

MEMS TERMS AND CONDITIONS FOR THE SUPPLY OF EQUIPMENT AND SERVICES

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

These Conditions were last updated on 1st July 2026.

1 INTERPRETATION

1.1 The following definitions apply in this Contract:

- (a) **Advance Payment:** the advance payment to be made by the Customer in accordance with clause 12.2.
- (b) **Battery:** a battery or other energy storage device.
- (c) **Charges:** collectively the Hire Charges and the Service Charges.
- (d) **Commencement Date:** has the meaning given in clause 2.3.
- (e) **Conditions:** these terms and conditions as amended from time to time in accordance with clause 21.8.
- (f) **Contract:** the contract between MEMS and the Customer for the hire of Equipment and supply of Services, as governed by these Conditions, and comprising the applicable Quotation, any Order Acknowledgement and any Project Particulars and Clarifications.
- (g) **Customer:** the entity that hires the Equipment and purchases the Services from MEMS as specified in the Quotation.
- (h) **Delivery:** means the transfer of physical possession of the Equipment to the Customer at the Delivery Location, and the words **Deliver** and **Delivered** shall be construed accordingly.
- (i) **Delivery Location:** the intended location of Delivery set out in the Quotation or such other location as the parties may agree in writing.
- (j) **EAWR:** The Electricity at Work Regulations 1989.
- (k) **Equipment:** the equipment (or any part of it) to be hired by the Customer as set out in the Quotation, together with all substitutions, additions and replacements of such equipment.
- (l) **Equipment Insurance Value:** the insurance value of the Equipment as specified in the Quotation.
- (m) **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 or outage; (vii) collapse of buildings, fire, explosion or accident; (viii) any labour or trade dispute, strikes, industrial action or lockouts; (ix) any failure, interruption or degradation of monitoring, telemetry, communications or remote-monitoring systems, where such failure is outside MEMS' reasonable control; (x) any access restrictions, blocked or obstructed access routes, or inadequate site access at or affecting the Delivery Location; (xi) any traffic delays, congestion, road closures, diversions, adverse weather, or any other transport-related conditions; (xii) any fuel shortages, market supply constraints, or other supply-chain limitations outside MEMS' reasonable control; and (xiii) unavailability, breakdown, or delay of tankers, delivery vehicles, equipment or drivers.
- (n) **Fuel Charges:** The price for fuel as set out in the Quotation (including any charges due pursuant to clause 9.3), subject to any fluctuation in fuel prices Charges as detailed in clause 10.6(d).
- (o) **Fuel Services:** MEMS's fuel management services including the provision, monitoring and replenishment of fuel for the Equipment including remote fuel level monitoring by means of MEMS Connect or any other remote monitoring system.
- (p) **Hazardous Environments:** means any of the following environments:
 - (i) airside;
 - (ii) bulk storage or production premises in the explosive, ammunition or pyrotechnic industries;
 - (iii) military bases;
 - (iv) Ministry of Defence premises;
 - (v) nuclear installations or establishments;
 - (vi) refineries, bulk storage or production premises in the oil, gas or chemical industries;
 - (vii) rail trackside or any other rail property to which the public do not have access; and
 - (viii) any other location with restricted access.
- (q) **Hire Charges:** The price for the hire of the Equipment as set out in the Quotation (subject to clause 5.4(b)).
- (r) **Hire Period:** the period that:
 - (A) commences from the time and date that the Equipment (i) leaves MEMS's depot or place where last employed; or (ii) has been reserved from (where the Customer reserves the Equipment before taking Delivery);
 - (B) shall continue until the Off-Hire Date (subject to the provisions of clause 5.4); and
 - (C) shall in any event be not less than the Minimum Hire Period.
- (s) **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.
- (t) **HSWA:** The Health and Safety at Work etc Act 1974.

