

MEMS TERMS AND CONDITIONS FOR THE SUPPLY OF PLANT AND SERVICES



The Customer's attention is particularly drawn to the provisions of clause 16 (Limitation of liability).

1 INTERPRETATION

1.1 The following definitions apply in this Contract:

- (a) **Charges:** collectively the Hire Charges and the Services Charges.
- (b) **Commencement Date:** has the meaning given in clause 2.3.
- (c) **Conditions:** these terms and conditions as amended from time to time in accordance with clause 21.8.
- (d) **Contract:** the contract between MEMS and the Customer for the hire of Plant and supply of Services, as governed by these Conditions.
- (e) **Customer:** the entity that hires the Plant and purchases the Services from MEMS as specified in the Quotation.
- (f) **Delivery:** means the transfer of physical possession of the Plant to the Customer at the Delivery Location or, where the hire of Plant is for use overseas, the delivery of the Plant by MEMS to the docks or a compound near the docks (as applicable), and the words **Deliver** and **Delivered** shall be construed accordingly.
- (g) **Delivery Location:** the intended location of Delivery set out in the Quotation or such other location as the parties may agree in writing.
- (h) **EAWR:** The Electricity at Work Regulations 1989.
- (i) **Force Majeure Event:** any circumstance not within MEMS's reasonable control including: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any law or any action taken by a government or public authority; (vi) interruption or failure of utility service; (vii) collapse of buildings, fire, explosion or accident; (viii) any labour or trade dispute, strikes, industrial action or lockouts; (ix) non-performance by suppliers or subcontractors; and (x) any failure outside MEMS's reasonable control that effects a remote monitoring system (including a failure of hub or network and local area conditions).
- (j) **Fuel Charges:** The price for fuel as set out in the Quotation, subject to any fluctuation in fuel prices Charges as detailed in clause 10.2(d)).
- (k) **Fuel Services:** MEMS's fuel management services.
- (l) **Hire Charges:** The price for the hire of the Plant as set out in the Quotation (subject to clause 5.2(b)).
- (m) **Hire Period:** the period that commences from the time and date that the Plant (i) leaves MEMS's depot or place where last employed; or (ii) has been reserved from (where the Customer reserves the Plant before taking Delivery), and shall continue until MEMS takes possession of the Plant (provided that, should MEMS fail to take delivery of the Plant due to a reason that cannot be attributed to the Customer, the provisions of clause 5.2 shall apply).
- (n) **Holiday Period:** covers any cessation of work over Easter, Christmas and the New Year; as well as any other bank or public holidays in England.
- (o) **HSWA:** The Health and Safety at Work etc Act 1974.
- (p) **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- (q) **Materials:** all materials, equipment, documents and other property of MEMS (excluding the Plant).

- (r) **MEMS:** MEMS Power Generation Limited registered in England and Wales with company number 02028435 with its registered office at Eastcourt Works, Beechings Way Industrial Estate, Beechings Way, Gillingham, Kent, ME8 6PS.
- (s) **Normal Working Hours:** 09:00am to 17:00pm on a Working Day.
- (t) **Offer:** has the meaning given to it in clause 2.2.
- (u) **Off-hire:** the period beginning at the time and date that the parties agree that the Plant is no-longer in use by the Customer and is ready for collection by MEMS.
- (v) **Order Acknowledgement:** MEMS' order acknowledgement form sent by MEMS to the Customer in response to the Offer.
- (w) **Plant:** the equipment (or any part of it) to be hired by the Customer as set out in the Quotation.
- (x) **Plant Insurance Value:** the insurance value of the Plant as specified in the Quotation.
- (y) **Quotation:** the quotation sent by MEMS in response to a Customer enquiry, containing a quote for the Plant and Services and the Plant Insurance Value.
- (z) **Services:** the services supplied by MEMS to the Customer as set out in the Quotation (including Fuel Services, if any).
- (aa) **Services Charges:** The price for Services as set out in the Quotation (including the Fuel Charges).
- (bb) **Stand Down Periods:** any period of time during the Hire Period where the Plant is at the Delivery Location but is not being used by the Customer, as agreed in writing by MEMS and the Customer.
- (cc) **Working Day:** a day other than a Saturday, Sunday or Holiday Period, when banks in London are open for business

1.2 The following rules of interpretation apply in this Contract:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email but not fax.

