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BPA Standard Conditions For Purchase of Goods or Services

Page 1/8

1 Definitions

"Company" shall mean British Pipeline Agency Limited trading as BPA and shall include its transferees, successors and assigns and the terms "We" and "Us" and "Our" refer to the Company

"Contract" means an agreement between the Company and the Contractor for the supply of any Goods and/or Services and shall comprise a Purchase Order, these Standard Conditions and any other supplemental terms and conditions (including statements of work, Specifications and Drawings) agreed in writing by or on behalf of the Contractor with the Company.

"Contractor" Shall mean the firm, person or company to whom the Purchase Order is issued, and those sub contractors and assigns approved by the Company and the terms "You" and "Your" refer to the Contractor.

"Drawings" means drawings referred to in the Specifications and any modification of such drawings and such other drawings as may be furnished or approved by the Company.

"Equipment" shall mean all equipment, appliances or things of whatsoever nature to be utilised by the Contractor for the purposes of performing the Services but does not include materials or other things intended to form or forming part of the completed Services.

"Goods and/or Services" shall mean any goods, services and other items to be provided by the Contractor in performing the Contract as detailed in the Contract.

"Governmental Body" means any court, arbitrator, agency, trust, department, inspectorate, minister, ministry, regulator, exchange, listing authority, official or public or statutory person (whether autonomous or not) having jurisdiction over a party in relation to a matter of transaction contemplated by this Contract.

"Information" means any information provided which is in oral or documentary form, and includes without limitation, technical data, specifications, statistics, analyses, and any information relating to the conduct of business, which may be provided by the Company, or acquired by the Contractor in the course of performing its obligations under this Contract.

"Personnel" shall mean the person or persons to be provided by the Contractor for the performance of the Goods and/or Services.

"Purchase Order" shall mean the Company's standard order and any supporting documentation required for the provision of goods or services on the terms of this Contract.

"Satisfactory" as defined in the technical specification

"Site" means the Company office, warehouse or premises at which the Goods are to be delivered/ Services are to be performed.

"Specifications" means the technical specifications and references together with any Drawings referred to therein.

"Sub-Contractor" shall mean any contractor to whom any part of the Contract has been sub-contracted by the Contractor with the approval of the Company.

"Withholding Tax" means any fee, tax charge or deduction of whatever nature imposed by the fiscal authorities in the country of tax residence of the Company on any sum payable by the Company to the Contractor for the fees under the Contract.

"Work Permit" means a formal written approval from a representative of the operational division of the Company.

"Working Day" means a day which is not a Saturday or Sunday or a bank holiday in the United Kingdom.

2 Interpretation

In the event of any conflict between these Standard Conditions and a separate project specific document agreed between the Company and the Contractor, the project specific document shall prevail.

Words importing the singular shall include the plural and vice versa where the context so requires.

The headings in these Standard Conditions are for ease of reference only and shall not be deemed to be part of or be taken into consideration in the interpretation or construction of the Contract.

All instructions, notifications, agreements, authorizations and acknowledgements shall be in writing.

Any review, approval or acknowledgment by the Company shall not relieve the Contractor from any liability or obligation under the Contract.

3 Placing the order

3.1 Where the Company wishes to acquire Goods and/or Services from the Contractor, it shall send a Purchase Order to the Contractor together with a copy of these Standard Conditions and any Drawings or Specifications which are to form part of the Purchase Order.

3.2 The Contractor will supply the Goods and/or Services in accordance with the terms of the Contract and the Goods will be delivered and/or the Services will be provided at the time and on the date specified in the Purchase Order.

3.3 No day work charges or variations of any sort will be paid or allowed unless the Contractor has received written authority from the Company for the incurrence of any such day work charges and variations.

4 Goods: where the purchase of goods is concerned

4.1 The Company shall be entitled at its discretion and on giving reasonable notice to check progress is being made by the Contractor and to make such tests as the Company may deem appropriate during manufacture of the Goods and before delivery. The Contractor will take all reasonable measures to provide access for such inspections and facilitate any such tests. Any such inspection shall not relieve the Contractor from any of its obligations under the Contract or from those existing under any express or implied statutory or other rights.

4.2 To enable the Company to comply with its obligations under applicable health and safety legislation, the Contractor will, if requested, provide the Company with adequate information about any Goods supplied under the Contract and/or any Purchase Order, the use for which they are designated and tested and about any conditions necessary to ensure such Goods will be safe and without risk to health when properly handled, stored, transported and used. This information is to be supplied in writing, marked with the relevant Purchase Order number and addressed to the Company.

5 Services: where the provision of services is concerned

5.1 The Contractor shall be deemed to have visited the Site where the Services are to be carried out and satisfied itself as to the local conditions, including, but not limited to, means of access, climatic conditions, conditions affecting the supply of labour and materials, security, fire and safety regulations and all such other factors as may affect its performance of the Services. You will be deemed to have done this prior to preparing your tender or quotation and no subsequent claim on the ground of insufficient or inaccurate information will be entertained.

