

## INTERPRETATION

### 1. Interpretation

1.1 In these Conditions capitalised terms have the meanings ascribed to them where they are first defined in the Contract and in particular:

**'Account Location'** means the location(s) where the Services are to be provided as specified in the Equipment List and/or Order;

**'Annual Operating Hours'** means the agreed annual operating hours for each of the Equipment which is subject to Full Service Maintenance as set out in the Equipment List and/or Order;

**'Conditions'** means these terms and conditions as amended from time to time;

**'Contract'** means the agreement between the Supplier and the Customer for the supply of Equipment and/or Services in accordance with these Conditions;

**'Customer'** means the person or entity which purchases Equipment and/or Services from the Supplier;

**'Delivery Address'** means the address for delivery of the Equipment as specified in the Order;

**'End Date'** means the date specified as the end of the Services;

**'Equipment'** means the goods which the Supplier has agreed to sell and the Customer has agreed to buy and/ or material handling equipment subject to the Services as set out in the Order;

**'Equipment List'** means the list of Equipment subject to the Services;

**'Estimated Delivery Date'** means the date on which the Supplier estimates that the Equipment will be delivered;

**'Excess Hours Charge'** means the charge for each additional hour as set out in the Equipment List where the Annual Operating Hours are exceeded;

**'Full Service Maintenance'** means the full service maintenance services set out below;

**'Intellectual Property Rights'** means any and all intellectual property rights and industrial property rights of any nature whatsoever including without limitation patents, patent applications, copyright, know-how, technical and commercial information, design (whether registered or unregistered), design rights, website content, internet domain names, database rights, trademarks, service marks or business names, applications to register any of the aforementioned rights, trade secrets and rights of confidence, in each case in any part of the world and whether or not registered or registrable and including all reversions, extensions and renewals of any such rights;

**'LOLER Inspection'** means the inspection carried out on Equipment in accordance with the Lifting Operations and Lifting Equipment Regulations 1998;

**'Manufacturer'** means Jungheinrich AG or other third party manufacturer of Equipment as applicable;

**'Order'** means any written order issued by the Customer for Equipment and/or Services including the Customer's written acceptance of the Supplier's quotation as the case may be;

**'Order Date'** means the date that the Parties agree the Order in writing;

**'Parties'** means the Supplier and the Customer;

**'Price'** means the price for the Equipment and/or Services;

**'Preventative Maintenance'** means the preventative maintenance services set out below;

**'Supplier'** means Jungheinrich UK Limited, Sherbourne House, Sherbourne Drive, Tilbrook, Milton Keynes, MK7 8HX;

**'Services'** means Preventative Maintenance, Full Service Maintenance and/ or LOLER Inspection services (as applicable) to be provided by Supplier as detailed in the Order;

**'Start Date'** means the date specified as the start of the Services;

**'Site Survey'** means the agreed operating conditions at the Account Location where the Services are to be carried out;

**'Working Hours'** means Monday to Friday 8.00 am to 5.00 pm (excluding public holidays);

## SALE OF EQUIPMENT

### 2. Basis of sale

2.1 By placing an Order with the Supplier or accepting the Supplier's quotation the Customer agrees to deal with the Supplier on the terms below to the exclusion of all other terms, conditions, warranties or representations.

2.2 An Order shall not be binding on the Supplier until it has accepted the Order in writing and communicated such acceptance to the Customer.

2.3 The Supplier's employees or agents are not authorised to make any representations concerning the Equipment beyond those contained in the Supplier's pre-printed marketing materials and specification sheets.

2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or

agents as to the storage, application or use of the Equipment which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

### 3. Sale and Purchase

3.1 The Customer agrees to purchase the Equipment from the Supplier and the Supplier agrees to sell the Equipment to the Customer on the following terms save as expressly amended in writing by the Supplier in accordance with these Conditions.

3.2 The Customer shall not be entitled to cancel in whole or in part any Order which the Supplier has accepted. In the event of the Supplier allowing the Customer to cancel any such order, the Supplier reserves the right, without prejudice to any other right or remedy, to apply a cancellation charge up to the Price payable under the Contract to compensate the Supplier for expenses incurred and loss of profit.