2 BASIS OF CONTRACT

- 2.1 The Quotation shall not constitute an offer, and is only valid for a period of 7 days from its date of issue.
- 2.2 Confirmation (orally or in writing) by the Customer of the terms of the Quotation constitutes an offer by the Customer to purchase the specified Plant and Services in accordance with these Conditions (**Offer**).
- 2.3 The Offer shall only be deemed to be accepted when MEMS issues the Order Acknowledgement at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 Any samples, drawings, descriptive matter or advertising issued by MEMS and any descriptions of the Plant or illustrations or descriptions of the Services contained in MEMS' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Plant described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 HIRE OF PLANT

- 3.1 MEMS shall hire the Plant to the Customer for the Hire Period.
- 3.2 MEMS reserves the right to amend any Plant specification:
- if required by any applicable statutory or regulatory requirement, and MEMS shall notify the Customer in any such event; and
 - for operational reasons provided that any such change does not materially and adversely affect the use by the Customer of the Plant in accordance with this Contract.
- 3.3 The minimum Hire Period shall be specified in the Quotation or, 1 week, whichever is greater.

4 DELIVERY OF PLANT

- 4.1 MEMS shall Deliver the Plant to the Delivery Location. Any dates and times quoted for Delivery of the Plant are approximate only, and the time of Delivery is not of the essence. MEMS shall not be liable for any delay in Delivery of the Plant that is caused by a Force Majeure Event or the Customer's failure to provide MEMS with adequate Delivery instructions or any other instructions that are relevant to the supply of the Plant.
- 4.2 The Customer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in writing, for unloading and loading of the Plant (and for any repairs required pursuant to clause 7) at the Delivery Location.
- 4.3 The Customer shall ensure that an authorised representative shall be present at the Delivery Location on the Delivery date(s) to take Delivery of the Plant and sign the related Delivery ticket. Should the Customer fail to ensure that such authorised representative is so present, MEMS shall be entitled to assume that the individual signing the Delivery ticket at the Delivery Location has apparent authority to bind the Customer and shall not be held responsible for any lack of authority.
- 4.4 Unless MEMS has agreed in the Quotation to supply craneage, if a crane or other lifting equipment is required for the safe and proper delivery of any Plant, the Customer will be responsible for the provision and cost of the same and all associated costs.
- 4.5 The Customer is deemed to have knowledge of the Delivery Location or the property or land where the Plant is to be Delivered and the Customer warrants that the condition of the Delivery Location is suitable for the use of such Plant. The Customer shall inform MEMS in writing in advance of any restrictions (including height restrictions) with respect to the Delivery Location and/or access to the Delivery Location that could reasonably be considered likely to affect Delivery.
- 4.6 If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, be transported over, be assembled or dismantled on without support, the Customer shall supply and lay suitable support in suitable positions for the Plant to work on, be transported over and be assembled and dismantled on, including for the purpose of Delivery and collection. Any support material supplied by MEMS is provided solely to assist the Customer under their duties within this clause 4.6 and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Plant.
- 4.7 The Customer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Delivery Location and the Customer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.
- 4.8 The Customer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work, etc. Act and observance of the Road Traffic Acts should they apply, including the cost of road fund licences and any insurances made necessary thereby, save that if and during such time as the Plant is travelling, whether for full or part journey from MEMS to the Delivery Location and the Delivery Location to MEMS under its own power with a driver supplied by MEMS, MEMS and not the Customer shall be responsible as aforesaid.