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BPA Standard Conditions For Purchase of Goods or Services

Page 2/8

- 5.2 The Contractor shall be deemed to have satisfied itself completely that its rates and/or prices are correct and sufficient to cover all its obligations and liabilities under the Contract and all matters necessary for the proper execution of the Purchase Order. The Contractor accordingly shall have no claim for extra payment on the grounds of lack of knowledge, nor shall it be relieved or excused from any obligations and/or liabilities.
- 5.3 Except where specified, the Contractor shall provide all labour, tools, plant, Equipment and materials required by the Contractor to carry out its duties pursuant to the Contract. All material shall be new and of appropriate quality.
- 5.4 The Contractor shall obtain a Work Permit before work is to commence and shall ascertain and strictly observe the conditions of such Work Permit including the Company's Health, Safety and Environmental Procedures, as communicated by the Company to the Contractor from time to time.

6 Defective goods and/or services

- 6.1 During a twelve month period commencing from the date on which all Goods or Services have been supplied in accordance with the Contract, the Contractor shall, with all possible speed and without cost to the Company, replace, repair or make good all and any defective work or Goods supplied whether due to faulty materials, design (other than design specified in detail by the Company) or workmanship or to any act or omission of the Contractor. The Company shall promptly inform the Contractor in writing of any such circumstances. Without limitation the Contractor shall reimburse any costs incurred by the Company arising from the failure by the Contractor to provide the Goods or Services in accordance with the terms of the Contract. The Company's rights hereof are in addition to and not in substitution for any express or implied statutory or other rights.
- 6.2 We reserve the right to reject and return at your expense the whole or part of any materials or Goods that are faulty in design, quality or construction or which are not in accordance with samples provided or standard specified or without the required documentation.

7 Warranties

- 7.1 The Contractor warrants that all Goods and/or Services shall be provided with all reasonable care and skill and in accordance with generally recognised commercial practices and standards and the Specifications by appropriately trained and qualified Personnel and that any Goods provided under this Contract and each Purchase Order shall:
- 7.1.1 Conform to the Specifications and the relevant Purchase Order and shall meet all other standards and/or requirements set out in the Contract;
- 7.1.2 Be of Satisfactory quality, free from defects and for their intended purposes (whether such purpose is implied or expressly stated in the Contract, Specifications or a Purchase Order);
- 7.1.3 Be suitable for use by the Company, including if applicable, inclusion in the Company's products; and
- 7.1.4 Not infringe any intellectual property rights of any third party.
- 7.2 The Company shall promptly inform the Contractor in writing of any such circumstances where the Goods and/or Services or any part thereof are found by the Company to be defective, inadequate or incomplete due to faulty material, workmanship or design or as a result of any act or omission of the Contractor, Sub-Contractors or Personnel or if the Goods and/or Services are not supplied in accordance with the relevant Purchase Order ("Defective Supply").
- 7.3 Without prejudice to any other right or remedy which the Company may have, if there is a Defective Supply, the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Company:
- 7.3.1 to rescind the Contract or the relevant Purchase Order (at its discretion);
- 7.3.2 to reject the Goods (in whole or in part) and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund for the Goods so returned shall be paid forthwith by the Contractor;
- 7.3.3 at the Company's option to give the Contractor the opportunity at the Contractor's expense either to remedy any defect in the Goods or to supply replacement Goods and/or to re-perform the Services and carry out any other necessary works to ensure that the terms of the relevant Purchase Order are fulfilled;
- 7.3.4 to refuse to accept any further deliveries of the Goods but without any liability to the Contractor;
- 7.3.5 to carry out, at the Contractor's expense, any work necessary to make the Goods and/or Services comply with the relevant Purchase Order; and
- 7.3.6 to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Contract and the relevant Purchase Order.
- 7.4 Where the Company elects that the Contractor shall repair or replace the Goods and/or re-perform the Services pursuant to sub-clause 7.3.3 or carry out work pursuant to sub-clause 7.3.5, the Contractor shall, with all possible speed, correct the same at its own expense. Without limitation, the Contractor shall reimburse any transportation costs and any other charges incurred by the Company in arranging for such replacement or repair of any Goods or re-performance of Services.
- 7.5 If the Contractor fails within a reasonable time to correct same as required by the Company, the Company shall have the right to remedy the affected Goods and/or arrange for the Services to be re-performed and recover from the Contractor all costs and damages arising from the Contractor's failure. Without prejudice to any other rights which it may have, the Company may deduct such costs and damages including without limitation any transportation costs and any other charges incurred by the Company from any payments due to the Contractor.
- 7.6 The Contractor's obligations under sub-clause 7.3.3 and sub-clause 7.3.5 shall extend for:
- 7.6.1 In the case of Goods and/or Services - for a twelve month period commencing on the date of delivery of the Goods to the Company or date of completion of the Services, or
- 7.6.2 In the case of Goods to be commissioned for the Company - during a twelve month period from the date of commissioning or eighteen months from the date of delivery, whichever is the shorter.
- 7.7 The Company's rights hereunder are in addition to and not in substitution of any express, implied statutory or other rights. In particular, the Company shall have, in relation to the supply of Goods, the benefit of all conditions and warranties implied by Sections 12, 13, 14, 15 of the Sale of Goods Act 1979.

