer with any product and technical information on the sale use, storage, handling and distribution of the Goods. The Customer shall be wholly responsible for complying with all statutes, regulations and any codes of practice applicable thereto

## 14. TERMINATION

14.1. If the Customer enters into any of the following (but not exclusively of) scenarios;

14.1.1. An order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a Court of competent jurisdiction to make a winding-up order in relation to the Customer; or

14.1.2. An order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents with the jurisdiction for the appointment of an administrator of the Customer, or documents are filed with a Court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) ; or

14.1.3. A receiver is appointed of any of the Customer's assets or undertakings, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or

14.1.4. The Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or

14.1.5. The Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

14.1.6. The Customer ceases, or threatens to cease, to trade; or

14.1.7. There is a change of control of the Customer within the meaning of section



1124 of the Corporation Tax Act 2010;  
or

14.1.8. The Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.1.9. The Customer breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

14.2. Then the Supplier shall have the right to cancel or suspend any further deliveries and treat the Contract as determined, but without prejudice to the Supplier's right to any such sums due and damages for loss suffered in consequence of such determination

#### **15. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

15.1. The Customer 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 by the Supplier to the Customer or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

15.2. The Customer shall restrict disclosure of such confidential material to such of its employees as need to know for the purpose of discharging the Customer's obligations to the Supplier.

15.3. The Customer shall ensure that such employees are subject to obligations of confidentiality corresponding to those which bind the Customer.

15.4. All materials, equipment, tools, copyright, rights in designs and any other Intellectual Property Rights in all drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, and shall be held by the Customer in safe custody at its own risk and maintained and kept in good Clause by the Customer until returned to the Supplier, and

shall not be disposed or used other than in accordance with the Supplier's written instructions or authorisation.

15.5. The Customer shall return all copies of any such material to the Supplier immediately on the Supplier's first written request.

15.6 This Clause shall survive the termination of the Contract, however arising. It is agreed that this Clause is severable and separate from this Contract in the event of the Contract being rescinded or cancelled.

#### **16. ANTI BRIBARY**

For the purpose of this clause; The meaning of foreign public official and whether a person is associated with another person shall be determined in accordance with section 6(5) of the Bribery Act 2010. A person associated with the Supplier includes but is not limited to any subcontractor, agent, affiliate, representative or third party working on the behalf or for the Customer.

16.1. The Customer shall and shall ensure that persons associated with it in connection with this Contract shall:

16.1.1. Comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 or the Foreign Corrupt Practices Act of 1977;

16.1.2. Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

16.1.3. Are aware and familiar with the above legislations and will comply with the Supplier's Ethics, Anti-bribery and Anti-corruption Policies in each case as the Supplier or the relevant industry body may update them from time to time;

- 16.1.4. Not do, or omit to do, any act that will cause or lead the Supplier to be in breach of any of the aforementioned Clauses;
- 16.1.5. Within 7 days report to the Supplier any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Contract;
- 16.1.6. Have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures to comply with the Bribery Act 2010 and will enforce them where appropriate;
- 16.1.7. If requested, provide the Supplier with any reasonable assistance, to enable the Supplier to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance; and
- 16.1.8. The Customer shall indemnify the Supplier against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Supplier as a result of any breach of this clause by the Customer or any breach of provisions equivalent to this clause performed by person associated with Customer as defined at 1.1.2 above.
- 16.2.** The Customer warrants and represents that neither the Customer nor any of its officers, employees, agents or other persons associated with it;
- 16.2.1. Has been convicted of any offence involving bribery or corruption, fraud or dishonesty; or
- 16.2.2. Having made reasonable enquiries, in so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or

- 16.2.3. Has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government Contracts; or
- 16.2.4. None of the officers or employees of the Customer or any person associated with it or any other person who is performing services or providing goods in connection with this Contract is a foreign public official; and
- 16.2.5. No foreign public official owns a direct or indirect interest in the Customer or any person associated with it or any other person for whom the Customer is responsible and no public official has any legal or beneficial interest in any payments made by the Customer under this Contract.

**16.3.** The Customer shall notify the Supplier within 7 calendar days if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat or uphold the warranties set out in this clause at the relevant time.

**16.4.** Breach of this clause shall be deemed a material breach under Clause 14.1.9.

**16.5.** If the Supplier terminates this Contract for breach of this clause, the Customer shall not be entitled to claim compensation or any further remuneration, regardless of any activities or Contracts with additional third parties entered into before termination and will indemnify the Supplier against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Supplier as a result of any breach of this clause by the Customer.

## **17. NOTICES**

**17.1.** Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its Head Office or its principal place of business or such other address as that party may

have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or fax.

17.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at Head Office

17.3. If sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

17.4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17.5. For the purposes of this clause, "writing" shall not include e-mail.

#### **18. NO PARTNERSHIP OR AGENCY**

18.1. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

#### **19. VARIATION**

19.1. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **20. FORCE MAJEURE**

20.1. The Supplier may defer the date of delivery or the Supplier may cancel the Contract in accordance with Clause 14, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation;

20.1.1. Strikes, lock-outs or other industrial disputes (excluding the workforce of the Supplier),

20.1.2. Failure of a utility service or transport or telecommunication network,

20.1.3. Act of God, war, riot, civil commotion, malicious damage,

20.1.4. Compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery,

20.1.5. Fire, flood, storm or,

20.1.6. Default of suppliers or sub-Contractors.

#### **21. WAIVER**

21.1. No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21.2. A waiver of any right under the Contract is only effective if it is in writing and it applied only to the party to whom the waiver is addressed and the circumstances for which it is given.

#### **22. SEVERANCE**

22.1. If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

22.2. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

22.3. If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **23. ASSIGNMENT**

23.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-Contract or deal in any other manner

with all or any of its rights or obligations under the Contract.

**23.2.** The Supplier may at any time assign, transfer, charge, sub-Contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**24. THIRD PARTY RIGHTS**

**24.1.** The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit or be enforceable by, anyone else.

**25. GOVERNING LAW**

**25.1.** The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-Contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

**26. JURISDICTION**

**26.1.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-Contractual disputes or claims).