5 ACCEPTANCE AND RISK

- 5.1 Unless notification in writing to the contrary is received by MEMS from the Customer within 24 hours of Delivery, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, provided that where the Plant requires to be

assembled at the Delivery Location, the periods stated above shall be calculated from the date of completion of such assembly.

- 5.2 The risk of loss, theft, damage or destruction of the Plant shall pass to the Customer on Delivery. At and from Delivery (including, for the avoidance of doubt, any Stand Down Periods and Holiday Periods) until MEMS takes possession of the Plant, the Customer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and MEMS's recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted). Notwithstanding the foregoing (and subject always to clause 9.1), should MEMS fail to collect the Plant at the agreed date of collection due to a reason that cannot be attributed to the Customer, the:

- Customer shall not be liable for any Hire Charges from the date of Off-hire; and
- risk of loss, theft, damage or destruction of the Plant shall pass to MEMS 1 week after the beginning of Off-hire.

- 5.3 The Customer shall at all times when hiring Plant take all reasonable steps to keep itself acquainted with the state and condition of the Plant. MEMS does not apply additional charges where the Plant is supplied with a monitoring system and, as such, the Customer shall not (and is not entitled to) rely on any such monitoring system to inform it of the state and condition of the Plant at any time. If such Plant is operated in an unsafe and unsatisfactory state or environment, the Customer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom.

- 5.4 Any inspection report (or a copy thereof) required under the relevant legislation shall be supplied by MEMS, if requested by the Customer, and returned on completion of the Hire Period.

6 OPERATION OF PLANT

- 6.1 When a driver or operator or any person is supplied by MEMS with the Plant (including for unloading or loading of the Plant), such person shall be competent in operating the Plant or for such purpose for which the person is supplied and such person shall be under the direction and control of the Customer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Customer (without prejudice to any of the provisions of clause 17) and the Customer shall be solely responsible for all claims arising in connection with the operation of the Plant by the said persons. Such drivers or operators or persons shall not operate any other plant or machinery or undertake work other than that for which they are supplied by MEMS unless previously agreed in writing between the parties.

- 6.2 The Customer shall not allow any other person apart from representatives of MEMS or the Customer to operate the Plant without MEMS's prior written consent.

- 6.3 The Plant shall not be moved from the Delivery Location to which it was Delivered or consigned without the prior written permission of MEMS.

- 6.4 Unless the Quotation specifies that the installation, commissioning, operation/watchkeeping, de-commissioning and/or de-installation of the Plant (as applicable) are to be performed by, or be the responsibility of, MEMS (or it is otherwise agreed in writing that any such obligations are to be performed by a MEMS engineer) the Customer shall:

- carry out the safe and proper installation, commissioning, de-commissioning and de-installation of the Plant in accordance with the EAWR, the HSWA and all other applicable laws and regulations;
- carry out the termination at any connection point between the Plant and the Customer's network/system in accordance with the EAWR, the HSWA and all other applicable laws and regulations;
- ensure the use and operation of the Plant in conformity with its specification, MEMS's operating instructions, the EAWR, the HSWA and all other applicable laws and regulations;
- ensure that the Plant is not used or operated for any purpose beyond its rated capacity or in a manner likely to result in deterioration of the Plant (except normal wear and tear);
- in the event of a leak spill or dispersal, immediately implement control measures to prevent, limit or reduce the impact;
- keep itself acquainted with the condition of the Plant and shall not use or operate it after it has become defective, damaged or in a dangerous state or in a state which results in a breach of any applicable law or regulation and if the Customer or any employee, contractor or agent

