

The buyer's attention is in particular drawn to the provisions of condition 12.4.

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**“Buyer”** the person, firm or company who purchases the Goods from the Company.

**“Buyer’s Equipment”** any equipment, systems, cabling or facilities provided by the Buyer and used directly or indirectly in respect of the Services

**“Company”** Power X Equipment Ltd. (Company No. 05436235)

**“Company’s Equipment”** any equipment, including tools, systems, cabling or facilities provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Buyer

**“Contract”** the Company’s sales order incorporating these terms and conditions

**“Delivery Point”** the place where delivery of the Goods is to take place under condition 7.

**“Goods”** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

**“Manufacturer”** means the manufacturer of the Goods

**“Services”** means the services to be provided by the Supplier under the Contract together with any other services which the Buyer provides, or agrees to provide, to the Company

1.2 Words in the singular include the plural and in the plural include the singular.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms of conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such documentation being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or

representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until the Contract is signed by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Sales Order is issued or a duly authorised representative verbally accepts the order giving an order number or the Company impliedly accepting the order by fulfilling it in whole or in part. Any quotation, sales order or Contract not accepted by the Company in accordance with this Clause 2.7 is valid for a period of [30] days only from its date, provided that the Company has not previously withdrawn it.

## 3. DESCRIPTION

3.1 The quantity and description of the Goods and Services shall be as set out in the Contract.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's or any Manufacturer’s catalogues or brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample or description.

## 4. SERVICES

4.1 The Services shall be provided by the Company to the Buyer at such time and such place as is either set out in the Contract or is agreed between the parties in writing

## 5. THE COMPANY’S OBLIGATIONS

5.1 The Company shall use reasonable endeavours to provide the Services and to deliver the Goods to the Buyer in accordance in all material respects with the Contract.

5.2 The Company shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

5.3 The Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply

at any of the Buyer's premises and that have been communicated to it under condition 6.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

## **6. BUYER'S OBLIGATIONS**

6.1 The Buyer shall:

- (a) co-operate with the Company in all matters relating to the Services.
- (b) provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Buyer's premises, office accommodation, data and other facilities as required by the Company.
- (c) provide to the Company in a timely manner such information as the Company may require and ensure that it is accurate in all material respects.
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services including identifying, monitoring, removing and disposing of any waste or hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises and informing the Company of all of the Buyer's obligations and actions under this condition 6.1(d);
- (e) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Buyer's premises.
- (f) ensure that all Buyer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements.
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Company's Equipment and the use of the Buyer's Equipment in relation to the Company's Equipment, in all cases before the date on which the Services are to start; and
- (h) keep and maintain the Company's Equipment in good condition in accordance with the Company's instructions as notified in writing from time to time whilst it is on the Buyer's Premises and shall not dispose of or use the Company's Equipment other than in accordance with the Company's written instructions or authorisation.

6.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.

6.3 The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to their property and those losses arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.

## **7. DELIVERY OF GOODS**

7.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business identified in the Contract.

7.2 The Buyer shall take delivery of the Goods either on the earlier of the Company delivering the Goods in accordance with the terms of the Contract or within 7 days of the Company giving the Buyer notice that the Goods are ready for delivery.

7.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

7.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

7.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate payment of instalments, instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence); and
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may at its sole discretion either store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) or require the Buyer at its own expense to arrange storage

(including but not limited to insurance) of the Goods; and

- (d) the Price shall be immediately paid by the Buyer; and
- (e) the Company shall be entitled to recover reasonable charges from the Buyer in respect of the need to “double handle” the Goods. Any sums due pursuant to Clauses 7(c) and 7(e) shall be paid in full to the Company before the Company shall be required to deliver the Goods.

## 8. RISK/TITLE

8.1 The Goods are at the risk of the Buyer from the time of delivery.

8.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are, or which become due to the Company from the Buyer on any account.

8.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee.

(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property.

