

TCE Transmission Terms and Conditions for Sale and Purchase

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Applicable Law	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
Conditions	means TCE's terms and conditions set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by TCE in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means this agreement between TCE and the Counterparty for the sale and purchase of the Deliverables incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;
Control	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of TCE and Controls, Controlled and under common Control shall be construed accordingly;
Counterparty	means the named party in the Contract which has agreed to purchase the Deliverables from TCE or the named party in the Contract which has agreed to supply Goods and/or Services to TCE whichever the case may be;
Deliverables	means the Goods or Services or both as the case may be;
Documentation	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water,

transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving TCE's or its suppliers' workforce, but excluding the Counterparty's inability to pay or circumstances resulting in the Counterparty's inability to pay;

Goods	means the goods and related accessories, spare parts and Documentation and other physical material set out in the Order or understood by the parties to be included in the Goods and to be supplied by TCE to the Counterparty in accordance with the Contract;
Location	means the address or addresses for delivery of the Goods and performance of the Services as set out in the Order;
Order	means the Counterparty's order for the Deliverables in substantially the same form as set out in the Counterparty's order form;
Parties	means the parties to the Contract;
Schedules	means the Schedules contained in these Conditions;
Services	means the services set out in the Order and to be supplied by TCE to the Counterparty in accordance with the Contract;
Specification	means the description or Documentation provided for the Deliverables set out or referred to in the Contract;
TCE	means TCE Transmission Limited, Company number 06644358, Vicarage Corner House, 219 Burton Road, Derby, England, DE23 6AE; and
VAT	means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.

1.2 In these Conditions, unless the context otherwise requires:

- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.2.3 a reference to a 'party' means either TCE or the Counterparty and includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (excluding email);
- 1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;
- 1.2.11 a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these conditions

- 2.1 These Conditions apply to and form part of the Contract between the Parties. They supersede any previously issued terms and conditions of purchase or supply between the Parties..
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding.
- 2.4 Each Order by the Counterparty to TCE shall be an offer to purchase the Deliverables.

3 Sale of Goods

Each party shall comply with its respective obligations in regard to goods sold by TCE, and may exercise its respective rights and remedies, under Schedule 1.

4 Purchase of Goods

Each party shall comply with its respective obligations in regard to goods purchased by TCE, and may exercise its respective rights and remedies, under Schedule 2.

5 Indemnity and insurance

- 5.1 The Counterparty shall indemnify, and keep indemnified, TCE from and against any losses, damages, liabilities, costs (including legal fees) and expenses incurred by TCE as a result of

or in connection with the Counterparty's breach of any of the Counterparty's obligations under the Contract.

- 5.2 The Counterparty shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Counterparty shall supply, so far as is reasonable evidence of the maintenance of the insurance and to confirm all of its terms from time to time applicable.

6 Limitation of liability

- 6.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 6.

- 6.2 Subject to clauses 6.5 and 6.6, TCE's total liability shall not exceed the insurance level maintained by TCE.

- 6.3 Subject to clauses 6.5 and 6.6, TCE shall not be liable for consequential, direct, indirect or special losses.

- 6.4 Subject to clauses 6.5 and 6.6, TCE shall not be liable for any of the following (whether direct or indirect):

6.4.1 loss of profit;

6.4.2 loss of revenue;

6.4.3 loss or corruption of data;

6.4.4 loss or corruption of software or systems;

6.4.5 loss or damage to equipment;

6.4.6 loss of use;

6.4.7 loss of production;

6.4.8 loss of contract;

6.4.9 loss of commercial opportunity;

6.4.10 loss of savings, discount or rebate (whether actual or anticipated);

6.4.11 harm to reputation or loss of goodwill

6.4.12 loss of business; and

6.4.13 wasted expenditure.

- 6.5 The limitations of liability set out in clauses 6.2 to 6.4 shall not apply in respect of any indemnities given by the Counterparty under the Contract.

- 6.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be

limited in any way in respect of the following:

- 6.6.1 death or personal injury caused by negligence;
- 6.6.2 fraud or fraudulent misrepresentation;
- 6.6.3 any other losses which cannot be excluded or limited by Applicable Law;
- 6.6.4 any losses caused by wilful misconduct.

7 Confidentiality and announcements

- 7.1 The Counterparty shall keep confidential all Confidential Information of TCE and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
 - 7.1.1 any information which was in the public domain at the date of the Contract;
 - 7.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 7.1.3 any information which is independently developed by the Counterparty without using information supplied by TCE or by any Affiliate of TCE; or
 - 7.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 7.2 This clause shall remain in force in perpetuity.
- 7.3 The Counterparty shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

8 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 90 days, either party may terminate the Contract by written notice to the other party.

9 Termination

- 9.1 TCE may terminate the Contract or any other contract which it has with the Counterparty at any time by giving notice in writing to the Counterparty if:
 - 9.1.1 the Counterparty commits a material breach of the Contract and such breach is not remediable;
 - 9.1.2 the Counterparty commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
 - 9.1.3 the Counterparty has failed to pay any amount due under the Contract on the due

date and such amount remains unpaid 14 days after TCE has given notification that the payment is overdue; or

- 9.1.4 any consent, licence or authorisation held by the Counterparty is revoked or modified such that the Counterparty is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 9.2 TCE may terminate the Contract at any time by giving notice in writing to the Counterparty if the Counterparty:
 - 9.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 9.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if TCE reasonably believes that to be the case;
 - 9.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 9.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
 - 9.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
 - 9.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
 - 9.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 9.2.8 has a resolution passed for its winding up;
 - 9.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 9.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 9.2.11 has a freezing order made against it;
 - 9.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items; or
 - 9.2.13 is subject to any events or circumstances analogous to those in clauses 9.2.1 to 9.2.12 in any jurisdiction.
- 9.3 TCE may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Counterparty if the Counterparty undergoes a change of Control.
- 9.4 If the Counterparty becomes aware that any event has occurred, or circumstances exist, which may entitle TCE to terminate the Contract under this clause 9, it shall immediately notify TCE in writing.
- 9.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of TCE

at any time up to the date of termination.

10 Notices

10.1 Any notice or other communication given by a party under these Conditions shall:

10.1.1 be in writing and in English;

10.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and

10.1.3 be sent to the relevant party at the address set out in the Contract.

10.2 Notices may be given, and are deemed received:

10.2.1 by hand: on receipt of a signature at the time of delivery;

10.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;

10.2.3 by email on receipt of a delivery email from the correct address.

10.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 10.1 and shall be effective:

10.3.1 on the date specified in the notice as being the date of such change; or

10.3.2 if no date is so specified, 2 Business Days after the notice is deemed to be received.

10.4 All references to time are to the local time at the place of deemed receipt.

10.5 This clause 10 does not apply to notices given in legal proceedings or arbitration.

11 Cumulative remedies

The rights and remedies provided in the Contract for TCE only are cumulative and not exclusive of any rights and remedies provided by law.

12 Time

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Counterparty's obligations only.