3.3 If the Equipment are to be manufactured or any process is to be applied to them by the Supplier in accordance with the specifications submitted by the Customer, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any Intellectual Property Rights of any other person or any other liability whatsoever which results from the Supplier's use of the Customer's specifications or from the sale or supply of such Equipment by the Supplier pursuant to the provisions of clause 4.5 below.

3.4 The Supplier reserves the right to make any changes in the specifications of the Equipment which are required to conform with any applicable safety or other requirements or which do not materially affect their quality of performance.

### 4. Delivery

4.1 Unless it is specified in a Contract that the Customer will collect the Equipment, the Supplier shall use its reasonable efforts to deliver the Equipment to the Customer at the Delivery Address on or around the Estimated Delivery Date. Time of delivery shall not be of the essence. The Estimated Delivery Date shall be extended if the Customer has failed to give the Supplier all information necessary to enable the Supplier to supply the Equipment or if the Customer has failed to carry out any other obligation in relation to the Contract, by the number of days delay caused by such failure. The Supplier shall not be liable for late delivery or performance.

4.2 The Supplier shall be entitled to deliver the Equipment in instalments in which case each instalment shall be treated as an entirely separate Contract and any default or breach by the Supplier in respect of any such instalment shall not entitle the Customer to cancel any other instalment or treat the Contract as a whole as repudiated.

4.3 Upon the Customer taking possession of the Equipment, the Customer shall confirm its acceptance or rejection of the Equipment. The Customer may only reject the Equipment if they: (i) do not accord in all material respects to the specifications agreed with the Supplier or if the Equipment are damaged and (ii) cannot be repaired. The signature of the Customer (or its representative) upon the delivery note or similar document shall be conclusive evidence of delivery and acceptance by the Customer that the Equipment have been received in perfect condition.

4.4 If the Equipment have not been delivered despite receipt by the Customer of the invoice from the Supplier relating to them, then the Customer shall notify the Supplier within three days after the date of such invoice.

4.5 If the Customer fails to take delivery of the Equipment or fails to give the Supplier adequate delivery instructions before the Estimated Delivery Date, then without prejudice to any other right or remedy available to the Supplier, the Supplier may:

4.5.1 store the Equipment until actual delivery is made and charge the Customer for the costs (including insurance) of storage, transport and loading; and/or

4.5.2 sell the Equipment (whether or not such Equipment were manufactured by the Supplier pursuant to the provisions of clause 3.3 above) to a third party in any country at the best price readily obtainable and charge the Customer for any shortfall between the Price agreed in an Order and the price achieved on the sale to a third party;

4.5.3 charge the Customer interest (both before and after any judgement) on the Price payable for the Equipment under the Contract at 4% over the base rate from time to time of Barclays Bank Plc from the Estimated Delivery Date to the date of actual delivery, alternative sale or alternative supply.

### 5. Installation of Equipment

5.1 If specified in the Contract, or the Supplier's standard documentation for the Equipment that the Supplier is to install the Equipment then, as soon as reasonably practicable after their delivery, the Supplier shall install them at the Delivery Address.

5.2 The Customer shall give full access to the Delivery Address to the Supplier for the purpose of installing the Equipment, shall undertake any preparatory work specified by the Supplier in the Contract or in the Supplier's standard documentation and shall compensate the Supplier for any additional costs which the Supplier incurs by reason of the Customer's failure to properly undertake any such preparatory work.

5.3 The Supplier shall procure that its employees who install the Equipment comply with all reasonable safety, security and other regulations which are in force or apply at the Delivery Address and which have been notified to the Supplier and its employees and the Customer shall indemnify the Supplier against any loss which the Supplier may suffer or incur as a result of any injury to its employees or damage to or loss of its property whilst at the Delivery Address resulting from anything other than the negligence of the Supplier or its employees or any non-compliance by the Equipment with the warranty set out in clause 7 below.

### 6. Prices and Payment

6.1 Subject to the provisions of clause 6.3 the Price of the Equipment shall be the price expressly quoted in writing by the Supplier or otherwise shall be the Supplier's list price at the Order Date.

6.2 Unless otherwise stated in the Contract or in any price list of the Supplier all prices are given by the Supplier on a delivered basis and are exclusive of VAT (save for spare parts quotations where prices may be quoted "ex-works" e.g. net of delivery and VAT).