- of the Customer does operate the Plant in such condition then the Customer shall be solely responsible for any damage, loss or accidents resulting therefrom;
- (g) carry out a visual inspection of the Plant (including all connection points) and leak identification checks on a daily basis and ensure that consumable levels (including fuel, oil and lubricant, coolant, refrigerant and chilled water treatment chemicals (as applicable)) in the Plant are checked daily and that these are kept at the level required for the proper operation of the Plant.
- 7 TITLE TO PLANT, BREAKDOWN, REPAIRS AND ADJUSTMENT**
- 7.1 The Plant shall at all times remain the property of MEMS, and the Customer shall have no right, title or interest in or to the Plant (save the right to possession and use of the Plant subject to the terms and conditions of the Contract).
- 7.2 The Customer shall at all reasonable times allow MEMS, its agents or its insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Customer shall allow such access during the Working Day. During Normal Working Hours MEMS will make no charge to the Customer for any routine maintenance and servicing but if the Customer can only make the Plant available for this purpose outside Normal Working Hours then MEMS reserves the right to charge the Customer for overtime costs in accordance with the rates set out in its rate card place from time to time (which can be provided to the Customer on request). Where repairs are required and the Customer has relocated the Plant post-Delivery, the Customer shall be responsible for supplying the craneage or other lifting equipment required to access the Plant for such repairs.
- 7.3 If scheduled maintenance and servicing is not carried out within 48 hours of MEMS advising the Customer of such maintenance and servicing being due, MEMS shall not be responsible for any breakdown which is attributable to such denial of or delay in access and the Hirer shall compensate MEMS for additional wear, tear and damage to the Plant by paying the full cost of both the next service and any consequent repairs which are attributable to such failure to service the Plant.
- 7.4 Any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified by the Customer in writing immediately to MEMS. The Customer shall not receive any credit for any breakdown time that is less than 24 hours. Subject to clause 7.5, any claim for breakdown time which exceeds 24 hours will only be considered from the time and date at which written notification is received and acknowledged by MEMS.
- 7.5 Subject to clause 7.7, full allowance for the Hire Charges will be made to the Customer for any stoppage due to breakdown of the Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs provided that the Customer must first provide MEMS with access and a reasonable period of time in which to rectify any such fault.
- 7.6 The Customer shall not repair, modify or alter the Plant.
- 7.7 The Customer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Plant due to the Customer's negligence, misdirection or misuse of the Plant, whether by the Customer or its servants, and for the payment of hire at the Hire Charges, during the period the Plant is idle due to such breakdown, unsatisfactory working or damage. The Customer is responsible for the cost of spares and repairs due to theft, loss or vandalism of the Plant. MEMS will be responsible for the cost of Plant repairs and spares involved in breakdown from all other causes.
- 7.8 The Customer shall not remove, deface or cover up any name plate or mark on the Plant that indicates that it is MEMS's property.
- 7.9 No claims will be admitted (other than those allowed for breakdown under this clause 7) for stoppages caused by a Force Majeure Event nor shall MEMS be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Customer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.
- 7.10 Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.
- 8 NOTICE OF ACCIDENTS**
- If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Customer to MEMS by email or telephone and confirmed in writing to MEMS no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Customer is not bound to fully indemnify MEMS, no admission of liability, offer, promise of payment or indemnity shall be made by the Customer without MEMS's prior written permission.
- 9 COLLECTION OF PLANT**
- 9.1 If the Plant is not made available for collection by the Customer as agreed between the parties, without prejudice to any other rights and remedies of MEMS:
- (a) such Plant shall be deemed to remain on hire by the Customer and the Hire Charges shall apply for any such period;
- (b) during this period, the Customer shall be responsible for the safekeeping of the Plant in accordance with clauses 5.2 and 17, and for all reasonable costs and expenses incurred by MEMS in seeking to collect such Plant and for not being able to hire the Plant to any third party; and
- (c) the Customer shall notify MEMS of a new collection date and time,
- and this process shall be repeated in the event of more than one failure by the Customer to facilitate collection, until collection of the Plant.
- 9.2 Prior to the completion of the Hire Period, the Customer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and bowsers. The Customer shall be liable for any costs, liabilities and expenses incurred by MEMS should the Customer fail to comply with this clause 9.2.
- 10 SUPPLY OF SERVICES**
- 10.1 MEMS shall supply the Services to the Customer using reasonable care and skill.
- 10.2 Where the Customer has ordered:
- (a) **Transport services:** Delivery and collection shall be made assuming clear and easy access with up to 30 minutes waiting time. Any Additional time on site will incur a demurrage charge of £180.00 per hour or part thereof;
- (b) **Installation services:** Subject to a site survey, MEMS shall supply a team to site to position temporary cable or other equipment (as required). Once positioned the final connections shall be made by MEMS, the Customer or a contractor employed on behalf of the Customer (as agreed) between the Plant and the Customer's equipment;
- (c) **De-installation services:** Subject to a site survey, MEMS shall supply a team to return to site to remove the equipment;
- (d) **Fuel Services:** Due to the daily fluctuations in fuel prices the Quotation will only specify the Fuel Charges as at the date of the Quotation and such Fuel Charges may increase or decrease as a result of fluctuations in fuel prices during the Hire Period.
- (e) **Design services:** Where MEMS undertakes design services (for example, mapping a power supply to a location), the Customer shall be responsible for informing MEMS of any relevant information about such location that may affect the design to be provided by MEMS and the Customer accepts and acknowledges that MEMS cannot be held responsible for any issue not ascertainable by reasonable examination of a location; and /or
- (f) **Watchkeeping services:** The Customer accepts and acknowledges that the provision of MEMS personnel at the Delivery Location is solely to deal expeditiously with any problems with the Plant that may arise from time to time but MEMS cannot guarantee that such problems will not arise.
- 10.3 MEMS shall use its reasonable endeavours to meet any performance dates for the Services specified in the Quotation or as otherwise agreed by the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 10.4 MEMS reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not