13 Further assurance

The Counterparty shall at the request of TCE, and at the Counterparty's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

14 Entire agreement

14.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

14.2 Each party acknowledges that it has not entered into the Contract or any documents entered

into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

14.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

15 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

16 Assignment

The Counterparty may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without TCE's prior written consent, which it may withhold or delay at its absolute discretion.

17 Set off

17.1 TCE shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Counterparty under the Contract or under any other contract which TCE has with the Counterparty.

17.2 The Counterparty shall pay all sums that it owes to TCE under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

18 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

19 Equitable relief

The Counterparty recognises that any breach or threatened breach of the Contract may cause TCE irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to TCE, the Counterparty acknowledges and agrees that TCE is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

20 Severance

20.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

20.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and

enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

21 Waiver

- 21.1 No failure, delay or omission by TCE in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 21.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by TCE shall prevent any future exercise of it or the exercise of any other right, power or remedy by TCE.
- 21.3 A waiver of any term, provision, condition or breach of the Contract by TCE shall only be effective if given in writing and signed by TCE, and then only in the instance and for the purpose for which it is given.

22 Compliance with law

The Counterparty shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

23 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict. In the event that a clause within the Conditions conflicts with a paragraph within a Schedule, the Schedule shall prevail to the extent of the conflict.

24 Costs and expenses

The Counterparty shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

25 Third party rights

- 25.1 Except as expressly provided for in clause 25.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 25.2 Any Affiliate of TCE shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

26 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

27 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 SALE OF GOODS

1 DEFINITIONS

In this Schedule 1, the following expressions shall have the following meanings:

- 1.1 **“Buyer”** means the person, firm or company with whom the Contract is made by TCE, whether directly or indirectly through an agent or factor who is acting for or instructed by or whose actions are ratified by such person firm or company;
- 1.2 **“Goods”** means the goods or other physical material set out in the Order, to be supplied by the Seller to the Buyer in accordance with the Contract;
- 1.3 **“Contract”** means the TCE's quotation for the sale or supply of the Goods or Services and any document referred therein, these Conditions of Sale, the TCE's acknowledgement of the Buyer's order for the Goods or Services and the Buyer's order for the Goods or Services, and if there shall be any inconsistency between the documents comprising the Contract they shall have precedence in the order herein listed
- 1.4 **“Incoterms”** means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.
- 1.5 **“Services”** Refurbishment of Goods (regardless of whether manufactured or supplied by TCE), servicing of Goods, advising as to which type of Goods are required for a particular function, drawing and advising on specifications, installation of Goods, site surveys, commissioning and training of the Buyer's employees agents and subcontractors. Consultancy and information imparted to other companies for commercial or technical purposes.
- 1.6 **“TCE's Premises”** means the premises detailed in the TCE's quotation or other contractual document or if not so mentioned means the TCE's works known as C/O Silver X Group Ltd, Units 2 & 3. Hamilton Road, Sutton-in-Ashfield NG17 5LD.

2 GENERAL

TCE or its Directors and/or employees, do not offer advice only observations and independent legal advice should be sought by the Buyer before acting on any observations made.

3 ORDERS

- 3.1 Unless verbal, telephone or telegraphic orders and any variations to orders are confirmed in writing by the Buyer, TCE shall not be responsible for errors or subsequent misunderstandings.
- 3.2 Notwithstanding that TCE may have given a detailed quotation, no order shall be binding on TCE unless and until it has been accepted in writing, orally by an authorised agent or employee of TCE or there is implied acceptance by TCE by its fulfilment of the order.

- 3.3 For Goods supplied on a “call off” order basis;
- 3.3.1 no “call off” order will be more than 12 months in duration and all outstanding amounts become due upon reaching this time limit;
 - 3.3.2 TCE reserves the right to ask for full payment of Goods supplied on a “call off” order basis (or held in stock by TCE against a call off order in an unfinished or non-complete state) at any time and especially where regular “calling off” of ordered items fails to be on a “regular basis”; and
 - 3.3.3 TCE reserves the right to set the terms for “regular basis” time periods. The Buyer remains liable for all parts held in stock in unfinished or non-complete state on their behalf by TCE and it is accepted by all Parties, that the Buyer will pay in full for all Goods held in stock on their behalf
- 3.4 The Buyer acknowledges that all Goods and Services provided or supplied by TCE that contains any third-party manufactured stock product, in either component form or other may become redundant at any point post TCE fulfilling the Buyers Order. Stock items may be become redundant at any time due to manufacturer upgrades or any other reason outside of TCE’s control. If any stock product becomes redundant, TCE will not offer a free of charge replacement or exchange, other than pursuant to the Buyer’s statutory rights. TCE may, at their sole discretion, offer upgraded products at a discounted rate. TCE does not accept any liability, in respect of any stock becoming redundant, that may have been purchased by the Buyer which is unsold or unused by the Buyer.
- 3.5 Orders for special products:
- 3.5.1 TCE cannot accept cancellation of orders for any Goods made specifically to the Buyer’s requirements (or held in stock in unfinished or non-complete state).
 - 3.5.2 Any disputes regarding specification of products supplied, must be raised in writing to TCE within 7 days of receipt of Goods, after this time the Goods will be deemed as accepted by the Buyer.
- 3.6 Unless earlier withdrawn or stated otherwise, quotations are open for acceptance for a period of thirty days from the date of

4 FILLING OF LUBRICATORS

- 4.1 Custom filling of lubricator or lubricator refill cartridges is offered as a service by TCE to Buyers. However, whilst every care is taken when filling lubricators or lubricator refill cartridges with Buyer’s or other selected choice of lubricant, air bubbles or foreign bodies may be present in the containers when received. If air bubbles are perceived as a problem, lubricant cartridges or lubricators should be inverted and air allowed to settle to exit nozzles for venting before first usage.
- 4.2 TCE accepts no liability or responsibility whatsoever, for air bubbles or foreign bodies entering lubrication lines or products being lubricated and any problems/ damage that may occur as a result. Suitable precautions should be taken by Buyers before usage of lubricator units.
- 4.3 TCE accepts no liability or responsibility whatsoever, for performance of Buyer specified or other lubricants in any application and offers lubricants which have been approved by the manufacturers of the Lubrication device as an alternative in each case. Compatibility testing

can be offered by TCE, but this will be at the Buyers expense.

5 LUBRICATOR SPECIFICATIONS/ SETTINGS/ OPERATION

- 5.1 All lubrication specifications and settings provided should be taken as approximate and used as a guideline only. These are theoretical in manner and should not be taken as exact. All Lubricator settings should be adjusted to suit requirements by the Buyer.
- 5.2 TCE will offer approximate specifications and settings as a service aid only and do not accept any liability or responsibility whatsoever for any inaccuracy in approximate settings given or any problems/ damage that may occur as a result. It is the Buyers responsibility to report to TCE any faults within 24 hours of any fault or error message being noticed and to take remedial action immediately, if a representative of TCE is not available to come to site within the next 24 hours.
- 5.3 Lubrication by manual means should be re-instated by the Buyer, until a remedy can be actioned. This responsibility and course of action should be taken by contract and non-contract Buyers alike.