6.3 The Supplier reserves the right to increase the Price of the Equipment in the event of and to take account of any change (between the Order Date and the actual delivery date) in:

6.3.1 costs due to factors beyond the Supplier's control including increases in materials, component parts, shipping or other manufacturing costs; and/or

6.3.2 the exchange rate of Sterling to Euro; and/or

6.3.3 the rate of export tax or other duty levied by the Federal Government of Germany; and/or

6.3.4 any import levies, duties, tariffs or other taxes (including VAT).

6.4 The Supplier shall be entitled to invoice the Customer for all amounts due under the Contract on or at any time after delivery of the Equipment unless the Equipment are to be collected by the Customer or the Customer fails to take delivery of them, in which case the Supplier shall be entitled to invoice the Customer at any time after the Supplier has notified the Customer that the Equipment are ready for collection/ or performance or (as the case may be) the Supplier has tendered delivery of the Equipment.

6.5 The Customer shall make payment to the Supplier in respect of all invoices in full and without any deduction or set off within the time specified in the Contract. Time of payment shall be of the essence.

6.6 If full payment is not received by the Supplier by the due date then without prejudice to its rights the Supplier shall be entitled to:

6.6.1 recover the entire Price; and/or

6.6.2 charge interest (both before and after any judgment) at the rate of 4% over the base rate from time to time of Barclays Bank Plc on all amounts outstanding to the Supplier by the Customer whether or not under the Contract and whether or not such sums have become due; and/or