8 Delivery

- 8.1 Delivery shall be in accordance with the requirements set out in the Contract and relevant Purchase Order and Goods and/or Services shall be delivered within any time periods set out in the relevant Purchase Order. Strict compliance with such requirements is to be of the essence of the Contract.
- 8.2 The Company shall return Goods delivered in error or damaged in transit or in excess quantity or not complying with the relevant Purchase Order to the Contractor at the Contractor's expense. The Contractor shall, in respect of incorrect deliveries or damaged Goods, arrange for prompt repair or replacement at no additional cost to the Company.

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BPA Standard Conditions For Purchase of Goods or Services

Page 3/8

- 8.3 If the Goods are not delivered on the due date or the Services are not performed on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to recover from the Contractor any expenditure reasonably incurred by the Company in obtaining goods and/or services in substitution from another contractor.
- 8.4 We reserve the right to refuse at our discretion entry to our premises to any of your employees, agents, servants or Subcontractors.

9 Payment and passing of risk

- 9.1 Advice notes must be sent on the day that the Goods are despatched and priced VAT invoices within three days thereafter. Invoices will not be passed for payment unless our order number and the advice note number are shown and the Contractor is VAT registered with the registration number included on the invoice. We decline responsibility for Goods sent without advice notes and/or invoices. Invoices must state the address to which Goods were delivered. All invoices must be sent to:

BPA
Accounts Department
5-7 Alexandra Road
Hemel Hempstead
Herts HP2 5BS

- 9.2 Unless otherwise agreed payment will be made by the Company 30 days after the receipt date of the invoice.
- 9.3 In the event of orders being placed on "price to be agreed basis" quotations must be submitted and our official amendment confirming the price must be in your possession before the goods are invoiced.
- 9.4 Without prejudice to the Company's right of rejection, title to and ownership of any of the Goods (and materials in the case of the supply of Services) for which payment or part payment has been made (whether completed or not) shall vest in the Company at the time of delivery or if earlier when such payment is made without prejudice to the continuing obligations of the Contractor under the Contract. You will be held responsible for loss or damage however occurring to our property in your possession.
- 9.5 The Contractor shall take all necessary precautions and steps to ensure that the Goods or materials which are to be delivered to the Company under the terms of the Contract are packaged in a safe and sufficient manner so as to avoid damage to or loss of any Goods or materials whilst they are in transit or otherwise until delivery in accordance with the Contract.
- 9.6 In all cases where Goods or materials purchased await delivery to and/or installation at the Site and in respect of which title and ownership have passed to the Company in accordance with the terms of the Contract, such Goods and such materials shall be physically isolated and clearly marked "property of BPA" together with all relevant order numbers and shall remain under the sole ownership of the Company whilst the risk in possession shall be borne by the Contractor until such time as the Goods or materials are delivered in accordance with the Contract.
- 9.7 The passing to the Company of title to and ownership of any Goods shall be without prejudice to the continuing obligations of the Contractor under the Contract.
- 9.8 In the event that the Company does not approve an entire invoice, the Company shall promptly notify the Contractor of the disputed portion(s) of the invoice. The Contractor shall then issue a credit note to the Company for the disputed portion. In the event that the points of dispute are resolved with the Company, the Contractor shall then have the opportunity to submit invoice(s) for the agreed value of the previously disputed portions.
- 9.9 Payment by the Company of the Contractor's invoices or, as may be, payment from Contractor to the Company, shall be without prejudice to the Company's rights subsequently to challenge the correctness thereof. The obligations contained in this sub-clause shall continue notwithstanding the completion or termination of the Contract.
- 9.10 Bona fide payment disputes shall not be cause for non-performance of this Contract by the Contractor.