6 PARTS SUPPLIED IN “KIT” FORM OR OTHER

- 6.1 TCE will:
 - 6.1.1 make every effort to ensure all parts are present when it supplies products in “KIT” form or other. However, it cannot be guaranteed that all adaptors, fittings or other components required to complete an installation will be present. It is understood by the Buyer that when opting to install products “in house” or by utilising their own appointed sub- contractors, that there may be a need to solve these issues internally; and
 - 6.1.2 supply Product Manuals for installation guidance, provided by its Manufacturing Partners, but will not be held responsible if some adaptors or connecting components are absent. It is the Buyer’s responsibility to supply or provide such parts. TCE does not supply fully functioning or complete kits for such purposes.
 - 6.1.3 make its best effort to supply as full a kit of parts, to enable the Buyer or their clients to install a system but will not be held responsible in any way should parts in kits supplied, be missing or omitted in error or otherwise.
- 6.2 The Buyer or their clients must have sufficiently skilled staff to install kits of products supplied, to create a fully functioning system or employ sufficiently skilled sub-contractors to fulfil the desired task of a fully functioning system.

7 DIVISIBILITY

- 7.1 TCE reserves the right to make deliveries and/or Services by instalments and to render a separate invoice in respect of each such instalment.
- 7.2 If TCE exercises its right to make deliveries and/or Services in accordance with paragraph 7.1 above, then any delay in the provision of such deliveries/and or Services, or failure to deliver any further instalment or instalments, shall not entitle the Buyer to reject the Contract or the delivery/service of any other instalment or to withhold payment in respect of any instalment previously delivered/served.

8 SERVICE CONTRACTS

- 8.1 TCE offers to manage Buyer's lubrication devices (supplied by TCE only), on an annually recurring contract or otherwise agreed terms.
- 8.2 TCE will not accept any liability whatsoever for non-performance of lubrication devices. It is the Buyers responsibility to report to TCE any faults within 24 hours of any fault or error message being noticed and to take remedial action immediately, if a representative of TCE is not available to come to site within the next 24 hours. Lubrication by manual means should be re-instated by the Buyer, until a remedy can be actioned. This responsibility and course of action should be taken by contract and non-contract Buyers alike.
- 8.3 Buyer is responsible for:
- 8.3.1 removing all blockages in between service visits by purging and clearing of grease-ways in bearings etc;
 - 8.3.2 reporting any error codes on lubricator display to TCE as soon as possible (within 24 hours);
 - 8.3.3 investigating any possible bearing issues as these are highlighted by the lubrication units (as soon as practicable);
 - 8.3.4 all pipework, fittings, splitters, divider blocks, lubricator cabinets, remote monitors and other associated equipment, should be checked regularly by Buyer staff as part of internal preventative maintenance procedures, to ensure full functionality and any failures reported in a timely manner;
 - 8.3.5 repairing all pipes and fittings failures (TCE's staff can assist at their discretion, during service visits);
 - 8.3.6 all accidental or negligent misuse of lubricators an associated equipment (pipework, fittings, splitters, distribution blocks, lubricator cabinets, remote monitors etc), will incur supplementary cost to Buyer for remedial works; and
 - 8.3.7 spare lubricant cartridges must be kept at agreed min/max levels.
- 8.4 If TCE cannot get an engineer to site within a given timeframe, then any points not receiving grease must be disconnected from the lubrication system, grease nipples re-installed and hand greasing re-instated until an engineer can attend to the issue

9 MONITORING DEVICES AND SERVICES

- 9.1 All Remote Monitor and GPS Tracking Devices supplied by TCE (TCE Monitor) are supplied on the understanding that data is provided with no warranties, or guarantees, expressed or implied, concerning data accuracy, completeness, reliability or suitability.
- 9.2 TCE shall not be held responsible, or be liable regardless of the cause or duration, for any errors, inaccuracies, omissions or other defects in or anomalies or the untimeliness or un-authenticity of the data or for any delay or interruption in the transmission thereof to the user or for any claims or losses arising therefrom or occasioned thereby. The end user/Buyer assumes and accepts the entire risk as to the quality, and quantity of the data. This applies to any remote monitor and tracking device that is in use as it must be understood and accepted

that GPS devices and data can be affected by influences beyond the control of TCE such as weather, topography, position and installation point.

- 9.3 TCE cannot be held responsible and accept no liability if there is any kind of “outage”, breakdown, loss of signal that is connected to any land or mobile telephone company or provider and the same applies to satellites and their controllers.
- 9.4 All subscriptions are paid in advance for the use of our Service, failure to pay subscription charges will result in the inability to access account. TCE can only offer credit notes for the remainder of an unused subscription at cancellation point. This credit can be used against other subscriptions or transferred to another account subject to receipt of permission from both parties. TCE will debit the chosen payment method automatically on the date specified in the self-serve portal area at the interval agreed at the start of the service contract. TCE will request updated payment details should payment fail and retry this until payment is made or service is cancelled. TCE reserves the right to terminate any subscription at any time.
- 9.5 All subscriptions commence 30 days from the date of the Order, regardless of the date of activation or the hardware installation date, which may result in some or all of subscription credit expiring in cases where the installation becomes protracted.
- 9.6 Subscription pricing is subject to change by TCE at any time. TCE will notify the Buyer, at least 30 days before a Buyers subscription pricing is due to change, of such change and the increase.

10 SERVICES, CONSULTANCY, INFORMATION IMPART

- 10.1 When TCE, or any of its employees, enters into a commercial agreement to provide third party companies with market information and makes known experience of market conditions, this will always be done in a non-advisory capacity (no advice is ever offered, only guidance), even if the task is for financial gain. Where this type of information exchange takes place, the parties will endeavour to ensure it is recorded.
- 10.2 Although the recordings can be kept/provided to the other party – these will always be the property of TCE and TCE individual/ employee involved. These recordings are not for public dissemination and cannot be used in any capacity which may reflect in a detrimental way on TCE, or any TCE individual/ employee concerned. In all and every case use of any recording is not allowed except for use internally for reference purposes by Counterparty and its employees only. Use of any recording for advertisement, commercial purposes or other non-internal reference purpose is prohibited. TCE disclaims in this way for its employee and itself. Any information provided is done so in good faith only, no advice is offered or implied. Persons acting upon information imparted do so at their own risk and TCE accepts no responsibility whatsoever, for any subsequent losses, claims or costs howsoever arising.

11 SECURITY OF WEBSITES, WEBSHOP and SERVICES

- 11.1 The Buyer agrees that they will not, and will not allow any other person to:
- 11.1.1 link to TCE's Websites and Services in any way that would cause the appearance or presentation of the site to be different from what would be seen by a user who accessed the site by typing the URL into a standard browser;
- 11.1.2 modify, copy, or cause damage or unintended effect to any portion of TCE's Websites and Services, or any software used within it;

- 11.1.3 collect or use any product listings, descriptions, case studies, images, demos or prices;
- 11.1.4 download any part of TCE's Websites and Services, without TCE's express written consent;
- 11.1.5 collect or use any information obtained from or about TCE's Websites and Services or the Content except as intended by this agreement;
- 11.1.6 aggregate, copy or duplicate in any manner any of the Content or information available from TCE's Websites and Services, other than as permitted by this agreement or as is reasonably necessary for your use of TCE's Websites and Services; and
- 11.1.7 share with a third party any login credentials to TCE's websites and Services.