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- (u) **Incident:** any spillage, leak, discharge or environmental incident involving the Equipment or any Battery or fuel.
 - (v) **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.
 - (w) **Materials:** all materials, equipment, documents and other property of MEMS (excluding the Equipment).
 - (x) **MEMS:** MEMS Power Generation Limited registered in England and Wales with company number 02028435 with its registered office at Beechings Way Industrial Estate, Beechings Way, Gillingham, Kent, ME8 6PS.
 - (y) **Minimum Hire Period:** the minimum period for which the Equipment must be hired by the Customer, being the period specified in the Quotation or one (1) week, whichever is the greater.
 - (z) **Normal Working Hours:** 09:00am to 17:00pm on a Working Day.
 - (aa) **Offer:** has the meaning given to it in clause 2.2.
 - (bb) **Off-Hire Date:** the date and time from which the Equipment is no longer in use by the Customer and is made available for collection, provided that such date and time shall not occur less than twenty-four (24) hours after the Customer has notified MEMS that the Equipment is no-longer in use. For the avoidance of doubt, notification by the Customer that the Equipment is no longer in use shall not, of itself, constitute the Off-Hire Date.
 - (cc) **Order Acknowledgement:** MEMS' order acknowledgement form sent by MEMS to the Customer in response to the Offer.
 - (dd) **Project Particulars and Clarifications:** project-specific particulars and/or clarifications issued by MEMS from time to time.
 - (ee) **Quotation:** the quotation sent by MEMS in response to a Customer enquiry, containing a quote for the Equipment and Services and the Equipment Insurance Value.
 - (ff) **Services:** the services to be supplied by MEMS to the Customer as set out in the Quotation (including Fuel Services, if any).
 - (gg) **Service Charges:** The price for Services as set out in the Quotation (including the Fuel Charges).
 - (hh) **Stand Down Periods:** any period of time during the Hire Period where the Equipment is at the Delivery Location but is not being used by the Customer, as agreed in writing by MEMS and the Customer.
 - (ii) **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 Equipment and Services in accordance with these Conditions (**Offer**).
- 2.3 The Offer shall only be deemed to be accepted on the earlier of MEMS: (a) issuing the Order Acknowledgement; or (b) commencing performance of the Contract, 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 Equipment 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 Equipment described in them. They shall not form part of the Contract or have any contractual force.

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- 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 EQUIPMENT

- 3.1 MEMS shall hire the Equipment to the Customer for the Hire Period.
- 3.2 MEMS reserves the right to amend any Equipment specification at any time (including during the Hire Period):
- (a) if required by any applicable statutory or regulatory requirement, and MEMS shall notify the Customer in any such event; and
 - (b) for operational reasons provided that any such change does not materially and adversely affect the use by the Customer of the Equipment in accordance with this Contract.

4 DELIVERY OF EQUIPMENT

- 4.1 MEMS shall Deliver the Equipment to the Delivery Location. Any dates and times quoted for Delivery of the Equipment 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 Equipment 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 Equipment.
- 4.2 The Customer shall be responsible for the unobstructed access to, and egress from, the Delivery Location for the purposes of MEMS providing the Services and carrying out of any repairs required pursuant to clause 7. For the avoidance of doubt, MEMS shall be responsible for the loading and unloading of Equipment 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 Equipment 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 for the delivery 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 Equipment, 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 and the Customer warrants that the condition of the Delivery Location is suitable for the use of such Equipment and the receipt of the Services. The Customer shall notify MEMS in writing prior to the Commencement Date of any restrictions (including restrictive ground conditions or height restrictions) or Hazardous Environments relating to the

Delivery Location and/or access to the Delivery Location that could reasonably be considered likely to affect Delivery or the performance of the Equipment or the Services by MEMS. MEMS shall have no liability for, and the Customer shall be responsible for, any loss, damage, cost or expense arising out of or in connection with: (a) the suitability of the Equipment; (b) any interruption to the power or energy supplied by the Equipment; (c) any damage to, or interruption affecting, the Customer's site, plant, systems or activities arising from the Equipment; or (d) the suitability of the Delivery Location for the Equipment or the provision of the Services.