10 Tax responsibility and indemnity

- 10.1 The Parties will co-operate with each other to minimise taxes and tax assessments to the extent legally permissible and administratively reasonable. In particular the following shall apply:
- 10.1.1 The Contractor shall co-operate fully with the Company in pursuing any refund claims for taxes, including any related litigation or administrative proceedings. In particular, in the event that the Company pursues, or requires the Contractor to pursue a refund of taxes it paid through the Contractor or seeks to establish whether a particular charge is subject to tax, the Contractor shall, to the extent legally permissible and administratively reasonable, make available or procure to be made available to the Company any relevant documentation, exemption certificates or other existing tax-related information requested by the Company. For the avoidance of doubt in the clauses relating to taxation issues the creation of information shall not include the preparation and supply of existing data, merely its compilation into a report or summary format which was not previously produced.
- 10.1.2 The Contractor shall supply to the Company such tax information (including documentary information) in connection with its activities under the Contract as may be reasonably required by the Company.
- 10.1.3 The Contractor shall retain all necessary and reasonable tax information and documents as shall enable the Contractor to comply with its obligations under this clause 10.1.3 for such a period as may be required in the relevant jurisdiction, and in any event not to be a period of less than twenty years.
- 10.2 All charges for Services provided in accordance with this Contract are exclusive of any applicable federal, state, local sales and value added taxes and other similar taxes. All credits given to the Company in accordance with this clause 10.2 are also exclusive of any Sales Tax.
- 10.3 Sales Tax shall be invoiced in addition to charges under the Contract insofar as this is required under statutory provisions. The Company agrees to pay all such Sales Tax properly invoiced in accordance with the relevant law and regulations in force at the time of making the supply. Insofar as legislation makes provisions for VAT exemptions, the Parties shall use their best endeavours to utilise such exemptions. Should the use of such an exemption provision be dependent upon mutual agreement, this shall herewith be deemed to have been agreed.
- 10.4 The Contractor shall invoice for and collect Sales Tax from the Company in the same manner as it generally collects Sales Tax from its other customers in the ordinary course of their business and shall be solely responsible for remitting such Sales Tax to the relevant taxing authority
- 10.5 The Contractor shall be duly registered in the relevant country, states and localities for the purposes of Sales Tax where such registration is relevant and the legislation so requires. Valid VAT invoices shall be issued by the Contractor in respect of all payments due under this Contract and shall conform with all relevant fiscal requirements (including those which may be applicable in any relevant country) and shall separately show all Sales Tax. In particular, where required by the relevant fiscal regulations, whether in the country of the Company or the country of the recipient invoices shall show the relevant currency and any conversion of the Sales Tax into any currency required to be shown in accordance with the relevant fiscal regulations of the country or countries concerned.

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BPA Standard Conditions For Purchase of Goods or Services

Page 4/8

- 10.6 Any amount paid by the Company as reimbursement for, or calculated by reference to, any expenses or costs incurred by the other party to this Contract shall be calculated net of any input tax credits which the Contractor is entitled to in respect of the expenses or costs
- 10.7 To the extent permitted by law, the Contractor hereby assigns and transfers to the Company all of its rights, title and interest in any refund for Sales Tax that the Contractor may collect from the Company.
- 10.8 The Contractor shall indemnify the Company in respect of any penalties and interest charges imposed upon them by a competent tax authority arising out of the error or omission by the Contractor in relation to Sales Tax, provided that the Company shall endeavour to notify the Contractor as soon as possible, and in any event, within 30 calendar days of such penalties and/or interest charges being brought to the Company's attention by the competent tax authority.
- 10.9 The Contractor shall be liable for all taxes (other than Sales Tax), which shall be properly and lawfully assessed or imposed on the Contractor by any competent authority in connection with the carrying out of the Goods and/or Services. The Contractor acknowledges that the Company is not and shall not be liable to any taxes referred to in this sub-clause 10.9.
- 10.10 The Contractor shall indemnify and keep indemnified the Company against all liabilities incurred as a consequence or breach by it or any Contractor of any of the obligations under this clause 10 in respect of all taxes (other than Sales Tax), interest and penalties, reasonably attributable costs and expenses whatsoever in relation thereto.
- 10.11 Except as provided above the Contractor shall be deemed to have taken into account all taxes levies or contributions in the calculation of amounts due under this Contract with the exception of Withholding Tax and similar taxes which will be dealt with in accordance with the following clauses.
- 10.12 The Company shall where required by law deduct Withholding Tax on all amounts payable under the Contract and it shall forward the relevant withholding or deducting certificate or certificates as soon as reasonably practicable (and in any event within 180 days of the withholding or deduction of the relevant tax) to the Contractor in respect of such tax withheld or deducted so that the Contractor is then able to seek to recover by refund or credit against tax liabilities of the Contractor from any relevant taxing authority or government authority the amount so withheld or deducted in accordance with the applicable law. In respect of the above, the following provisions shall also apply:
 - 10.12.1 the Company shall use all reasonable endeavours to obtain the relevant withholding or deducting certificate or certificates in a form which the Contractor can utilise in order to enable it to recover or obtain credit from the relevant taxing or other government authority the amount so withheld or deducted; and
 - 10.12.2 in determining the applicability of any Withholding Tax the provision of any relevant bilateral income tax treaties shall be taken into account.
- 10.13 The obligations contained in this clause 10 shall continue notwithstanding the completion or termination of the Contract.