- 6.6.3 require the immediate return to the Supplier of all Equipment agreed to be sold by the Supplier to the Customer in which the property has not passed to the Customer in accordance with the provisions of clause 9 below and the Customer hereby agrees to reimburse to the Supplier upon demand the Supplier's costs or expenses in recovering such Equipment; and/or
- 6.6.4 suspend further delivery of Equipment.
- 7. Warranty and Liability**
- 7.1 The Supplier warrants that the Equipment will be free from defects in material and workmanship for the periods set out below commencing from the date of delivery provided that:
- 7.1.1 the Supplier shall be under no liability in respect of any defects in the Equipment arising from any drawing, design or specifications supplied by the Customer, and;
- 7.1.2 any such defect in or failure to meet any such specification by the Equipment shall be notified to the Supplier in writing as soon as reasonably possible after the Customer discovers such defect or non-conformity.
- 7.2 Equipment sold by the Supplier is warranted to the extent that the Supplier will, at its sole discretion, repair or replace free of charge any part or parts which are found to be defective due to faulty materials or workmanship subject to the conditions below:
- 7.3 New Equipment**
- 7.3.1 Jungheinrich Equipment - 12 months or 2000 operational hours from date of delivery (whichever occurs first) and the Equipment is subject to a maintenance agreement taken out with the Supplier (or approved service provider of the Supplier) within 3 months of delivery and continuing throughout the warranty period;
- 7.3.2 Ameise Equipment - 12 months or 1000 operational hours from date of delivery (whichever occurs first) and the Equipment is subject to a maintenance agreement taken out with the Supplier (or approved service provider of the Supplier) within 3 months of delivery and continuing throughout the warranty period;
- 7.3.3 Third party Equipment - as per third party Manufacturer's warranty conditions as given by the Manufacturer to the Supplier which the Supplier hereby assigns to the Customer so far as it is able and the Equipment is subject to a maintenance agreement taken out with the Supplier (or approved service provider of the Supplier) within 3 months of delivery and continuing throughout the warranty period.
- 7.3.4 Manual materials handling Equipment without operating hour meter - 12 months from date of delivery.
- 7.3.5 Spare parts - 6 months from date of purchase.
- 7.3.6 Jungheinrich Batteries & Chargers
- 7.3.6.1 Li-Ion Batteries - 8 years from date of delivery subject to no more than 6000 operational hours during the first three years up to a maximum 12000 operational hours over the total warranty period.
- 7.3.6.2 Lead Acid Batteries - 5 years from date of delivery up to 250 correct charging cycles per year.
- 7.3.6.3 Gel Batteries - 12 months from date of delivery or 750 correct charging cycles (whichever occurs first).
- 7.3.6.4 Li-Ion and Lead Acid Chargers (including built-in chargers) - 5 years from date of delivery and the Equipment is subject to an annual service clean by the Supplier (or approved service provider of the Supplier).
- 7.3.6 Spare parts - 6 months from date of purchase.
- 7.4 Used Equipment**
- 7.4.1 Jungstars Remanufactured Equipment - 12 months or 1200 operational hours from date of delivery (whichever occurs first) and the Equipment is subject to a maintenance agreement provided by the Supplier (or approved service provider of the Supplier) throughout the warranty period;
- 7.4.2 Jungstars Batteries & Chargers
- 7.4.2.1 Li-Ion Batteries - 12 months from date of delivery up to 2000 operational hours.
- 7.4.2.3 Lead Acid Batteries - 12 months from date of delivery or 250 correct charging cycles (whichever occurs first).
- 7.4.2.4 Gel Batteries - 12 months from date of delivery or 750 correct charging cycles (whichever occurs first).
- 7.4.2.5 Li-Ion and Lead Acid Chargers (including built-in chargers) - 12 months from date of delivery.
- 7.5 All other Used Equipment - warranty as stated at point of sale.
- 7.6 The Supplier shall be under no liability for any costs or claims that arise in respect of any warranty where: (i) the Customer or any third party incorrectly carries out any modification alteration, repair, maintenance or service of Equipment; (ii) Equipment is used for any purpose other than for which it was intended or supplied; (iii) unauthorised modifications are made to Equipment; (iv) defects are found due to wilful damage, negligence, overloading, misuse, improper operation, neglect, environmental conditions or failure to follow Manufacturer's guidelines or instructions (including failure to follow battery operation, maintenance, charging or topping requirements as applicable); (v) parts are fitted other than as specified by the Manufacturer; (vi) warranty conditions are not adhered to. Items excluded from warranty are components requiring replacement due to wear and tear, paintwork, all accessories. Equipment warranty is non-transferable and proof of purchase may be required. All warranty claims are subject to assessment by the Supplier which reserves the right to decline or reject any claim that does not meet the warranty conditions above.
- 7.7 In the event of any valid claim under clause 7 being made by the Customer, the Supplier shall be entitled to replace or repair the Equipment (or the part in question) free of charge at the Supplier's sole discretion, but the Supplier shall have no further liability to the Customer. Any component or parts replaced by the Supplier shall become the property of the Supplier.
- 7.8 There are no warranties, conditions, guarantees or representations, as to quality or fitness for a particular purpose of the Equipment or other warranties, conditions, guarantees or representations whether express or implied, oral or in writing, except as expressly stated in the Contract. Accordingly all terms that are capable at law of being excluded are excluded from the Contract.
- 7.9 Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation, breach of the terms implied by s.12 of the Sale of Goods Act 1979 (title and quiet possession) or for any other liability that cannot be excluded at law arising out of or in connection with the supply, functioning or use of the Equipment.