- 4.6 Without prejudice to MEMS's other rights or remedies of MEMS, where, in MEMS's reasonable opinion, the Delivery Location constitutes a Hazardous Environment or contains restrictions which have not been disclosed or properly identified by the Customer in accordance with clause 4.5, MEMS reserves the right to:

- (a) refuse or suspend Delivery or commencement of the Services; and/or
- (b) adjust the Charges (including applying additional charges) to reflect the increased risk, cost or operational requirements associated with the site restrictions or Hazardous Environment, and

the Customer shall indemnify and keep indemnified MEMS against all losses, liabilities, damages, claims, demands, costs and expenses (including legal and professional fees) suffered or incurred by MEMS arising out of or in connection with the Customer's failure to disclose or properly identify such restrictions or Hazardous Environment.

- 4.7 If the ground (including any private access road or track) is soft or unsuitable for the Equipment 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 Equipment 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 4.7 and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Equipment.

- 4.8 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.

- 4.9 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

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as the Equipment 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.

- 4.10 The Customer accepts and acknowledges that where a Battery is supplied as part of the Equipment, MEMS does not guarantee that any such Battery shall be delivered with any charge.

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 Equipment 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 Equipment 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 Subject to clause 5.4, the risk of loss, theft, damage or destruction of the Equipment 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 Equipment, the Customer shall be responsible for the safe keeping of the Equipment, 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).
- 5.3 Subject to clause 5.4, the Equipment shall remain on hire and Hire Charges shall continue to accrue in accordance with these Conditions until the Off-Hire Date.
- 5.4 Notwithstanding clauses 5.2 and 5.3 (and subject always to clause 9.1), if MEMS fails to collect the Equipment at the Off-Hire Date and provided such failure is attributable to MEMS own fault or negligence, then:

- (a) the Customer shall not be liable for any Hire Charges from the Off-Hire Date; and
- (b) risk of loss, theft, damage or destruction of the Equipment shall pass to MEMS seven (7) days after the Off-Hire Date.

For the avoidance of doubt, in all other circumstances, including where collection by MEMS is delayed due to reasons not attributable to MEMS (including the occurrence of a Force Majeure Event, lack of access, site conditions, third-party restrictions or the Customer's acts or omissions), Hire Charges shall continue to accrue in accordance with clauses 5.3 and 9.1 and risk shall be allocated in accordance with clauses 5.2 and 9.1.

- 5.5 The Customer shall at all times when hiring Equipment take all reasonable steps to keep itself acquainted with the state and condition of the Equipment and installation. MEMS does not apply additional charges where the Equipment is supplied with MEMS Connect remote monitoring system

and, as such, the Customer shall not (and is not entitled to) rely on any such monitoring systems to inform it of the state and condition of the Equipment at any time. If such Equipment 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.

6 OPERATION OF EQUIPMENT

- 6.1 When a driver or operator or any person is supplied by MEMS with the Equipment (including for unloading or loading of the Equipment), such person shall be competent in operating the Equipment 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 Equipment 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 Equipment 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 Equipment without MEMS's prior written consent.
- 6.3 The Equipment 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 Equipment (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:
- (a) carry out the safe and proper installation, commissioning, de-commissioning and de-installation of the Equipment in accordance with the EAWR, the HSWA and all other applicable laws and regulations;
 - (b) carry out the termination at any connection point between the Equipment and the Customer's network/system in accordance with the EAWR, the HSWA and all other applicable laws and regulations;
 - (c) ensure the use and operation of the Equipment in conformity with its specification, MEMS's operating instructions, the EAWR, the HSWA and all other applicable laws and regulations;
 - (d) ensure that the Equipment is not used or operated for any purpose beyond its rated capacity or in a manner likely to result in deterioration of the Equipment (except normal wear and tear);