12 MECHANICAL WORKS, SITE SERVICES and THIRD PARTY SERVICES

- 12.1 All Mechanical works, site services and third party services are supplied by TCE utilising the services of bona-fide sub-contractors or service providers appointed by TCE.
- 12.2 These services and products are supplied on the understanding that all works and products are provided with no warranties, or guarantees, expressed or implied, concerning accuracy, completeness, reliability or suitability.
- 12.3 TCE shall not be held responsible, or be liable regardless of the cause or duration, for any errors, inaccuracies, omissions or other defects in or anomalies or the untimeliness or un-authenticity of the works/ services or for any delay, cessation or interruption in the duration of works/ services thereof to the user or for any claims or losses arising therefrom or occasioned thereby.
- 12.4 TCE's appointed sub-contractors and/or services providers agrees that they will be liable for all losses claims and costs directly or indirectly as a consequence of their provision of goods or services. The Buyer accepts that the sub-contractor and/or the service provider assumes and accepts the entire risk as to the quality, and quantity of the goods, works or services, and their completeness.
- 12.5 TCE cannot be held responsible and accepts no liability if there is any kind of "outage", breakdown, incompleteness or other stoppage in the Buyer's work processes due to works or services carried out by appointed sub-contractors and/or service providers. However, TCE will take steps to ensure correct employers, public and products insurance of the required coverage is in place with all appointed sub-contractors and/or service providers to carry out works or services on its behalf and to this end valid employers, public and products liability insurance of the required coverage amounts, details must be provided by any appointed sub-contractor before any goods are supplied, works or services are carried out on TCE's behalf.
- 12.6 TCE will not be responsible or liable in the event of termination of insurance cover or inaccuracies within insurance documentation, which causes issues with insurance cover provided, by or for Bona-fide sub-contractors, service providers or their insurance advisors/ providers/ underwriters for any reason.
- 12.7 Notwithstanding the above, TCE will not be held responsible or accountable in any way, should the appointed Bona-Fide Sub-contractors or service providers default in any way

including but not limited to financially, by closure of business or any other way or form. Any shortfall in project completeness and any financial implications or other that this may present to the client company, will not be borne by TCE and redress must be sought from the appointed Bona-fide sub-contractors in all and every case.

13 BONA FIDE SUB-CONTRACTORS

- 13.1 TCE will appoint sub-contractors to carry out installation work on its behalf from time to time. The sub-contractor appointed by TCE, assumes and accepts the entire risk as to the quality and quantity of the goods, works or services, plus completeness. Also, TCE will not be held responsible and accepts no liability if there is any kind of "Outage", breakdown, incompleteness or other stoppage in the Buyer's work processes due to the goods supplied, works or services carried out by appointed sub-contractors.
- 13.2 TCE appointed sub-contractors must ensure valid Employers, Public and Products Liability Insurance of the required coverage amounts, are provided to TCE before any, goods are supplied, works or services are carried out on TCE's behalf. However, TCE will not be responsible or liable in the event of termination of insurance cover or inaccuracies within insurance documentation, which causes issues with insurance cover provided, by or for sub-contractors or their insurance advisors/ providers/ underwriters for any reason. In addition to the above, TCE will not be held responsible or accountable in any way, should the appointed sub-contractors default in any way – should this be financially, by closure of business or any other way or form.
- 13.3 Any shortfall in project completeness and any financial implications or other that this may present to the Buyer, will not be borne by TCE and redress must be sought from the appointed sub-contractors in all and every case.

14 PRICES

- 14.1 The price payable for Goods and/or Services shall, unless otherwise stated by TCE in writing and agreed on its behalf, be the list price of TCE current at the date of despatch.
- 14.2 All prices are exclusive of Value Added Tax, insurance, carriage and delivery charges. This will be charged at the appropriate rate.
- 14.3 TCE's prices are subject to adjustment to take account of any variation in TCE's costs including (but not limited to) variations in wages, the cost of materials, exchange rate fluctuations, alterations of duties and other costs since the date of TCE's quotation or (if no quotation is issued) the Buyer's order. TCE accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted. The invoice so adjusted shall be payable as if the price set out therein were the original contract price.
- 14.4 TCE will be entitled to charge the prescribed minimum order value requirement (at the date of sale of the Goods and Services) if the Buyer orders Goods on credit to a value below TCE's prescribed minimum order value requirement.

15 TERMS OF PAYMENT

- 15.1 Unless otherwise stated by TCE in writing and recorded on TCE's acknowledgement of order, the price for the Goods and Services and any charges payable shall be due in the case of Goods when the Buyer orders them and in the case of Services when the Services are

supplied. For Goods supplied on a "call off" order basis, payment will be due when items are "called off" and under normal payments terms of 30 days. However, no call off order will be more than 12 months in duration and all outstanding amounts become due upon reaching this time limit. TCE reserves the right to ask for full payment of Goods supplied on a "call off" order basis at any time and especially where regular "calling off" of ordered items fails to be on a "regular basis". TCE reserves the right to set the terms for "regular basis" time periods.

- 15.2 Where the Goods or Services are supplied on credit, the payment shall be due in cash not later than 30 days from the date of the invoice. Time for payment shall be of the essence.
- 15.3 Without prejudice to any other rights it may have, TCE shall charge interest at 4% above the then current Base Rate of Lloyds Bank PLC on overdue payments of the price of the Goods.
- 15.4 The Buyer shall not be entitled to any deductions, discounts or rebates for prompt or early payment. The Buyer shall pay the price of the Goods and Services, including any additional by virtue of this clause, and all charges due under this contract without any deduction whether by way of set-off, counterclaim or otherwise.
- 15.5 Where payment is outstanding beyond 7 days from the due date, TCE reserves the right to suspend, cancel or otherwise take any action appropriate to recover monies owed to it

16 DELIVERY

- 16.1 Unless otherwise agreed by TCE in writing, delivery of the Goods shall take place at TCE's Premises.
- 16.2 All times or dates given for delivery of the Goods are given in good faith but without any responsibility on the part of TCE. Time of delivery shall not be of the essence of any contract nor shall TCE be under any liability for any delay beyond TCE's control.
- 16.3 Where the Goods are handed to a carrier for carriage to the Buyer or the United Kingdom port for export any such carrier shall be deemed to be an agent of TCE and not of the Buyer for the purposes of Sections 44, 45, and 46 of the Sale of Goods Act 1979.
- 16.4 The Buyer agrees that Section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by TCE.
- 16.5 No liability for non-delivery loss of or damage of the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the Contract will attach to TCE unless claims to that effect are notified in writing by the Buyer to TCE (and in the case of claims for non-delivery loss or damage with a copy to the carrier if TCE's own vehicles have not been used to deliver the Goods):
 - 16.5.1 within seven days of delivery for loss damage or non-compliance with the Contract; or
 - 16.5.2 within ten days of the date of the invoice for non-delivery.
- 16.6 In the event of a valid claim for non-delivery loss damage or non-compliance with the Contract, TCE undertakes at its option either to repair or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery loss damage or non-compliance.
- 16.7 If the Buyer shall fail to give notice in accordance with condition 6(4) above the Goods shall

be deemed to be in all respects in accordance with the Contract. Without prejudice to earlier acceptance by the Buyer it shall be bound to accept and pay for the same accordingly.