- 7.10 Subject to clause 7.9 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any indirect, special or consequential damages, howsoever arising (including but not limited to pure economic loss, loss of anticipated profit or saving, loss of business, loss of production, depletion of goodwill or similar) arising out of or in connection with the supply, functioning or use of the Equipment.
- 7.11 Subject to clause 7.9, the Supplier's total liability to the Customer in respect of all other losses arising out of or in connection with the supply, functioning or use of the Equipment whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall exceed the Price paid for those Equipment.
- 7.12 Except pursuant to clause 7.9 above, no action, regardless of form, arising out of the transactions and Equipment under the Contract may be brought by the Customer more than two years after the cause of action has accrued.
- 8 Intellectual Property**
- 8.1 The Supplier shall at its expense defend any action against the Customer and pay all damages and costs awarded against the Customer (except to the extent that the Customer is entitled to recover such sums under any policy of insurance) based on a claim that any of the Equipment constitute an infringement of any Intellectual Property Rights belonging to any third party ("a Claim") provided that:
- 8.1.1 the Supplier shall be notified promptly in writing by the Customer of any notice of a claim;
- 8.1.2 the Supplier shall have the sole control of the defence of any action on a Claim and all negotiations for settlement or compromise, and;
- 8.1.3 the Customer shall provide all reasonable assistance in defending any action take all steps reasonably possible to mitigate or reduce any damages and costs which may be awarded against it as a result of a Claim.
- 8.2 If a Claim is successful or the Supplier considers that it is likely to be successful, the Supplier may, at its option or as part of a settlement or compromise, procure for the Customer the right to continue using the Equipment, modify the Equipment so that they are non-infringing or terminate the Contract in so far as it applies to those Equipment subject to the Claim, in which latter case the Supplier shall refund to the Customer the Price paid for such Equipment less depreciation on a straight line basis over the life of the Equipment as determined by the Supplier.
- 8.3 In no event shall the Supplier have any liability under this clause with respect to any Claim based on the use of the Equipment in combination with any other product or equipment not supplied by the Supplier.
- 8.4 This clause 8 sets out the entire obligation and liability of the Supplier with respect to infringement of Intellectual Property Rights.
- 9 Risk and Title**
- 9.1 Risk of loss of or damage to the Equipment shall pass to the Customer when the Customer (or its agent) takes possession of the Equipment.
- 9.2 Notwithstanding delivery and the passing of risk in the Equipment to the Customer, nor any other provisions in the Contract, the Supplier shall retain ownership of and title to the Equipment until full payment is received by the Supplier for all of the Equipment that the Supplier has supplied to the Customer.
- 9.3 Until ownership of and title to any Equipment owned by the Supplier passes to the Customer, the Supplier shall be entitled at any time to repossess them and shall be fully indemnified by the Customer for doing so. The Customer hereby grants the Supplier or its authorised representative a licence to enter any premises where Equipment belonging to the Supplier are stored at any time for the purpose of repossessing the Equipment that have been delivered to the Customer, with or without any materials attached to them.
- 9.4 The Supplier shall be entitled to use or dispose of such Equipment as it wishes. Unless the Supplier expressly elects otherwise, any contract between it and the Customer for the supply of Equipment shall remain in existence, notwithstanding any exercise by the Supplier of any of its rights under this clause 9.
- 9.5 The Customer shall not be entitled to pledge or in any way charge by way of security for indebtedness any Equipment that remain the property of the Supplier. However, if the Customer does so, all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- MAINTENANCE SERVICES**
- 10. Basis of Services**
- 10.1 The Customer agrees to deal with Supplier on the terms below for the Services to the exclusion of all other terms, conditions, warranties or representations.
- 10.2 The Supplier's employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Supplier in writing.
- 10.3 Any advice or recommendation given by Supplier or its employees or agents to the Customer as to the Services which is not confirmed in writing by Supplier is followed or acted upon entirely at the Customer's own risk and accordingly Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 11. Preventative Maintenance**
- 11.1 The level of the Preventative Maintenance is specified in the Equipment List.
- 11.2 The Preventative Maintenance shall be provided by prior arrangement during Working Hours.
- 11.3 The Supplier will undertake to carry out Preventative Maintenance at the agreed intervals in the Equipment List and Order.
- 11.4 The Price for Preventative Maintenance covers labour costs for the routine inspection, testing, adjustment and lubrication of the Equipment in accordance with the Manufacturers' service handbook. Any lubricants and filters required as part of Preventative Maintenance will be charged at the prevailing rates. Parts and labour for additional repairs required as an outcome of Preventative Maintenance will be charged at the prevailing rates.
- 11.7 The Preventative Maintenance shall be provided by prior arrangement during Working Hours only. Additional charges at the Suppliers prevailing rates will be applied where the Customer requires Preventative Maintenance to be provided outside Working Hours.
- 11.8 If an appointment is made for a Supplier engineer to visit the Account Location to carry out the Preventative Maintenance and is subsequently not allowed access to the Equipment then a charge may be made to cover wasted travel time and labour.
- 11.9 The rate shown on the Equipment List will be inclusive of travel time, mileage and labour time required to complete the Preventative Maintenance.
- 11.10 The Price of Preventative Maintenance will be reviewed annually and any increase will be limited to no more than 3% each year.