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- (e) carry out a visual inspection of the Equipment (including all connection points) and leak identification checks on a daily basis and ensure that consumable levels (including fuel, oil, Adblue, lubricant, and coolant, (as applicable)) in the Equipment are monitored and kept at the level required for the proper operation of the Equipment;
 - (f) keep itself acquainted with the condition of the Equipment 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 Equipment in such condition then the Customer shall be solely responsible for any damage, loss or accidents resulting therefrom.
- 6.5 In the event of any Incident:
- (a) the Customer must promptly notify MEMS and take all necessary steps to contain, control and mitigate the impact of the Incident, including implementing any reasonable emergency measures;
 - (b) if the Customer fails to act appropriately or fails to take the steps detailed in clause 6.5(a) above, MEMS reserves the right to intervene and take such actions as it considers reasonably necessary. All costs, expenses and losses incurred by MEMS in doing so shall be recoverable in full from the Customer; and
 - (c) the Customer shall indemnify and keep indemnified MEMS against all liabilities, losses, damages, fines, regulatory penalties, enforcement costs, claims and expenses (including reasonable professional fees) arising out of or in connection with the Customer's failure to properly manage, respond to, or mitigate any Incident.
- 7 TITLE TO EQUIPMENT, BREAKDOWN, REPAIRS AND ADJUSTMENT**
- 7.1 The Equipment shall at all times remain the property of MEMS, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment 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 Equipment 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 Equipment available for this purpose outside Normal Working Hours then MEMS reserves the right to charge accordingly. Where repairs are required and the Customer has relocated the Equipment post-Delivery, the Customer shall be responsible for supplying the craneage or other lifting equipment required to access the Equipment 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 Customer shall compensate MEMS for additional wear, tear and damage to the Equipment by paying the full cost of both the next service and any consequent repairs which are attributable to such failure to service the Equipment.
- 7.4 Any breakdown or the unsatisfactory working of or damage to any part of the Equipment 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 clauses 7.4 and 7.7, full allowance for the Hire Charges will be made to the Customer for any stoppage due to breakdown of the Equipment 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 Equipment.
- 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 Equipment due to the Customer's negligence, misdirection or misuse of the Equipment, whether by the Customer or its servants, and for the payment of hire at the Hire Charges, during the period the Equipment 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 Equipment.
- 7.8 The Customer shall not remove, deface or cover up any name plate or mark on the Equipment that indicates that it is MEMS's property, without MEMS prior written approval.
- 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 Equipment 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 Equipment from soft or unsuitable ground or a hazardous environment.
- 7.10 Each item of Equipment 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 Equipment working in conjunction therewith, provided that where two or more items of Equipment are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

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7.11 The Customer acknowledges that MEMS may monitor the use of the Equipment by the Customer and may, at any time during the Hire Period, replace any element of the Equipment with alternative plant or equipment that, in MEMS's reasonable opinion, better accords with the Customer's requirements or usage. The Customer shall provide MEMS with all necessary access to enable such replacement.

8 NOTICE OF ACCIDENTS

If the Equipment 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 EQUIPMENT

9.1 If the Equipment 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 Equipment 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 Equipment in accordance with clauses 5.2 and 17, and for all reasonable costs and expenses incurred by MEMS in seeking to collect such Equipment and for not being able to hire the Equipment to any third party; and
- (c) the Customer shall notify MEMS of a new anticipated collection date,

and this process shall be repeated in the event of more than one failure by the Customer to facilitate collection, until collection of the Equipment. In this connection, it shall be the Customer's responsibility to inform MEMS forthwith of any collection issues and upon the remedy of any such issues.

9.2 Prior to the completion of the Hire Period, the Customer shall clean and where necessary, decontaminate the Equipment. All fuel and contaminants will be removed from bunds and enclosures. 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.

9.3 Subject to clause 9.4, on collection, where MEMS:

- (a) provides Fuel Services and a tank is returned to MEMS: (i) less than 75% full, MEMS will charge the Customer for the shortfall; and (ii) more than 75% full, MEMS will credit the Customer for the excess; or

- (b) does not provide Fuel Services and a tank is returned to MEMS: (i) less than 75% full, MEMS will charge the Customer for the shortfall; and (ii) more than 75% full, MEMS will not credit the Customer for the excess,

and any such shortfall shall be payable by the Customer at the prevailing rates for Fuel Charges detailed in the Quotation.

9.4 Fuel levels in a tank shall be recorded by MEMS personnel on the collection note as the Equipment is collected, and MEMS shall make the collection note available to the Customer for confirmation by counter-signature. If the Customer does not sign the collection note, the fuel level recorded by MEMS shall nonetheless be deemed accurate and binding unless the Customer provides MEMS with written evidence to the contrary within 24 hours of collection.