- 16.8 The Buyer will at its own cost, unless otherwise agreed in writing, supply all machinery equipment and labour, lay on all Services and make all other preparations as shall be necessary for the off-loading, commissioning, and/or testing, installation, and proper working delivery of the Goods and/or supply of Services at the Buyer's premises.

17 RETURNS

Goods supplied in accordance with the Contract cannot be returned without TCE's prior written authorisation. Duly authorised returns shall be sent to TCE's Premises at the Buyer's expense.

18 PACKING AND CARRIAGE

Unless otherwise agreed by TCE in writing, the prices of the Goods are exclusive of packing and carriage.

19 DAMAGES AND DEFECTS

TCE warrants that subject to the normal limits of industrial quality the Goods shall at the time of despatch be reasonably fit for the purpose for which the Buyer has given written details (if any) to TCE prior to the contract and be of satisfactory quality and correspond with the description to which they are sold. If any Goods do not conform to that warranty TCE will at its option repair or replace the Goods but the Buyer (and not TCE) shall be responsible for the cost and expense of re-delivering the same and the cost of removing defective goods (including all travelling and other expenses) and supplying any materials or substances previously supplied by or on behalf of the Buyer and the Goods shall remain at the risk of the Buyer at all times. In the case of parts sent to the Buyer with which the Buyer repairs the Goods, once the Buyer has tampered with the Goods the warranty is invalidated. Also once the Buyer has used the goods or tampered or altered the Goods in any way, any and all warranties are invalidated.

- 19.1 In the case of products supplied on a trial basis, normal warranty does not apply.
- 19.2 In the case of the Services TCE warrants that the Services will be carried out with reasonable skill and care.
- 19.3 The foregoing warranties under this clause are conditional upon:
- 19.3.1 the Buyer giving written notice to TCE of the alleged defect in the Goods and/or Services, such notice to be received by TCE within seven days of the time when the Buyer discovers or ought to have discovered the defect and in any event within 7 days of delivery of the Goods and/or provision of the Services;
- 19.3.2 the Buyer affording TCE a reasonable opportunity to inspect the Goods or if so requested by TCE returning the allegedly defective Goods to TCE's works carriage paid for inspection to take place there;
- 19.3.3 the Buyer making no further use of the Goods after the time at which the Buyer discovers or ought to have discovered the defect;

- 19.3.4 the defective Goods having been installed used stored and maintained in accordance with any instructions issued by TCE or in accordance with general trade practice and there being no negligence or misuse on the part of the Buyer its servants or agents nor the Goods having been altered or repaired by any person other than TCE or those authorised by TCE.
- 19.3.5 TCE being satisfied that the defect in the Goods and/or Services was due to its defective workmanship or use of defective materials and without prejudice to the foregoing TCE shall be under no liability for defects due to wear and tear or neglect or use of the Goods for any purposes other than those for which they are designed;
- 19.3.6 The defective Goods not having been sold let hired or otherwise disposed of by the Buyer to a second or subsequent user or purchaser.
- 19.4 The total liability of TCE for any loss of the Buyer in respect of any one event or series of connected events (excluding indirect or consequential loss or damage howsoever caused) shall in the case of orders for Goods and/or Services (excluding VAT) be the value of the individual item or £500 total, whichever is the lesser in value.
- 19.5 Save as otherwise provided in this clause and to the extent permitted by law:-
- 19.5.1 all other conditions and warranties express or implied are hereby expressly excluded;
- 19.5.2 TCE shall be under no liability for any loss or damage howsoever caused which arises in respect of the Buyer's liabilities to any third party;
- 19.5.3 TCE shall be under no liability for any direct or indirect or consequential loss or damage howsoever caused and without prejudice to the foregoing TCE shall not be liable for any costs claims or damages or expenses arising out of any tortious acts or omissions or any breach of contract or statutory duty calculated by reference to profits, income production or accruals or loss of such profits, income production or accruals or by reference to accrual of such costs claims damages or expenses on a time basis.
- 19.6 Nothing contained in these Conditions shall be construed as an attempt to exclude or limit the liability of TCE in negligence for the death of or injury to any person.
- 19.7 Where the Goods and/or Services are not manufactured by TCE, it gives no warranty as to patent registered design copyright and other industrial property rights in or in connection with the Goods and/or Services. TCE offers no warranty period for performance of Goods or "fitness for purpose", except where warranty is offered by the original equipment manufacturer or supplier. In this case these terms may be extended by TCE at its sole discretion to the Buyer. The Buyer should always use its own staff to confirm "fitness for purpose" before order placement with TCE.
- 19.8 TCE accepts no responsibility for any drawing design or specification not prepared by TCE and TCE give no warranty guarantee representation or opinion on the practicability of construction or of the efficacy safety or otherwise of materials to be supplied or work to be executed by TCE in accordance therewith and the Buyer shall be responsible for the cost of any additional work caused by defects in any such drawings designs or specifications. TCE does not offer normal warranties on products supplied on a trial basis.

20 TCE'S LIEN

- 20.1 In addition to any other right or lien to which TCE may by law or the other terms hereof be entitled TCE shall be entitled to a general lien on all the Goods and property of the Buyer in TCE's possession whether paid for or not and the right of sale of such Goods and property at TCE's sole discretion for any unpaid money due under the terms of any contract between TCE or any Associated Company and the Buyer or any Associated Company of the Buyer.
- 20.2 For the purposes of this clause a company is to be treated as another's "Associated Company" if one of the two has control of the other (whether directly or indirectly) or both are under the control of the same person or persons (whether directly or indirectly) and for the purposes of this definition the expression "control" shall have the meaning attributed thereto by Section 416 of the Income and Corporation Taxes Act 1988.
- 20.3 TCE shall have the right to put any Goods or property over which it has a lien into a saleable state by any means whatsoever and (without prior notice to the Buyer) to sell such Goods whether by private treaty or otherwise on such terms as TCE may agree at its sole discretion. Out of the proceeds of sale TCE shall be entitled to retain a sum equivalent to all unpaid monies due to it from the Buyer as aforesaid together with the cost of putting the Goods into a saleable state as aforesaid and the expenses of sale and any balance shall be paid to the Buyer.