(c) not destroy, deface, or obscure any identifying mark on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

8.4 The Buyer may use the Goods before ownership has passed to it solely on the following conditions:

(a) the Goods are used only for the purpose that they were manufactured for; and

(b) the Goods are used only in accordance with the Company's or the Manufacturer's instructions and operator/maintenance manuals; and

(c) the Goods are fully and adequately serviced and maintained in accordance with the Manufacturer's warranty; and

(d) the Goods are only used at the Delivery Point.

8.5 The Buyer's right to possession of the Goods shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or

amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed in respect of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(b) the Buyer encumbers or in any way charges any of the Goods.

8.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

8.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be used or stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

8.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 8 shall remain in effect.

## 9. PRICE

9.1 Save as set out in Clause 9.3 below unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price set out in the Sales Order (“the Price”).

9.2 Save as agreed in writing the Price shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

9.3 Where Services are provided on a time and materials basis the Price shall be calculated as follows: -

- (a) the charges payable for the Services shall be calculated in accordance with the Company's standard daily fee rates, as set out in Appendix A and as amended from time to time by the Company giving not less than 1 months' written notice to the Buyer
- (b) the Company's standard daily fee rates for each individual person are calculated based on a twelve-hour day.

(c) the Company shall be entitled to charge an overtime rate of one and a half times the standard hourly fee rate on a pro-rata basis for each part hour or for any time worked by individuals whom it engages on the Services outside the 12 hours referred to in condition 9.3(b);

(d) the Company shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Company shall use such time sheets to calculate the hourly charges.

9.4 Where Services are provided other than on a time and material basis, the total price for the Services shall be the amount set out in the Company's Sales Order (or as in 9.1.) The total price shall be paid to the Company (without deduction or set-off) within 30 days of the date the Services were completed to the Company's reasonable satisfaction.

9.5 Any fixed price and daily rate contained excludes the cost of hotel, and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services and any additional costs (including but not limited to time spent in the provision of the Services such time to be charged in accordance with clause 9.3 above.) incurred as a result of circumstances which were not known to the Company at the time of the Sales Order. Such expenses, materials and third-party services shall be invoiced to the Buyer by the Company after the Services have been provided;

9.6 The Company may vary the Price for the Goods and/or Services at any time between the date of the sales order and delivery to reflect any increase in the cost to the Company of providing the Goods and/or Services.

## 10. PAYMENT

10.1 Subject to conditions 7.5(d) and clause 9, payment of the Price is due in pounds sterling unless otherwise agreed in writing and the Price shall be payable within 30 days of the date of the Company's Sales Order in respect of the supply of Goods and in accordance with clause 9 above in respect of Services or the provision of Goods and Services.

10.2 Time for payment shall be of the essence.

10.3 No payment shall be deemed to have been received until the Company has received cleared funds.

10.4 All payments due to the Company under the Contract shall become due immediately on its termination despite any other provision.

10.5 The Buyer and/or its Bank (as defined below) shall make all payments due under the Contract in full without any deduction whether by way of set-off,

counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

10.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract or its termination, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate prevailing from time to time at National Westminster Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

10.7 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Company on the due date the Company may suspend provision of all Goods and Services until payment has been made in full and set off any liability of the Company to the Buyer against any liability of the Buyer to the Company.

10.8 If the Company does not receive payment as per clause 10.1 then the Company reserves the right without incurring any liability not to supply any further Goods or Services to the Buyer until payment is received in full.

## 11. QUALITY OF GOODS

11.1 Where the Company is not the Manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the Manufacturer of the Goods subject to any specific amendments set out in the Contract ("the Warranty"). Save as set out at Clause 11.2 the Company shall have no liability under any warranty so transferred.