11 Drawings and technical data

- 11.1 Any deviation from or modification to Specifications or Drawings is subject to the prior written approval of the Company. If the Contractor considers that there is any omission, inconsistency or inaccuracy in Specifications or Drawings, or that any modifications should be made to such Specifications or Drawings, the Contractor shall forthwith give written notification thereof to the Company.
- 11.2 The Contractor shall, when requested by the Company, provide Drawings and technical data in connection with Goods and/or Services to the Company for approval and/or record purposes. Any such approval shall not imply that the Company has checked or is responsible for the accuracy of any Drawings or technical data other than its own.
- 11.3 Technical information (including Drawings, designs, Specifications, electronically recorded data, computer programs and calculations) and any intellectual property therein, developed or arising during the term of the Contract or in connection with the performance of the Purchase Order including the results thereof, shall belong to the Company and the Company shall have full access thereto.
- 11.4 The Contractor shall vest in the Company all copyrights, design rights, patents (including patent applications) and any other intellectual property rights relating to the Contract and developed or arising during the performance of any Purchase Order or acquired from any third party, including the results thereof, and will execute all necessary documents, produce all necessary evidence and do all other things to procure to the Company such ownership upon Company's request so to do and at Company's expense.

12 Business Conduct and Compliance with applicable laws

- 12.1 It is a condition of this Contract that you will at all times and shall procure that your Sub-Contractors and Personnel comply with all applicable laws, regulations, bye-laws rules and requirements or guidelines from any Governmental Body, legislation (including but not by way of limitation the Factories Act 1961, the Health and Safety at Work Act 1974 and the Bribery Act 2010) and with the Company's Health and Safety Policy and Environmental Policy relevant to the Goods and/or Services covered by the Contract, including any which may come into force during the period of the Contract and will indemnify us against any and all loss, liability, damages, claims, expenses or costs we may sustain (including but not limited to legal costs incurred by the Company as a result of or in connection with any alleged infringement of such laws, regulations, bye-law rules and requirements). Copies of the Company's Health and Safety Policy and Environmental Policy are available upon request.
- 12.2 The Contractor shall at all times perform its obligations under the Contract in a safe and responsible manner and shall observe and comply with all applicable statutory obligations, industry standards and the relevant Company safety requirements, as communicated to it by the Company from time to time.
- 12.3 The Contractor shall procure that Personnel abide by the Company's security regulations and such directions as may be issued by the Company's security officers when working at the Company's Sites.
- 12.4 BPA's policy on business conduct can be viewed at www.bpa.co.uk in the Policies section. When engaged by BPA, the Contractor/Vendor, together with associates, affiliates and sub-contractors shall comply with Company principles, values and expectations defined therein, conducting business in an ethical manner and in compliance with all applicable laws and regulations. Company reserves the right to require Contractor / Vendor to provide supporting documentation to demonstrate compliance with BPA's business conduct policy and any failure to comply with this clause shall be deemed a material breach of this Contract.

13 Insurance

- 13.1 In connection with this Contract, the Contractor shall effect and maintain insurances adequate to cover its liabilities as specified in the Contract, and to meet statutory requirements.
- 13.2 In particular, the Contractor shall, at no additional expense to the Company, effect and maintain insurance covering but not limited to;
 - (I) Contractor's and Sub-Contractor's property;
 - (II) Employer's liability for a minimum amount of £5,000,000; and
 - (III) Third party liability insurance for a minimum amount of £5,000,000/Legal liability.
- 13.3 The Contractor shall obtain from its insurers a waiver of all rights of subrogation against the Company endorsed upon all such policies of insurance.

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BPA Standard Conditions For Purchase of Goods or Services

Page 5/8

- 13.4 Where policies are effected to meet the requirements of this clause 13, the Contractor shall ensure that the Company is co-insured for the purpose of the Contract.
- 13.5 The Contractor shall, if so requested, provide evidence of all insurances required herein, including any renewals thereof, and shall provide certificates with respect to the policies carried, together with any other relevant information the Company may reasonably require.
- 13.5 In so far as the Contractor's insurance does not protect Sub-Contractor(s), the Contractor shall, at no additional expense to the Company, effect and maintain the required insurance or procure that its Sub-Contractors have suitable insurance as required by the Contract.

14 Intellectual property indemnity

- 14.1 The Contractor agrees to indemnify and hold the Company harmless from and against any loss, liability, damage or claim including but not limited to legal costs incurred by the Company as a result of the infringement or alleged infringement of any patent rights, registered or unregistered design, copyright trademark or name or any other intellectual property rights relating to the performance of the Contract.
- 14.2 The Company shall give the Contractor the earliest possible notice in writing of any claim being made or action threatened or brought against the Company. Upon approval from the Company, the Contractor will be permitted at no additional cost to the Company, to defend any litigation which may ensue and will carry out all negotiations required to achieve settlement of the claim. The Contractor may settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification may be sought by the Company, where the Company is a party to such claim, action or proceeding provided that (i) the Contractor gives the Company reasonable prior written notice thereof, (ii) the Contractor obtains an unconditional release of the Company from all liability arising therefrom, and (iii) any such settlement, compromise or consent to judgment does not place any non-financial obligations on the Company.