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materially affect the nature or quality of the Services, and MEMS shall notify the Customer in any such event.

11 CUSTOMER'S OBLIGATIONS

11.1 The Customer shall:

- (a) ensure that any relevant drawings which could prohibit the Plant from being Delivered or installed or Services from being provided are provided to MEMS prior to commencement. The Customer is responsible for the test and inspection of the Plant and all temporary installed equipment on site and ensure the Customer's equipment on site is fit for purpose and maintained to relevant standards;
- (b) co-operate with MEMS in all matters relating to the Plant and Services;
- (c) provide MEMS, its employees, agents, consultants and subcontractors, with access to the Delivery Location, Customer's premises and other facilities as reasonably required by MEMS to Deliver the Plant and provide the Services;
- (d) provide MEMS with such information and materials as MEMS may reasonably require to supply the Plant and Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Delivery Location, Customer's premises and other applicable facilities for the supply of the Plant and Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Plant and Services before the date on which the Plant is to be Delivered and the Services are to start;
- (g) comply with all applicable laws, including health and safety laws; and
- (h) keep all Materials and Plant at the Customer's premises in safe custody at its own risk, maintain Materials in good condition until returned to MEMS, and not dispose of or use Materials or Plant other than in accordance with MEMS' written instructions or authorisation.

11.2 If MEMS' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, MEMS shall have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays MEMS' performance of any of its obligations;
- (b) MEMS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from MEMS' failure or delay to perform any of its obligations as set out in this clause 11.2; and
- (c) the Customer shall reimburse MEMS on written demand for any costs or losses sustained or incurred by MEMS arising directly or indirectly from the Customer Default.

12 CHARGES AND PAYMENT

12.1 In consideration of provision of the Plant and Services, the Customer shall pay the Charges.

12.2 The Quotation shall specify whether the Plant is being hired for an unlimited or a specified number of running hours. Unless the Plant is hired on the basis of unlimited running hours, as soon as reasonably practicable after the end of each week during the Hire Period, the Hirer shall render to MEMS an accurate statement of the number of hours the Plant has worked each calendar day in such week. If the Customer exceeds any specified number of hours, the Customer may be charged at an additional price as specified in such Quotation.