10 SUPPLY OF SERVICES

10.1 MEMS shall supply the Services to the Customer using reasonable care and skill.

10.2 Clauses 10.3 to 10.9 (inclusive) shall apply to the extent that such services form part of the Services to be performed by MEMS under the Contract.

10.3 **Transport services:** Delivery and collection of Equipment shall be made assuming clear and easy access at the Delivery Location with up to 30 minutes waiting time. Any additional time on site will incur a demurrage charge as per Quotation.

10.4 **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 Equipment and the Customer's equipment.

10.5 **De-installation services:** Subject to a site survey, MEMS shall supply a team to return to site to remove the Equipment.

10.6 Fuel Services:

- (a) Where fuel services are ordered, MEMS shall monitor the usage and volume of fuel available in the Equipment by using MEMS Connect or any other remote monitoring system used by MEMS. MEMS shall monitor fuel levels remotely. MEMS shall use all reasonable endeavours to supply fuel to ensure operational continuity of the Equipment.
- (b) If the Customer opts to use its own fuel, or fuel sourced from a third party for the Equipment:
 - (i) the Customer shall ensure that only fuel meeting the fuel specification notified by MEMS or as set out in the Quotation or Order Acknowledgement, is used in connection with the Equipment; and

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- (ii) the Customer shall be fully liable for all loss, damage, costs and expenses suffered or incurred by MEMS arising from, or in connection with, the use of such unsuitable fuel, including all costs of repair, replacement, cleaning, and any resulting downtime of the Equipment.
- (c) 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.
- (d) MEMS shall have no liability whatsoever for any interruption, outage, delay or failure to deliver fuel, or for any failure or delay in performing the Fuel Services, to the extent that such interruption, outage, delay or failure is caused by, results from, arises out of, or is contributed to by:
 - (i) any Force Majeure Event;
 - (ii) unexpected or abnormal changes in consumption, load demand or usage patterns by the Customer; or
 - (iii) any act or omission of the Customer (including a failure to provide 24/7 unobstructed access), or any other event, circumstance or cause beyond MEMS' reasonable control.

For the avoidance of doubt, MEMS shall not be responsible for any resulting downtime or operational impact on the Equipment arising from such events.

- 10.7 **Design services:** Where MEMS provides any design services (including, without limitation, mapping a power supply to a location or providing design input as part of a disaster recovery plan):
- (a) the Customer is solely responsible for providing complete, accurate and up-to-date information, including all relevant site, ground, structural, access, environmental and operational details. MEMS shall not be liable for any inaccuracies, defects or deficiencies in design based on inaccurate, misleading or omitted information supplied by the Customer;
 - (b) all responsibility for the condition, suitability, safety and accessibility of the Delivery Location, including all ground and site conditions, rests exclusively with the Customer; and
 - (c) MEMS shall have no liability for any loss, delay, inaccuracy, inadequacy, omission or error arising out of or in connection with the design services. MEMS shall have no liability for the suitability, sufficiency or appropriateness of any Equipment recommended. Any recommendations or guidance given by MEMS are advisory only and based solely on information provided by the Customer.

- 10.8 **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 (and reliability of) the Equipment that may arise from time to time but: (a) MEMS cannot guarantee that such problems will not arise; and (b) the MEMS personnel shall not be present for security purposes and any such presence does not affect the Customer's insurance obligations as detailed herein; and/or

- 10.9 **Disaster recovery planning:** MEMS does not warrant or guarantee that any disaster recovery plan will: (i) ensure or achieve any particular response time and operates on a best endeavours basis (ii) be effective to recover or restore the Customer's operations following any disaster, incident or outage (iii) guarantee the availability, provision or supply of any Equipment, whether on a priority basis or at all.