15 Liability and indemnity

- 15.1 The Contractor shall indemnify the Company from and against any and all liabilities for:-
- 15.1.1 losses, damages, costs, expenses, claims, demands or causes of action arising out of, or in any way connected with the Contractor's performance or non-performance of the Contract; and/or
- 15.1.2 loss of or damage to the property of the Company and/or the property of its clients, shareholders, principles, employees or agents to the extent arising out of or in relation to any act or omission on the part of the Contractor and/or Sub-Contractors and/or Personnel; and/or
- 15.1.3 death, illness or injury to Personnel howsoever caused, including in the case of the negligence of the Company and/or its employees or agents; and/or
- 15.1.4 losses, damages, costs, expenses, claims, demands or causes of action arising out of, or in any way connected with sub-clause 15.1.3 above, howsoever caused, including in the case of the negligence of the Company and/or its employees or agents; and/or
- 15.1.5 death, illness or injury to any third party or for loss of or damage to any third party's property and against all losses, damages, costs, expenses, claims, demands or causes of action resulting therefrom, arising out of or in relation to any act or omission on the part of the Contractor and/or Sub-Contractor(s) and/or Personnel.
- 15.2 The Company shall indemnify the Contractor from and against any and all liabilities for:-
- 15.2.1 loss of or damage to the property of the Contractor and/or the property of the Personnel to the extent arising out of or in relation to any act or omission on the part of the Company and/or its employees or agents; and/or
- 15.2.2 death, illness or injury to any employee of the Company howsoever caused including in the case of the negligence of the Contractor, Sub-Contractors or Personnel; and/or
- 15.2.3 losses, damages, costs, expenses, claims, demands or causes of action arising out of, or in any way connected with sub-clause 15.2.2 above, howsoever caused, including in the case of the negligence of the Contractor and/or Sub-Contractor(s) and/or Personnel.
- 15.3 In any event, and save as specifically provided to the contrary in this Contract, in no circumstances shall the Company or the Contractor be liable in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise howsoever, and whatever the cause thereof for any loss which may be regarded as special, indirect or consequential (howsoever caused).

16 Suspension of the goods and/or services

- 16.1 The Company shall have the right to suspend performance by the Contractor of the Goods and/or Services or manufacture or delivery of the Goods, or any part thereof, in the event of fault or failure of the Contractor in carrying out its obligations under the Contract. In such event, no compensation shall be payable by the Company to the Contractor in respect of any costs and/or damages incurred by the Contractor as a result of such suspension.
- 16.2 In addition to suspension pursuant to sub-clause 16.1, the Company shall have the right to suspend performance by the Contractor of the Goods and/or Services, or any part thereof, for any reason at any time and from time to time by informing the Contractor in writing, specifying that part of the Services or manufacture and/or delivery of Goods which is to be suspended and the effective date of such suspension.
- 16.3 Except where the Company suspends the Goods and/or Services pursuant to clause 16.1, the Company shall compensate the Contractor for suspension of the Goods and/or Services as follows:
- 16.3.1 for the supply of Goods or performance of Services executed, or partly executed, up to and including the date of suspension, in accordance with the Contract;
- 16.3.2 for Personnel retained on standby during the period of suspension at the written request of the Company in accordance with the Contract; and
- 16.3.3 for other items directly related to the suspended Goods and/or Services provided that such items have been specifically authorised in advance by the Company.
- 16.4 The Contractor shall immediately secure, make safe and protect all Services performed or Goods manufactured and/or delivered up to the date of suspension and shall cease performance of the suspended Services or manufacture or delivery of Goods during the suspension.
- 16.5 The Contractor shall, during any period of suspension, continue to perform any non-suspended Services or manufacture or delivery of Goods with all due diligence.
- 16.6 Except as provided elsewhere in this clause, any costs, loss or damage sustained by the Contractor during suspension shall be for the account of the Contractor.
- 16.7 The Contractor hereby waives any right to suspend its performance and/or to terminate the Services or delivery of Goods.