12.3 The Hire Charges shall accrue per week or part thereof (for example, if the Customer hires the Plant for 1 week and 1 day, the Customer shall be charged 2 weeks of Hire Charges).

12.4 The Customer shall remain within the set credit limit during the Hire Period as specified in the Order Acknowledgement.

12.5 MEMS reserves the right to charge the Customer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation.

12.6 The Hire Charges shall not apply during any Stand Down Period.

12.7 MEMS reserves the right to increase the price of the Plant, by giving notice to the Customer, to reflect any increase in the cost of the Plant to MEMS that is due to any:

- (a) request by the Customer to change the Delivery date(s), quantities or types of Plant or Services ordered; or
- (b) delay caused by any instructions of the Customer in respect of the Plant or Services or failure of the Customer to give MEMS adequate or accurate information or instructions in respect of the Delivery of the Plant or supply of Services.

12.8 Unless otherwise specified in the Order Acknowledgement, in respect of Plant and Services, MEMS shall invoice the Customer for the accrued Charges in arrears at the end of each calendar month or, if the Hire Period expires before the end of a calendar month, at the end of such Hire Period.

12.9 Unless otherwise specified in the Order Acknowledgement, the Customer shall pay each invoice submitted by MEMS:

- (a) within 30 days of the date of the invoice and/or remain within the set credit limit as detailed in clause 12.4; and
- (b) in full and in cleared funds to a bank account nominated in writing by MEMS,

and time for payment shall be of the essence of the Contract.

12.10 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by MEMS to the Customer, the Customer shall, on receipt of a valid VAT invoice from MEMS, pay to MEMS such additional amounts in respect of VAT as are chargeable on the supply of the Services or Plant at the same time as payment is due for the supply of the Services or Plant.

12.11 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

13 INSURANCE

During this Contract and for one year afterwards the Customer shall maintain in force an insurance policy with a reputable insurance company, against theft, malicious and accidental damage and loss, and fire and flood to the Plant with a level coverage that meets or exceeds the Plant Insurance Value. On MEMS' request, the Customer shall provide MEMS with copies of such insurance policy certificates and details of the cover provided for as required under this clause 13. In the event that the Plant is to be operated in or enter a potentially hazardous environment (including airports, ports, railways, hospitals, refineries, power stations and nuclear establishments), the Customer shall inform MEMS in writing prior to the Commencement Date to ensure adequate insurance cover is in place to protect the Plant during the Hire Period (subject to clause 5.2(b)).

14 INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property Rights in or arising out of or in connection with the Plant and Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by MEMS.

14.2 The Customer grants MEMS a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to MEMS for the term of the Contract for the purpose of providing the Plant and Services to the Customer.

15 CONFIDENTIALITY

15.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.2.