- 10.10 During the course of providing the Services, MEMS may, from time to time, generate, procure or make available certain data, to which the following provisions shall apply:

- (a) **Emissions data:** the Customer acknowledges and accepts that all emissions data collected by MEMS in connection with the Equipment and/or performance of Services is indicative only.
- (b) **Predictive savings data:** the Customer acknowledges and accepts that any predictive savings data (including any environmental impact estimates or projected financial or operational savings) collected and/or disclosed by MEMS, is indicative only and is based on assumptions, modelling, or historical performance.
- (c) **Telemetry data:** with respect to telemetry data collected by MEMS including data collected through MEMS Connect or any other remote fuel or equipment-monitoring system used by MEMS, the Customer acknowledges and accepts that:
 - (i) it will not have access to such data;
 - (ii) such data may be delayed, interrupted, unavailable, corrupted, or otherwise fail due to factors including (without limitation) loss of signal, weak signal strength, network or communication issues, hardware faults, environmental interference, acts or omissions of the Customer, or other circumstances outside MEMS's reasonable control.
 - (iii) Fuel Services may be impacted by interruptions or failures in telemetry data (including those referred to at clause 10.10(c)(ii) above) and agrees that MEMS shall have no liability for any Equipment shutdowns, performance or supply issues, delays, or other consequences arising from or connected to any failure, interruption, or unavailability of telemetry data; and

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- (iv) telemetry data is provided solely for indicative purposes in support of MEMS delivery of services and does not replace or diminish the Customer's responsibility to monitor the Equipment.

All data generated by or derived from the Equipment, the Services, or any associated systems shall be and remain the exclusive property of MEMS.

- 10.11 MEMS does not warrant the accuracy, completeness, or real-time reliability of any data and shall not be liable for any loss, damage, or cost arising from the Customer's reliance on such data.
- 10.12 MEMS shall use its reasonable endeavours to meet any performance times and 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.
- 10.13 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 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 Equipment 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 Equipment 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 Equipment 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 Equipment and provide the Services;
- (d) provide MEMS with such information and materials as MEMS may reasonably require to supply the Equipment 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 Equipment and Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Equipment and Services before the date on which the Equipment 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 Equipment at the Customer's premises in safe custody at its own risk, maintain Materials and Equipment in good condition until returned to MEMS, and not dispose of or use Materials or Equipment 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**), then:

- (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;
- (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; and
- (d) for the avoidance of doubt, all Charges shall remain due and payable in accordance with these Conditions during any period of suspension, delay or non-performance arising from a Customer Default, and the Customer shall not be entitled to withhold, reduce, set-off or delay payment of any Charges by reason of such suspension, delay or non-performance.

12 CHARGES AND PAYMENT

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

12.2 Advance payment

- (a) If required by written notice from MEMS, the Customer shall pay to MEMS an upfront lump sum in respect of the Equipment in the amount stated in such notice (**Advance Payment**).
- (b) Subject to the Customer having fully complied with its obligations under these Conditions, the Advance Payment (or any remaining balance of it) shall be refundable at the end of the Hire Period to the extent that it is not required to meet or satisfy any claims, liabilities or sums due to MEMS from the Customer under the Contract and/or these Conditions.

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For the avoidance of doubt, receipt of the Advance Payment by MEMS shall not constitute a guarantee of Delivery of the Equipment or performance of any Services.

12.3 The Quotation shall specify the weekly hire tariff the Equipment is being hired on; (UL) unlimited number of running hours, (50) 50 running hours, or (SB) zero running hours. As soon as reasonably practicable after the end of each week, the Customer shall render to MEMS an accurate statement of the number of hours the Equipment has operated during such week. If the Customer exceeds any specified number of hours, the Customer will be charged at an excess rate per hour as specified in such Quotation.

12.4 The first week of the Hire Charges shall accrue on a per week basis, and thereafter shall be calculated on a per-day basis (i.e. one seventh of the weekly rate). For example, if the Customer hires the Equipment for: (a) 3 days, the Customer shall be charged 1 week of Hire Charges; (b) 8 days, the Customer shall be charged 1 week and 1 day of Hire Charges.

12.5 The Customer shall remain within the set credit limit as specified in the Order Acknowledgement, Quotation, invoice or elsewhere in writing by MEMS. MEMS may from time to time vary the credit limit and will inform the customer of the revised credit limit in writing. In the event the Customer exceeds their credit limit then an interim payment will be required.

12.6 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.