BPA Standard Conditions For Purchase of Goods or Services

17 Termination

- 17.1 Without prejudice to any other rights and remedies of the Company under the Contract or otherwise at law, the Company may, without penalty, terminate the affected Purchase Order or Contract forthwith by written notice to the Contractor if:-
- the Contractor shall become insolvent, be declared bankrupt or go into liquidation, or shall pass a resolution for winding-up (other than for the purposes of amalgamation or reconstruction) or if a Court shall make an order to that effect, or shall have a receiving order made against it; or
 - an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Contractor; or
 - a person becomes entitled to appoint a receiver or an administrative receiver over the assets of the Contractor or a receiver or an administrative receiver is appointed over the Contractor; or
 - the Contractor breaches any of the health and safety provisions detailed in the Contract, or in the Company's sole judgment, fails to meet the required standard of safety performance.
- 17.2 In the event that the Company serves notice of termination, the Contractor shall be entitled to remuneration only in respect of the Services performed or Goods delivered up to the date of termination and the Company shall not compensate the Contractor for any loss and/or damages.
- 17.3 In the event that the Company serves notice of termination, the Contractor shall carry out the Company's instructions in regard to termination, including the termination of Sub-Contractors' services where necessary and the Company shall pay the Contractor in respect of the Services performed and Goods delivered up to such termination in accordance with the terms of the Contract, together with the additional reasonable costs of giving effect to the Company's instructions in regard to termination. If requested by the Company the Contractor shall make every reasonable effort to effect cancellation of all affected commitments upon terms satisfactory to the Company and shall thereafter only carry out such work as may be necessary to preserve and protect the Services already completed and Goods delivered and to protect the Equipment and materials belonging to the Company in the Contractor's possession.
- 17.4 The Company may terminate the Contract and/or any Purchase Order for any reason whatsoever on written notice. In this event, the Contractor shall have the following rights, obligations and duties:
- 17.4.1 the Company assumes and becomes liable for all financial commitments the Contractor may have in good faith undertaken or incurred up to the termination date in connection with the Contract and/or relevant Purchase Order (as applicable) and in accordance with the terms thereof, and the Contractor shall thereupon be entitled to all rights, set-offs and benefits held by the Contractor under or in connection with such financial commitments.
- 17.4.2 the Contractor, as a condition of receiving payments provided herein, shall execute all documents and take all steps required by the Company to vest such rights, set-offs and benefits in the Company.
- 17.4.3 the Company shall reimburse the Contractor, insofar as such charges shall not have already been covered by payments on account to the Contractor, for:
- such portion or portions of the Services executed or performed or Goods delivered in accordance with the Contract and/or relevant Purchase Order up to the date of termination;
 - reasonable demobilisation expenses incurred after the date of termination, unless provision for same is made under the Contract and/or relevant Purchase Order; and
 - an amount to be agreed in respect of any expenditure reasonably incurred by the Contractor in expectation of completion of the Services and/or delivery of Goods;
- but the Company shall not compensate the Contractor for loss of (prospective) profit or production.
- 17.5 The Contractor shall (i) provide reasonable assistance, co-operation and documentation to assist the Company to transition the Services or if practicable delivery of Goods with as little disruption to the Company as is possible in the circumstances from the Contractor to a replacement service provider or to the Company; (ii) promptly deliver to the Company all materials owned by the Company, Goods, materials or other things intended to form or forming part of the completed Goods and/or Services, together with copies of all Drawings, Specifications and other documents prepared or obtained by the Contractor in connection with the Goods and/or Services ordered including the originals thereof, (iii) carry out the Company's instructions concerning any cancellation or assignment of sub-contracts, purchase contracts and any other matters arising out of the Contract and/or relevant Purchase Order which the Company decides are necessary or appropriate.
- 17.6 The Contractor shall, upon reasonable request by the Company, provide the Company with access to and copies of all reasonable non-confidential or non-proprietary information held or controlled by the Contractor which it has prepared or maintained in accordance with the Contract and/or relevant Purchase Order.
- 17.7 In the event of termination by the Company under clause 17.1, the Company shall have the right to complete the Goods and/or Services or employ others to complete the Goods and/or Services and to recover from the Contractor all costs incurred, had the Contract and/or relevant Purchase Order not been terminated together with all other costs associated with or arising from the termination. The Company shall have the right to recover such costs either directly from the Contractor or by deducting such costs from any monies due or which become due to the Contractor.
- 17.8 The Contractor shall, be responsible for its own costs associated with terminating, decommissioning or transitioning of the Goods and/or Services.

18 Assignment and sub-letting

- 18.1 The Contractor may not sub-contract or assign the Contract or any part of the Contract without the Company's prior written consent. The Company's approval shall not relieve the Contractor from any liability or obligation under the Contract and it shall be responsible for the acts, defaults and neglects or any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, its agents, servants or workmen and the Contractor shall agree with any Subcontractor that the Subcontractor shall be bound by and observe the provisions of the Contract in so far as they may be applied to the sub-contract.

19 Non-exclusivity

- 19.1 For the avoidance of doubt, nothing expressly contained in or implied from the Contract shall be deemed to give rise to or constitute any exclusivity of purchase or supply or in any way prevent or restrict the Company from purchasing goods and services which are similar or identical to the Goods and/or Services from any source whatsoever or in any way prevents the Contractor from supplying or offering to supply Goods and/or Services to any other person.

20 Independent contractor

- 20.1 In the performance of the Contract, it is hereby declared that the Contractor is an independent contractor, and nothing in this Contract shall constitute or be deemed to constitute a partnership between the parties or constitute any party the agent of the other party. All persons introduced by the Contractor during

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BPA Standard Conditions For Purchase of Goods or Services

Page 7/8

the performance of the Contract shall be regarded as the Personnel of the Contractor alone and all debts, liabilities and obligations of any kind imposed upon or incurred by the Contractor in the performance of the Contract shall be the debts, liabilities and obligations of the Contractor.