15.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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- 15.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 16 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 16.1 Nothing in these Conditions shall limit or exclude MEMS' liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 16.2 Subject to clause 16.1, MEMS shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; or
 - (g) any indirect or consequential loss.
- 16.3 Subject to clause 16.1, MEMS' total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising in aggregate under or in connection with the Contract, shall be limited to the greater of £50,000 or 50% of the total Charges paid under the Contract in the Contract year (i.e. commencing with the Commencement Date or any anniversary of it) in which the breaches occurred.
- 16.4 The limits and exclusions in this clause 16 reflect the insurance cover MEMS has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 16.5 The terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 and the terms implied by sections 3 to 5 of the Supply of Equipment and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 16.6 This clause 16 shall survive termination of the Contract.
- 17 CUSTOMER'S RESPONSIBILITY FOR LOSS AND DAMAGE**
- 17.1 For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left at Delivery Location during a Holiday Period or Stand Down Period) the Customer shall make good to MEMS all loss of or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in clauses 5.2(b) and 7, shall also fully and completely indemnify MEMS and any personnel supplied by MEMS in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period (subject to clause 5.2(b)), and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Plant, Hire Charges shall be continued until the settlement has been agreed. Payment of the settlement must be made within 7 days of the date of such agreement. Notwithstanding the foregoing, the Customer shall not be responsible for damage, loss or injury:
- (a) prior to Delivery;
 - (b) during the assembly and/or dismantling of any Plant where such Plant requires to be completely assembled/dismantled at the Delivery Location, provided always that such assembly/dismantling is under the exclusive control of MEMS or its agent, or
 - (c) after expiry of the Hire Period or 7 days from the beginning of the Off-hire, whichever is earlier;
- 17.2 The Customer shall indemnify MEMS against any charges or fines that MEMS may become liable for as a result of the operation of the Plant during the Hire Period.
- 18 TERMINATION**
- 18.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
- (a) fails to pay any amount due under the Contract on the due date for payment;
 - (b) commits a material breach of any other term of the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
 - (c) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (e) financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 18.2 Without affecting any other right or remedy available to it, MEMS may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer does or causes to be done or permit or suffer any act or thing whereby MEMS's rights in the Plant may be prejudiced or put into jeopardy.
- 18.3 Without affecting any other right or remedy available to it, MEMS may suspend the supply of Services or all further deliveries of Plant under the Contract or any other contract between the Customer and MEMS if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer does not remain within the set credit limit as detailed in clause 12.4 or the Customer becomes subject to any of the events listed in clause 18.1(c) to 18.1(e), or MEMS reasonably believes that the Customer is about to become subject to any of them.
- 19 CONSEQUENCES OF TERMINATION**
- 19.1 On termination of the Contract the Customer shall immediately:
- (a) pay to MEMS all of MEMS' outstanding unpaid invoices and interest and, in respect of Services and Plant supplied but for which no invoice has been submitted, MEMS shall submit an invoice, which shall be payable by the Customer immediately on receipt and in this connection the Customer accepts and acknowledges the provisions of clauses 3.3 and 12.3;
 - (b) provide MEMS or its agents unobstructed access to recover the Plant;
 - (c) return all of the Materials. If the Customer fails to do so, then MEMS may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 19.2 If the Customer cancels the Contract more than 24 hours before the Hire Period commences, then the Customer is liable for a cancellation fee of up to 25% of the total Charges plus VAT and all reasonable costs and charges incurred by MEMS or to which MEMS is committed at the time of termination. The parties confirm that these liquidated damages are reasonable and proportionate to protect MEMS's legitimate interest in performance of the Contract. The Customer shall not be permitted to cancel the Contract within 24 hours prior to commencement of the Hire Period or during the Hire Period.
- 19.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

MEMS TERMS AND CONDITIONS FOR THE SUPPLY OF PLANT AND SERVICES



- 19.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 20 FORCE MAJEURE**
- MEMS shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event.
- 21 GENERAL**
- 21.1 Assignment and other dealings
- (a) MEMS may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- (c) Neither the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party by the Customer without the prior written consent of MEMS. The Customer shall not mortgage, charge, pledge, part with possession of or otherwise deal with the Plant and shall protect the same against distress, execution or seizure and shall indemnify MEMS against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this clause 21.1(c).
- 21.2 Notices.
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or sent by email to the email address specified in the Quotation.
- (b) Any notice or other communication shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Working Day after posting or at the time recorded by the delivery service; or (iii) if sent by email, at 9.00am on the next Working Day after transmission.
- (c) This clause 21 does not apply to the service of any proceedings or other documents in any legal action.
- 21.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 21.3 shall not affect the validity and enforceability of the rest of the Contract.
- 21.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 21.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 21.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause 21.6 shall limit or exclude any liability for fraud.
- 21.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 21.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 21.9 **Governing law and jurisdiction.**
- (a) the Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- (b) each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.