21 TERMINATION OR CANCELLATION

- 21.1 In the event of:
- 21.1.1 any distress execution or other legal process being levied upon any of the Buyer's assets;
 - 21.1.2 the Buyer entering into any arrangement or composition with its creditors committing any act of bankruptcy or (being a corporation) an order being made or an effective resolution being passed for its winding up except for the purposes of amalgamation or reconstruction as a solvent company or a Receiver and Manager Receiver Administrative Receiver or Administrator being appointed in respect of the whole or any part of its undertaking or assets;
 - 21.1.3 an encumbrancer taking possession of any of the property or assets of the Buyer;
 - 21.1.4 the Buyer ceasing or threatening to cease to carry on business;
 - 21.1.5 non-payment by the Buyer of any monies due from it to TCE;
 - 21.1.6 any breach of these conditions by the Buyer;
 - 21.1.7 the Buyer reasonably apprehending that any part of the events mentioned above is about to occur in relation to the Buyer;
 - 21.1.8 TCE shall be entitled to suspend all or any work on or future deliveries and instalments of the Goods and/or the provision of Services under this or any other contract and on written notice to cancel the undelivered portion of this or any contract between the Buyer and TCE and sell the Goods elsewhere and/or deem that the whole of the price under this or any other contract shall be payable immediately.

21.1.9 In the event of any such cancellation by TCE in accordance with the provisions in this agreement or any cancellation and/or repudiation of the contract by the Buyer, TCE shall be entitled to recover as damages from the Buyer all loss and damage of whatever kind consequential or otherwise which TCE shall sustain in connection with such cancellation.

21.1.10 The exercise of the rights conferred by this Condition shall be without prejudice to any other right enjoyed by TCE pursuant to these Conditions or by law including in particular

21.1.11 the right to recover the Goods or the proceeds thereof from the Buyer pursuant to the next clause.

22 PASSING OF TITLE AND RISK

22.1 From the time of delivery the Goods shall be at the risk of the Buyer who shall be solely responsible for their custody and maintenance but, unless otherwise expressly agreed in writing, the Goods shall remain the property of TCE until all payments under the Contract have been made in full and unconditionally. Whilst the ownership of TCE continues the Buyer shall keep the Goods separate and identifiable from all other Goods in its possession as bailee for TCE.

22.2 In the event of any resale by the Buyer of the Goods the beneficial entitlement of TCE shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to TCE and until and subject to such assignment shall be held on trust in a separate identified account for TCE by the Buyer who will stand a strictly fiduciary capacity in respect thereof.

22.3 In event of failure to pay the price in accordance with the Contract, TCE shall have power to resell the Goods. Such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purposes TCE and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.

23 CONDITIONS AND WARRANTIES

23.1 The Contract shall not constitute a sale by description or sample.

23.2 Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of the Goods or their fitness for any particular purposes (even if that purpose is made known expressly or by implication to TCE) or as to the correspondence of the Goods with any description or sample are hereby expressly negated.

23.3 TCE reserves the right to make without notice such reasonable modifications in specifications descriptions designs materials or finishes as it deems necessary or desirable. The Buyer shall not be entitled to object to or reject the Goods or Services or any of them by reason of such reasonable modifications.

24 DEFECTIVE GOODS

24.1 TCE and the Goods and Services it supplies, to the best of its knowledge, comply in all aspects with the requirements of the Health and Safety at Work Act 1974 and all related

legislation.

- 24.2 Subject to the provisions of this Agreement, if a competent authority declares that the Goods are unsafe or a risk to health in any respect the Buyer shall notify TCE immediately. TCE shall at the Buyer's expense make such modification to the Goods or Services or supply such additional or replacement parts for the Goods as such competent authority shall consider necessary to ensure that the Goods comply with any necessary requirements.
- 24.3 In the case of Goods not manufactured by TCE, TCE will pass on to the Buyer to the extent that it is able any benefits obtainable under any warranty given by TCE's supplier provided that the Goods have been accepted and paid for.
- 24.4 Nothing herein shall impose any liability on TCE in respect of any defect in the Goods arising out of the acts, omissions negligence or default of the Buyer its servants or agents including in particular without prejudice to the generality of the foregoing any failure by the Buyer to comply with any recommendations of TCE as to storage and use of the Goods (including without limitation any instructions provided by TCE as to the calibration of the Goods).
- 24.5 Nothing herein shall have the effect of excluding or restricting the liability of TCE for death or personal injury resulting from its negligence in so far as the same is prohibited by United Kingdom statute.
- 24.6 In the case of third party suppliers or service providers to TCE and any services or products that they supply to TCE, should any issue of any type, cause any third party supplier to cease said supply or service to TCE, TCE will not be liable for any losses sustained by the Buyer or their clients, for loss of said service or support for any product supplied by TCE. TCE will make efforts to maintain all services supplied by third party suppliers/ service providers, but will not be liable for refunds or financial losses of any kind (including but not limited to direct, indirect and consequential losses).

25 CONSEQUENTIAL LOSS

TCE shall not be liable for any costs claims or damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals by reference to accrual of such costs, claims, damages or expenses on a time basis.

26 TESTING, INSTALLATION, ADJUSTMENT and MEASUREMENT

- 26.1 Where the Buyer requires TCE to carry out tests on the Goods, TCE may charge the Buyer at a reasonable rate for work done and materials used in testing.
- 26.2 Where TCE carries out work at the Buyer's request at any place other than its own premises, without prejudice to any other remedy TCE may have, the Buyer shall indemnify TCE against any losses it may suffer (including any damages, costs and expenses it may have to pay) as a result of damage to TCE's property or claims against TCE by its employees or by any third party where the losses arise from the nature condition or state of repair of the place or any materials or equipment in that place or from any negligence of the Buyer, its servants or agents or any third party. Any persons or third party instructed by TCE to carry out work at the Buyer's request at any other place other than its own premises, will have adequate Insurance cover and for any works carried out TCE shall not be liable for any costs claims or damages or expenses arising out of any tortious act or omission or any breach of contract or statutory

duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals by reference to accrual of such costs, claims, damages or expenses on a time basis.

27 REFURBISHMENT

- 27.1 If the Buyer wishes TCE to refurbish a mechanical item the Buyer will (at the Buyer's cost) return the mechanical item to TCE.
- 27.2 TCE will provide a quotation for the refurbishment of the mechanical item. If TCE provides an estimate without having seen the mechanical item then TCE will not be bound by this estimate and shall provide a quotation once it has seen the mechanical item but prior to carrying out the work.
- 27.3 In the case of parts added to a mechanical item during refurbishment TCE warrants that subject to the normal limits of industrial quality the parts shall at the time of delivery and for twelve months after that date be of satisfactory quality.
- 27.4 The Buyer agrees to indemnify and keep TCE indemnified from and against all costs, expenses, liabilities, injuries, losses, damages, claims, demands or legal costs (on a full indemnity basis) and judgements which TCE incurs or suffers as a consequence of a fault in a mechanical item supplied by the Buyer to TCE for refurbishment.