11.2 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall:

(a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

(b) be reasonably fit for the purpose that the Manufacturer intended them to be used

11.3 The Company shall not be liable for a breach of the warranty in condition 11.2 unless:

(a) the Buyer gives written notice of the defect to the Company within the Warranty Period and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and

(b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there; and

(c) unless otherwise agreed by the Company the Buyer ceases to use the Goods immediately upon giving notice to the Company pursuant to clause 11.3(a).

11.4 The Company shall not be liable for a breach of any of the warranties in condition 11.2 if:

(a) the Buyer makes any further use of such Goods after giving such notice; or

(b) the defect arises because the Buyer failed to follow the Company's or Manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) the Buyer alters or repairs such Goods without the written consent of the Company; or

(d) the Buyer fails to comply with the provisions of clause 11.4.

11.5 Subject to condition 11.3 and condition 11.4, if any of the Goods do not conform with any of the warranties in condition 11.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

11.6 If the Company complies with condition 11.5 it shall have no further liability for a breach of the warranty in condition 11.2 in respect of such Goods.

11.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the Warranty Period.

11.8 Any Warranty is personal to the Buyer and is not assignable or otherwise transferable unless agreed in writing with the Company.

## 12. **LIMITATION OF LIABILITY**

12.1 Subject to clause 7 and clause 11, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions.

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

(d) any use made by the Buyer of the Services or any part of them; and

(e) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions

implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these conditions excludes or limits the liability of the Company:

(a) for death or personal injury caused by the Company's negligence; or

(b) under section 2(3), Consumer Protection Act 1987; or

(c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

(d) for fraud or fraudulent misrepresentation.

12.4 Subject to condition 12.2 and condition 12.3:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and

(b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 13. **ASSIGNMENT**

13.1 The Company may assign the Contract or any part of it to any person, firm or company.

13.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13.3 The Buyer confirms that it is acting as principal and not agent for the purposes of the Contract.

13.4 Notwithstanding the provisions of clause 13.2 the Company may at the request of the Buyer but at its sole discretion invoice any finance company or other such institution ("the Bank") in respect of the Price for the Goods. Any such action by the Company shall not constitute an assignment or consent to assign the Contract.

13.5 Neither the Company's agreement to invoice the Bank pursuant to clause 13.4 above nor its acceptance of payment(s) from the Bank shall release the Buyer from any of its duties obligations or liabilities pursuant to the Contract save for the need to pay any part of the Price actually paid by the Bank.

13.6 The Buyer hereby irrevocable represents and warrants to the Company that notwithstanding payment of the Price by the Bank the Buyer is the purchaser of the Goods and the Buyer hereby undertakes to the Company that if, in breach of the terms of this Contract it purports to have agreed that the Bank is the owner of the Goods, in the event of non payment (whether in whole or in part) of the Price the Buyer shall act as the agent for the Company and

recover the Goods from the Bank and return the Goods immediately to the Buyer.

14. **FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or to cancel the Contract or vary the type of the Goods or Services ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, global pandemic (such as the Covid-19 pandemic) epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

15. **GENERAL**

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.6 The formation, existence, construction, performance, validity, and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15.7 Nothing in this Contract is intended to or shall be deemed to constitute a partnership or joint venture or

any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16. **EXCLUSIONS**

16.1 Unless expressly set out in the Contract the Company does not warrant the tonnage of material that the Goods will process.

16.2 If on installation additional parts or equipment not listed in the Sales Order are required either but not limited to install the Goods or make the Goods function or to ensure that a certain throughput tonnage of material can be processed by the Goods or to link the Goods to the Buyers existing equipment at the Delivery Point or any other site at which the Buyer intends to use the Goods then the Company shall use its reasonable endeavours to source, at the Buyer's cost, the additional parts, equipment and service required.

16.3 If during the course of the provision of the Services or installation of the Goods the paint work or finish of the Buyer's Equipment are damaged (notwithstanding the fact that the damage is caused by the Company's employees or agents) or the Goods are painted in a different shade to the Buyer's Equipment unless the Goods or thereby rendered unusable or it is reasonably likely to give rise to a health and safety issue then the Company shall not be required to rectify the said damage.