- 11.11 Preventive Maintenance shall commence on the Start Date and shall continue thereafter for a minimum period of 12 months following which it may be terminated without cause by either Party on 3 months' written notice, unless otherwise terminated in accordance with these Conditions.
- 12. Full Service Maintenance**
- 12.1 The level of Full Service Maintenance is specified in the Equipment List.
- 12.2 A Site Survey agreed and signed by both Parties will be carried out prior to the commencement of the Full Service Maintenance. Should the operating conditions detailed in the Site Survey change the Supplier reserve the right to vary the Price or terminate the contract without further liability.
- 12.3 The Full Service Maintenance shall be provided by prior arrangement during Working Hours. Additional charges at the Suppliers prevailing rates will be applied where the Customer requires Full Service Maintenance to be provided outside Working Hours
- 12.4 Supplier will undertake to carry out Full Service Maintenance at the intervals stated in the Manufacturer's operating handbook at the frequency stated in the Equipment List.
- 12.5 The Price for Full Service Maintenance is dependent on the level of Full Service Maintenance provided by the Supplier as follows:-
- 12.5.1 Full Service Level 1 - covers the cost of travel and labour for preventative maintenance which includes the routine inspection, testing and adjustment of the Equipment. Spare parts, lubricants, consumables and environmental waste disposal are not included;
- 12.5.2 Full Service Level 2 - includes all services in Service Level 1 and additionally labour and parts to carry out repairs due to fair wear and tear (excluding repairs required due to any damage, accident, negligence or misuse of any Equipment by the Customer or other third party). The Supplier will use reasonable endeavours to attend a breakdown within 4 working hours of receipt of a breakdown notification from the Customer during Working Hours;
- 12.5.3 Full Service Level 3 - includes all services in Service Level 1 and 2 and additionally replacement of up to one set of tyres per year due to wear and tear where worn out through normal use;
- 12.6 The following are excluded from Full Service Maintenance:
- the cost of repairing any fault or damage deemed to have been caused accidentally, negligently or maliciously;
  - the overhaul of chassis, mast assemblies, engines or transmissions;
  - maintenance, repair or replacement of batteries or chargers;
  - repair of faults caused by faulty or end of life batteries;
  - maintenance or repair of attachments or accessories;
  - replacement of bulbs;
  - repair or replacement of forks;
  - repair or replacement of escape harness systems (VNA trucks);
  - supply of fuel, additives, oil or coolant;
  - repair or replacement of panels or protective cab parts;
  - provision of temporary replacement Equipment.
- 12.7 If the Manufacturer of Equipment ceases to supply spare parts the Supplier will be released from the Full Service Maintenance without further liability.
- 12.8 If an appointment is made for a Supplier engineer to visit the Account Location to carry out the Full Service Maintenance and is subsequently not allowed access to the Equipment then a charge may be made for wasted travel time and labour.
- 12.9 Full Service shall commence on the Start Date and shall continue until the End Date unless otherwise terminated in accordance with these Conditions.
- 13. LOLER Inspection**
- 13.1 The requirement for LOLER Inspection of Equipment is specified in the Equipment List and /or Order.
- 13.2 The Price for LOLER Inspection covers the labour costs for carrying out LOLER Inspection and inspection documentation required. No additional service or repair is supplied under LOLER Inspection services.
- 13.3 The LOLER Inspection shall be provided by prior arrangement during Working Hours at the frequency stated in the Equipment List and/or Order.
- 14. Customer Obligations**
- 14.1 The Customer agrees throughout the term of the Services:
- to grant the Supplier such access to such parts of the Account Location(s) and to make available such facilities as the Supplier shall reasonably require in order to perform the Services;
  - to carry out the daily checks to the Equipment as recommended by the Manufacturer and to comply with all Manufacturers operating instructions;
- 14.1.3 to take all reasonable precautions to protect the health and safety of Supplier employees attending the Account Location(s);
- 14.1.4 to make available the Equipment and supply all documentation and other information necessary for Supplier to carry out the Services.
- 15. Prices and Payment**
- 15.1 The Price for the Services is exclusive of VAT.
- 15.2 The Customer shall make payment to the Supplier in respect of all invoices in full without any deduction or set off within the time specified in the Contract. Time of payment shall be of the essence.
- 15.3 If full payment is not received by Supplier by the due date then without prejudice to its rights the Supplier shall be entitled to:
- claim for the entire amount outstanding;
  - charge interest (both before and after any judgement) at the rate of 4% over the base rate from time to time of Barclays Bank PLC on the outstanding balance; and/or
  - suspend or cease providing the Services to the Customer.
- 15.4 Where any Annual Operating Hours are exceeded the Supplier shall be entitled to charge the Excess Hours Charge for each additional hour accrued by the relevant Equipment as detailed in the Equipment List, which the Customer shall be liable to pay to Supplier in accordance with clause 15.2.
- 15.5 Without prejudice to the foregoing the Supplier reserve the right by giving 30 days notice at any time during the Contract to change the Price in the event of and to take account any change in costs due to factors beyond the Supplier's control relating to increases in materials, spare parts, shipping and/or any import levies, duties, tariffs or other taxes (including VAT).