21 Employee relations

- 21.1 The Contractor is responsible for the management of its own Personnel and for relations with any trade unions. The Contractor is expected to manage employee relations by establishing policies and anticipating problems rather than reacting to difficulties as they arise.
- 21.2 Upon the outbreak of any strike or labour dispute or where there is the likelihood of a dispute involving any of the Personnel, the Contractor shall forthwith give details to the Company.
- 21.3 The Contractor shall impose on its Sub-Contractors like obligations as described in the above paragraphs and shall be responsible for its Sub-Contractor's compliance therewith.
- 21.4 Any failure to comply with the above provisions by the Contractor or its Sub-Contractors will be treated as a breach of Contract and shall provide grounds for termination of the Contract by the Company.
- 21.5 The Contractor shall appoint an experienced and qualified industrial relations representative who shall be approved by the Company to act on the Contractor's behalf in matters concerning industrial relations.

22 Publicity

- 22.1 The Contractor shall not disclose the existence or terms of the Contract or publish or permit to be published either along or in conjunction with any other person any information, article, photograph, illustration or any other material of whatever kind relating to this Contract, or the Company's business generally, without prior reference to and approval in writing from the Company. Such approval shall apply to each specific application and relate only to that application.

23 Confidentiality

- 23.1 Any and all Information and any information derived from the Contract shall remain the property of the Company. The Contractor shall keep all Information confidential and shall not and shall procure that its Sub-Contractors and Personnel shall not, without the prior approval of the Company publish or disclose, or make use of the Information except for the purpose of implementing the Contract or relevant Purchase Order. Information may only be released by the Contractor to a third party or Sub-Contractor accepting a like obligation of confidentiality, and then only to the extent necessary for the performance of the third party contract or sub-contract.
- 23.2 The Contractor's obligation not to divulge Information to a third party or Sub-Contractor shall not apply to information which: -
 - 23.2.1 is part of the public domain otherwise than in consequence of a breach by the Contractor, its Sub-Contractors or Personnel of the obligations under this clause 23.
 - 23.2.2 was in the Contractor's possession prior to award of the Contract and which the Company did not notify the Contractor as being confidential.
 - 23.2.3 was received from third parties having the right to disclose such information.
 - 23.2.4 the Contractor is obliged to submit to Governmental Bodies.
- 23.3 The Contractor shall not disclose the existence or terms of the Contract or publish or permit to be published either alone or in conjunction with any other person any information, article, photograph, illustration or any other material of whatever kind relating to this Contract, or the Company's business generally, without prior reference to and approval in writing from the Company. Such approval shall apply to each specific application and relate only to that application.

24 Notices

- 24.1 Any notice or other communication to be given under the Contract shall be in writing and shall be given by delivering by hand at, or by sending by prepaid registered or recorded delivery post or by fax or electronic mail to the registered office (or last known address if an individual) of the relevant party or such other address or fax number as either party may notify to the other from time to time in accordance with this paragraph. Any notice given shall be deemed to have been given at the time of delivery (if delivered by hand) or on the first Working Day following the day of delivery (if delivered by hand on a day that is not a Working Day), or on the first Working Day following the day of sending, if by e-mail or fax, or on the second Working Day following the day of sending if by post. For the purposes of this clause, Working Day means any day except Saturday and Sunday upon which the clearing banks in the City of London are normally open for business.

25 Entire agreement

- 25.1 The Contract contains the entire agreement between the parties in relation to the supply of Goods or Services and supersedes any previous agreements arrangements or representations in relation thereto.
- 25.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Contract. Nothing in this clause shall limit or exclude any liability for fraud.

26 Waiver

- 26.1 No waiver by either party of any provision of the Contract shall be binding unless made by formal amendment to the Contract. Further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

27 Severability

- 27.1 If for any reason any clause or provision of the Contract (or any part of either) shall be held to be invalid or unenforceable, the remaining clauses and provisions (or part) shall continue to have full effect and the parties shall remain bound by their terms.

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BPA Standard Conditions For Purchase of Goods or Services

Page 8/8

28 Delay

- 28.1 No delay or failure in performance by either party to this contract shall constitute default or give rise to any claim for damages if such delay or failure is caused by circumstances beyond that party's reasonable control. Unless such circumstances frustrate performance of the contract, the circumstances shall not operate to excuse, but only to delay performance.
- 28.2 In situations where delays occur in carrying out the work not arising from the fault of the Company, the Contractor shall work such overtime and use such additional personnel and equipment as may be necessary to ensure completion of the works in accordance with the agreed construction programme as referred to herein. No payment will be made by the Company in respect of such overtime or additional personnel or equipment.

29 Rights of third parties

- 29.1 Any client, shareholder or principal of the Company shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce the same rights as those conferred on the Company pursuant to clause 14 of the Contract but its consent to vary or rescind the Contract is not required.
- 29.2 Subject to clause 26.1, for the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

30 Dispute Resolution

- 30.1 Any dispute under this condition shall be determined by a single arbitrator in London elected by Company from a panel of arbitrators to be agreed upon or in default of agreement to be appointed by the President of the Law Society.

31 Applicable law

- 31.1 This Contract shall be construed and interpreted in accordance with English Law and subject to the jurisdiction of the English Courts.