28 EXPORT TERMS

- 28.1 The Buyer shall forthwith obtain all imports licences (or equivalent authorisation) necessary in respect of the importation of the Goods into the country to which they are to be consigned and shall promptly inform TCE of their grant.
- 28.2 Unless otherwise specified, delivery shall be effected FCA (as defined in the Incoterms) by TCE delivering the Goods into the charge of the carrier named by the Buyer (but TCE shall not be required to give the Buyer any notice relating to insurance) and the Goods shall at that time be deemed to be delivered in accordance with the contract.
- 28.3 TCE shall not be responsible for any loss or damage to the Goods after the same have been delivered.
- 28.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at TCE's premises before shipment. TCE shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 28.5 Unless otherwise specified by TCE in writing, all orders accepted by TCE will specify that the price is FCA. Unless otherwise specified by TCE in writing, all prices quoted are exclusive of VAT, customs duties, import services. All prices quoted are subject to variations without notice.
- 28.6 Unless otherwise agreed the price for the Goods to be supplied by TCE is specified in the tender document and is payable in cash in sterling.
- 28.7 In relation to prices specified in a currency other than sterling ("the Quoted Currency"), and unless otherwise agreed in writing by TCE, it shall have the right at any time or times when the rate in the London Foreign Exchange market for the Quoted Currency in terms of sterling

stands more than 5% higher than such rate on the date when the price was quoted, to raise any such prices by a percentage not exceeding the percentage rise in such rate for Quoted Currency and shall forthwith notify the Buyer of such increase price which shall then be substituted for the original price.

- 28.8 Payment of all amounts due to TCE shall be made by irrevocable sight letter of credit opened by the Buyer in favour of TCE and confirmed by a bank in the United Kingdom acceptable to TCE or if TCE has agreed in writing on or before acceptance of the Buyer's order to waive this requirement by acceptance by the Buyer and delivery to TCE of a bill of exchange drawn on the Buyer payable 30 days after sight to the order of TCE at such branch of Lloyds Bank Plc in England as may be specified in the bill of exchange.
- 28.9 The Buyer undertakes not to offer the Goods for resale in the United Kingdom or any other country notified by TCE to the Buyer at or before the time the Buyer's order is placed or to sell the Goods to any person if the Buyer knows or has reason to believe that person intends to resell the Goods in any such country.

29 RECOMMENDATIONS

- 29.1 The recommendations TCE provides as part of our service are to be considered as recommendations only and do not constitute advice in any way.
- 29.2 The Buyers are not required to action any of our recommendations.
- 29.3 Any actions or inaction implemented as a result of, or in connection with, our recommendations shall be at the Buyers sole risk.
- 29.4 Reliance upon TCE's recommendations shall be at the Buyers sole risk.
- 29.5 The Buyer TCE, its officers and employees shall be indemnified against any and all legal costs, pertaining to any and all legal disputes between Buyer and any other party.
- 29.6 TCE reserves the right to monitor e-mails in accordance with the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000. TCE is committed to keeping Buyer data safe at all times in compliance with the GDPR and Data Protection Laws. It is the Buyer's responsibility to check attachments for viruses: whilst precautions have been taken to prevent the transmission of viruses, TCE will not be held responsible for any damage caused as a result of contagion.

Schedule 2 PURCHASE OF GOODS

1 DEFINITIONS

In this Schedule 2, the following expressions shall have the following meanings:

- 1.1 “**Contract**” means the Order and the Seller’s acceptance thereof.
- 1.2 “**Goods**” means the article or things or any of them described in as Order and to be supplied by the Seller
- 1.3 “**Purchaser**” means TCE or any associate of TCE whose behalf an Order is placed.
- 1.4 “**Seller**” means the person, firm or company with whom an order is placed.
- 1.5 “**Order**” means the Purchaser’s official instructions to the Seller in writing to supply the Goods on these Conditions and where those instructions conflict with the terms of these Conditions those instructions shall prevail.

2 OFFER AND ACCEPTANCE

An Order made by the Purchaser shall constitute an offer on the part of the Purchaser which must be accepted by the prompt return of the acknowledgement of an Order form or other similar acceptance in writing by the actual execution of an Order and such acceptance will be deemed to bind the Seller to these Conditions and no Goods shall be supplied by the Seller except in accordance with such Conditions.

3 SOLE CONDITIONS

- 3.1 These conditions alone shall apply to an Order subject only to the variations in writing signed by both the Seller and the Purchaser. Any printed or standard conditions appearing on any documents emanating from the Seller are not accepted by the Purchaser and shall supersede any previously issued terms and conditions of purchase or supply.
- 3.2 No other agreement or understanding in any way modifying or supplementing an Order nor any promises or representations made by the representatives of the Purchase or Seller shall be binding unless confirmed in writing and signed by authorised officers of both parties.

4 DESCRIPTIONS AND QUALITY

- 4.1 The Goods shall be supplied in strict accordance with the description and specification contained in an Order and shall not exceed the quantity specified. The Purchaser shall not be liable for any excess costs or charges due to deviations from the specification or stated quantity.
- 4.2 The Goods supplied shall be of the very best quality and fit for their purposes. The Goods shall comply with all relevant standards and Codes of Practice and contain no deleterious materials or defective components. The Purchaser reserves the right to reject any of the Goods which are faulty or do not conform to the quality, quantity, standard or description as specified in an Order. The Purchaser may return any rejected Good at the Seller's risk and expense. Acceptance of the Goods by the Purchaser is subject to a weight check in the

receiving store of the Purchaser or on a public weighbridge and to any tests specified in the Order.

5 INDEMNITY

5.1 The Seller shall indemnify the Purchaser against the following (whether caused by defective design, workmanship or material or by failure of the Seller to supply the Goods in accordance with the terms of an Order or any terms implied by Statute or Common Law) or by any other default or non-compliance of the Seller relating to an Order:

5.1.1 any loss, expense or damage or injury whatsoever or whensoever arising suffered by the Purchaser or for which the Purchaser may be held liable to third parties:

5.1.2 consequential or indirect loss or damage (including without limitation loss of profit, use of contracts) sustained by the Purchaser or for which the Purchaser may be liable for any claims in respect of breach of any statutory duty.

6 DELIVERY

6.1 A separate invoice in respect of each Order shall be sent by the Seller to the Purchaser upon despatch of the Goods showing the number and date of the Order.

6.2 All deliveries shall be made to the place or places and at the time or times specified in the Order accompanied by a delivery note showing the Order number and in the case of part delivery the outstanding balance remaining to be delivered.

6.3 The Goods shall be properly packed and protected against damage and deterioration in transit and shall be delivered, insured and carriage paid in accordance with the purchaser's instruction (if any).

6.4 Unless otherwise agreed in writing between the Purchaser and the Seller, time shall be of the essence in relation to the obligations of the Seller and the delivery date or dates specified in an Order shall be condition of the contract.

6.5 If the Seller fails to deliver any of the Goods by the date specified in the Order, the Purchaser shall (without prejudice to its other rights and remedies) be entitled at the Purchaser's sole discretion:

6.5.1 to terminate the Contract in whole or in part;

6.5.2 to purchase the same or similar Goods from another supplier;

6.5.3 to refuse to accept the delivery of any more Goods under the Contract;

6.5.4 to recover from the Seller all costs and losses resulting to the Purchaser from the failure in delivery, including the amount by which the price payable by the Purchaser to acquire those Goods from another supplier exceeds the price payable under the Contract and any loss of profit; and

6.5.5 all or any of the foregoing.