16.4 The Buyer shall be responsible for all costs associated with the safe and adequate removal of all waste and effluent products produced during the course of the provision of the Services or installation of the Goods.

16.5 Notwithstanding any inspection by the Company or the Manufacturer or their employees agents or representatives no warranty or representation is made by the Company that the Goods will be capable of installation at the Buyer's Delivery Point or elsewhere and the cost of any amendments adjustments additional equipment or labour to allow installation of the Goods at the Delivery Point or elsewhere shall be at the sole cost of the Buyer and the Buyer hereby warrants to the Seller that the Delivery Point or such other site as it intends to install the Goods complies with all CDM and Health and Safety requirements for the purposes of installation and use of the Goods.

16.6 The Company shall not be liable for any loss or damage caused if the Buyer fits or attempts to fit the Goods themselves whether or not the Buyer complies with or attempts to comply with the manufacturer's or the Company's suggestions, advice, instructions or recommendations.

16.7 The Buyer is responsible for providing safe and unrestricted access to the point at which the Service or Installation of the Goods shall take place.

16.8 If the Buyer agrees a time for the Services or installation of Goods and at that time access to the Delivery Point is either denied or restricted to the Company's employees, servants agents or representatives then the Buyer shall pay on demand the Price together with all associated additional costs notwithstanding the fact that the Services have not been provided or the Goods have not been installed.

16.9 If the Buyer orders the incorrect Goods, then they must pay for these in full including carriage. Where Goods can be taken back into stock by the Company then the Buyer will be charged a 20% restocking fee plus any associated costs such as carriage and packing.

16.10 The Company will, entirely at its own discretion submit any claims which may be a claim under a manufacturers warranty to the Manufacturer ("Warranty Claim"). If the Buyer owes money to the Company then the Company may in its absolute discretion refuse to submit a Warranty Claim to the relevant Manufacturer or carry out any works which may be a Warranty Claim unless either the Buyer has paid all monies owed to the Company (including the Company's reasonable estimate of the cost of the works to be done which may result in a Warranty Claim) or the relevant Manufacturer has confirmed in advance that the Company's costs and expenses together with the cost of replacement parts will be paid by them as a Warranty Claim.

## 17. TERMINATION

17.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than 7 days written notice or immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default for not less than 14 days after being notified in writing to make such payment: or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach: or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or

(being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (g) 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 other party; or
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 17.1(d) to condition 17.1(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of contract of the other party (as defined in section 574 of the Capital Allowances Act 2001).

17.2 On termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and sums due pursuant to any Sales Orders or Contract and interest and, in respect of Services supplied but for which no invoice has been submitted, the

Company may submit an invoice, which shall be payable immediately on receipt;

(b) the Buyer shall forthwith return all of the Company's Equipment. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned or repossessed, the Buyer shall be solely responsible for their safe keeping; and

(c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

17.3 On termination of the Contract (howsoever arising), the following conditions shall survive and continue in full force and effect:

(a) Condition 12 (Limitation and Liability)

(b) Condition 17 (Termination); and

(c) Condition 20 (Law and Jurisdiction).

#### 18. VARIATION

18.1 The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

18.2 Subject to condition 18.1, no variation of the Contract or these Conditions or of any of the documents

referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

#### 19. COMMUNICATIONS

19.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by a courier service:

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

19.2 Communications shall be deemed to have been received:

(a) If sent by a courier service and signed by a member of Company Staff

(b) if delivered by hand, on the day of delivery.

#### 20. LAW AND JURISDICTION

20.1 The Contract shall be governed by and construed in accordance with English Law.

20.2 The parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any dispute arising from or issues of interpretation of this Contract.

### Appendix A

#### Charges Payable for Service

£550 per day Monday to Friday. £750 per day Saturday to Sunday. Based on 12 hours a day

All daily rates exclude travel costs, hotel accommodation and meals