12.7 MEMS reserves the right to increase the price of the Equipment, by giving notice to the Customer;

(a) on an annual basis;

(b) at any time after the Minimum Hire Period; or

(c) to reflect any increase in the cost of the Equipment to MEMS that is due to any: (i) request by the Customer to change the Delivery date(s), quantities or types of Equipment or Services ordered; (ii) delay caused by any instructions of the Customer in respect of the Equipment or Services; (iii) failure of the Customer to give MEMS adequate or accurate information or instructions in respect of the Delivery of the Equipment or supply of Services; (iv) Force Majeure Event; (v) increase in consumer price index and/or retail price index.

12.8 Unless otherwise specified in the Quotation, Order Acknowledgement or otherwise in writing by MEMS, in respect of Equipment and Services, MEMS shall invoice the Customer for the accrued Charges in arrears at the end of each week or calendar month (depending on account) or, if the Hire Period exceeds a week but 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 12.5; 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 Equipment at the same time as payment is due for the supply of the Services or Equipment.

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 Equipment with a level coverage that meets or exceeds the Equipment 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 Equipment 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 and any Delivery to ensure adequate insurance cover is in place to protect the Equipment during the Hire Period (subject to clause 5.4(b)).

14 INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property Rights in or arising out of or in connection with the Equipment 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 Equipment 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.

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- 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.
- 15.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 15.4 The obligations set out in this clause 15 shall survive termination or expiry of the Contract for a period of two (2) years.
- 16 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 16.1 Nothing in the Contract 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 (excluding the Fuel 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 Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 and Supply of Goods (Implied Terms) Act 1973 are, to the fullest extent permitted by law, excluded from the Contract.
- 16.6 MEMS shall not be liable for any delay, damage, loss, cost or expense from or in connection with the Customer's failure to disclose, or to properly identify, the existence or nature of any Hazardous Environment at the Delivery Location.
- 16.7 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 Equipment 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 Equipment from whatever cause the same may arise, fair wear and tear excepted, and except as provided in clauses 5.4(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 Equipment or the provision or receipt of Services during the continuance of the Hire Period (subject to clause 5.4(b)), and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Equipment, 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. Hire Charges shall be paused during such 7-day period provided that should payment not be made during such 7-day period, the Hire Charges shall be deemed to have recommenced from commencement of such 7-day period until payment has been made. 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 Equipment where such Equipment 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

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- (c) after expiry of the Hire Period or 7 days from the beginning of the Off-Hire Date, 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 Equipment during the Hire Period.

18 TERMINATION

18.1 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:

- (a) fails to pay any amount due under the Contract on the due date for payment;
- (b) commits a 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 MEMS reasonable opinion the Customer'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:

- (a) on giving not less than 1 months' written notice to the Customer; and/or
- (b) 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 Equipment 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 Equipment 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 12.5 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 or expiry of the Contract and at the end of the Hire Period, the Customer shall immediately:

- (a) pay to MEMS all of MEMS' outstanding unpaid invoices and interest and, in respect of Services and Equipment 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 Minimum Hire Period and the provisions of clause 12.4;
- (b) provide MEMS or its agents unobstructed access to recover the Equipment;
- (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:

- (a) more than 48 hours before the Hire Period commences, then the Customer is liable for a cancellation fee of 25% of the total Charges (excluding the Fuel Charges) that would have been levied by MEMS during the Minimum Hire Period;
- (b) less than 48 hours but more than 24 hours before the Hire Period commences, then the Customer is liable for a cancellation fee of 50% of the total Charges (excluding the Fuel Charges) that would have been levied by MEMS during the Minimum Hire Period;
- (c) less than 24 hours before the Hire Period commences or during the Hire Period, then the Customer is liable for a cancellation fee of 100% of the total Charges (excluding the Fuel Charges) that would have been levied by MEMS during the Minimum Hire Period,

plus VAT and all reasonable costs and charges incurred by MEMS or to which MEMS is committed at the time of cancellation. The parties confirm that these liquidated damages are reasonable and proportionate to protect MEMS's legitimate interest in performance of the Contract.

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.

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

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MEMS shall not be in breach of the Contract nor liable for the 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. If the period of delay or non-performance continues for fourteen (14) days, MEMS may terminate the Contract, without any obligation to compensate the Customer for such early termination, by giving not less than fourteen (14) days' written notice to the affected party.

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 Equipment 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 Equipment 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.