6.6 Notwithstanding the above paragraph 6.4, time shall not be of the essence in regard to the obligations of the Purchaser.

7 TITLE AND RISK

The Goods shall remain at the Sellers risk until accepted by the Purchaser. The property in the Goods shall pass to the Purchaser on delivery or when the Goods become appropriated to the Contract, whichever is the earlier.

8 PRICE AND PAYMENT

- 8.1 The price stated in the Order is inclusive of all costs and expenses including packing and transportation costs. No variation in the price of the Goods will be accepted for any reason whatsoever unless reasonable notice thereof has been given in writing by the Seller the Purchaser and an authorised officer of the Purchaser shall have accepted the price variation in writing.
- 8.2 Where the Goods are subject to Value Added Tax or any other taxes the amount legally demandable is to be rendered as a separate item of account and if required by the Purchaser, the Seller shall produce bona fide evidence of the amount paid or to be paid by it in respect thereof.
- 8.3 The Purchaser reserves the right to deduct from any monies due or becoming due to the Seller, any monies due from the Seller to the Purchaser under the Contract or any other contract relating to the supply of Goods or Services.
- 8.4 The price of the Goods includes the cost of insurance, packaging and carriage of the Goods unless otherwise expressly indicated in the Order.
- 8.5 Any discount period will be calculated from the date the invoice is received by the Purchaser.
- 8.6 Payment for Goods accepted by the Purchaser shall be made at the end of the calendar month of invoice.

9 BREACH

- 9.1 Any breach of any term of an Order or any of these Conditions by the Seller regarding time of delivery shall (whether or not the Purchaser has accepted the Goods or any part thereof and whether or not the property in those Goods has passed to the Purchaser) entitle the Purchaser at its option either to treat the Contract as repudiated or treat any such breach as a breach or warranty giving rise to claim for damages.
- 9.2 If at any time after acceptance by the Seller of an Order the Seller (being an individual) commits any act of bankruptcy or compounds or makes arrangement with his creditors, or the Seller (being a company) goes into liquidation either voluntary or compulsory (except a voluntary insolvent liquidation for the purpose of amalgamation or reconstruction) or has a receiver or administrative receiver appointed over any of its assets the Purchaser may cancel such Order by written notice to the Seller.
- 9.3 No time given or concession made on the part of the Purchaser shall be construed as a waiver of any rights and remedies hereunder or at common law.

10 CANCELLATION

The Purchaser shall have the right to cancel an Order in whole or in part at any time for any reason whatsoever by giving the Seller notice thereof in writing. In such event, the Purchaser

shall pay to the Seller (except where the order has been cancelled due to breach by the Seller) a fair and reasonable sum for all materials used and work done up to the time of the cancellation whereupon the property in such materials shall pass to the Purchaser. The Purchaser shall not be liable for any loss including consequential or indirect loss suffered by the Seller or any third party as a result of such cancellation.

11 WARRANTY

11.1 The Seller undertakes, warrants and represents that, the Goods shall for a period of 24 months from delivery (the **Warranty Period**):

11.1.1 conform to any sample, specification and/or descriptions given in quotations, estimates and sales material;

11.1.2 be free from defects in design, material and workmanship;

11.1.3 comply with all Applicable Laws, standards and best industry practice (including in relation to their manufacture, packaging and delivery);

11.1.4 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

11.1.5 be fit for purpose and any purpose held out by the Seller and set out in the Order and as otherwise required to meet the Purchaser's needs.

11.2 If the Goods or any thereof show any defects in design, workmanship or materials or do not otherwise comply with the Contract within a period of 24 months from the date of delivery the Purchaser may at its option either:

11.2.1 Require the Seller to repair or replace such defective Goods to the satisfaction of the Purchaser (in which case the Clause shall apply to the repaired or replacement Goods); or

11.2.2 Reject such defective Goods (in which case the Purchaser shall return the same to the Seller at the Seller's risk and expense and the Purchaser shall be entitled to purchase equivalent goods elsewhere and any additional expense incurred in connection therewith reimbursed forthwith by the Seller).

11.3 The Purchaser's rights under these Conditions are in addition to, and do not exclude or modify, the rights and remedies to which the Customer may be entitled and (without limitation) the conditions, warranties and terms implied by the Sale of Goods Act 1979 are not excluded.

12 PATENTS

12.1 The Seller warrants that the design, construction and quality of the Goods comply in all respects with all statutes, statutory rules, orders, regulations and Codes of Practice, which may be enforced or which in any way apply to the Goods and further that any adaptation, sale or use of the Goods by the Purchaser will not infringe any patent, trade mark, trade name, registered design, copyright or other intellectual property right belonging to any third party.

12.2 The Seller undertakes to indemnify the Purchaser against all loss, damage, costs, expenses, claims and proceedings which the Purchaser may suffer or incur by reason of any breach of their said warranties.

13 CONFIDENTIALITY

The Seller shall treat any Order and all designs, drawings, specifications and information supplied therewith as confidential and shall not disclose the same to any third party without the Purchaser's prior written consent or infringe any copyright, patent, trade name, registered design or any other intellectual property right vested in the Purchaser.

14 FACTORING

The seller is prohibited from factoring or otherwise assigning any of its rights arising from this Order or from varying the terms of payment without the express written permission of the Purchaser signed by its authorised officer.

15 MECHANICAL WORKS, SITE SERVICES and THIRD PARTY SERVICES

- 15.1 All Mechanical works, site services and Third Party services are supplied by TCE utilising the services of Bona-Fide Sub-Contractors or service providers only.
- 15.2 These services and products are supplied on the understanding that all works and products are provided with no warranties, or guarantees, expressed or implied, concerning accuracy, completeness, reliability or suitability. TCE shall not be held responsible, or be liable regardless of the cause or duration, for any errors, inaccuracies, omissions or other defects in or anomalies or the untimeliness or un-authenticity of the works/ services or for any delay or interruption in the duration of works/ services thereof to the user or for any claims or losses arising therefrom or occasioned thereby. TCE's appointed Bona-Fide Sub-contractors or service providers will be liable in all and every case. The Bona-Fide Sub-Contractor or service provider assumes and accepts the entire risk as to the quality, and quantity of the works or services.
- 15.3 TCE cannot be held responsible and accept no liability if there is any kind of "Outage", breakdown, or other stoppage in the end client's work processes due to works or services carried out by appointed Bona-Fide sub-contractors or service providers.
- 15.4 Valid Employers, Public and Products Liability Insurance of the required coverage amounts, must be provided by any Company appointed Bona-Fide Sub- Contractor or service providers before any works or services are carried out on TCE's behalf. However, TCE will not be responsible or liable in the event of termination of insurance cover or inaccuracies within insurance documentation, which causes issues with Insurance cover provided, by or for Bona-fide sub-contractors, service providers or their insurance advisors/ providers/ underwriters for any reason.
- 15.5 Detailed Risk Assessment and Method Statements must be provided by third-party company appointed Bona-Fide Sub Contractors or service providers prior to commencement of works and must be approved by end client and TCE before any works or services can take place on TCE's behalf.