- 16. Warranty and Liability**
- 16.1 The Supplier warrants that the Services will be provided using reasonable skill and care. No other warranties, conditions, guarantees or representations as to the Services are given by Supplier and all other warranties, conditions, guarantees or representations whether express or implied, oral or in writing are hereby excluded from the Services to the fullest extent permitted by law.
- 16.2 Nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation, breach of the terms implied by s.2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or for any other liability that cannot be excluded at law arising out of or in connection with the Services provided by the Supplier.
- 16.3 Subject to clause 16.2 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any indirect, special or consequential damages howsoever arising (including but not limited to pure economic loss, loss of anticipated profit or saving, loss of business, loss of production, depletion of goodwill or similar) arising out of or in connection with the Services provided by Supplier.
- 16.4 Subject to clause 16.2 the Supplier's total liability to the Customer in respect of all other losses arising out of or in connection with the supply of the Services whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall exceed the Price paid for those Services by the Customer during the 12 months immediately preceding the date on which the claim arose.
- 16.5 Except pursuant to clause 16.2 above no action regardless of form arising out of the transactions and Services under the Contract may be brought by the Customer more than two years after the cause of action has accrued.
- GENERAL TERMS (applicable to all)**
- 17. Termination**
- 17.1 The Supplier shall be entitled to terminate the Contract forthwith by notice in writing to the Customer if:
- the Customer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or
  - the Customer (being an individual, company or partnership) is unable to pay its debts within the meaning of the Insolvency Act 1986; or convenes a meeting of its creditors; or if a proposal is made for a voluntary arrangement or compromise for the benefit of creditors or otherwise; or a receiver, administrative receiver or similar officer is appointed over all or a substantial part of the Customer's assets; or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the bankruptcy, winding up or dissolution of the Customer; or is subject to insolvency proceedings or ceases or threatens to cease to carry on business; or there is at any time a material change in the management, ownership or control of the Customer; or if the Supplier reasonably believes that any of the events specified in this clause is about to occur or has a reasonable belief that the Customer is unlikely to pay its debts as they fall due and notifies the Customer accordingly.
- 17.2 In the event of termination by the Supplier pursuant to clause 17.1 above then, without prejudice to any other right or remedy available to it the Supplier shall be entitled to cancel the Contract or suspend any further supply of Equipment or Services under it without any liability to the Supplier and, if the Equipment or Services have already been supplied but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Supplier shall be entitled to charge interest (both before and after any judgement) at the rate of 4% over the base rate from time to time of Barclays Bank PLC from the time of such cancellation or suspension until the Supplier receives payment.
- 18. Force Majeure**
- 18.1 The Supplier reserves the right to defer the delivery or to cancel the Contract or reduce the volume of Equipment or level of Services if it is prevented from or delayed in the carrying on its business due to circumstances beyond its reasonable control including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, third party strikes or lock-outs, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 19. Anti-Bribery**
- 19.1 The Customer undertakes that it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption but not limited to the Bribery Act 2010. Any breach of this clause 19 will be deemed as a material breach of the Contract.
- 20. General**
- 20.1 The remedies available to the Supplier under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Customer.
- 20.2 The failure or delay of the Supplier to enforce or to exercise any term of or any right, power or privilege arising pursuant to the Contract shall not constitute any waiver of such term or right and shall in no way affect the Suppliers right later to enforce or exercise it.
- 20.3 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.
- 20.4 Any notice or written communication required or permitted to be served on or given to either Party under the Contract shall be sent by recorded delivery mail to the other Party at its address set out in the Contract or to such other address which it has previously notified to the sending Party and shall be deemed to have been received the second day after the date of posting.
- 20.5 No variation to these terms shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed by an authorised representative on behalf of each of the Customer and Supplier.
- 20.6 The Contract is personal to the Customer and the Customer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of the Supplier.
- 20.7 The Contract contains all the terms agreed by the Parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the Parties prior to the Contract except as set out in the Contract.
- 20.8 No term of this Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.
- 20.9 The construction, validity and performance of the Contract (and any dispute or claim arising out of or in connection with it) shall be governed by the laws of England and the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute.