

**ROTORK GENERAL CONDITIONS OF SALE ("GCS")**

**FOR THE PROVISION OF SERVICES**

**1. Interpretation**

The definitions and rules of interpretation set out in Schedule 1 apply to these GCS.

**2. Applicable Terms**

2.1 Subject to clause 2.2 below, the Contract shall comprise of the following and, in the event of conflict between any of the following, except where expressly stated otherwise in these GCS, the document mentioned first shall take priority:

- (a) These GCS;
- (b) any terms expressly set out (not referenced) in the Acknowledgement;
- (c) any other terms set out or referenced in Rotork's Quotation (provided (and to the extent that) such quotation is referenced in either the Acknowledgement or the Purchase Order);
- (d) subject to clause 2.4 below, any terms expressly set out (not referenced) in the Purchase Order that either describe the Services or are specific to the Services, provided that they do not materially alter these GCS or Quotation;
- (e) any terms expressly set out (not referenced) in the Purchase Order specific to the Services which vary or amend the effect of these GCS or Quotation terms, provided that such amendment expressly specifies that it constitutes an amendment to these GCS, and the Purchase Order is signed by Rotork;

2.2 Where these GCS specify that a term in an Acknowledgment or Purchase Order will dictate the Parties' position or will take effect, such term shall take priority to the extent granted by these GCS.

2.3 For the avoidance of doubt, if the details of the Services described in Rotork's Quotation differ from those set out in the Acknowledgement or Order Form the latter shall apply.

2.4 Any general terms and conditions or back of order terms that are set out or referenced in the Purchase Order and are either: not specific to the Services to be supplied by Rotork; or are routinely incorporated in all (or substantially all) the Customer's purchase orders with its suppliers, are excluded in full and will have no effect.

2.5 For the avoidance of doubt, any Quotation issued by Rotork shall not constitute an offer and is given on the basis that the Contract shall only become effective only upon the later of:

- (a) the date of Acknowledgement by Rotork;
- (b) the date of fulfilment of all conditions precedent stipulated in the Contract (where relevant); and
- (c) the date on which Rotork is deemed to have accepted the Contract by means of specific performance, ("**Deemed Acknowledgment**") provided that any customer terms shall not be deemed to automatically apply where not expressly agreed to by Rotork (the "**Effective Date**").

2.6 These GCS are for the provision by Rotork of Services to the Customer. Any Products sold or provided by Rotork ancillary to the provision of the Services shall be governed by the terms and conditions applicable to the provision by Rotork of Products, as available on Rotork's website or otherwise provided by or agreed with Rotork and the Customer separately.

**3. Purchase Orders and Specification of Services**

3.1 The Customer will provide Rotork with all Information reasonably requested by Rotork in connection with the site, Services or Asset to which the contract relates. The Customer shall ensure that any Information it provides to Rotork upon which Rotork may rely in relation to the Services, Assets or site is accurate and up to date. Rotork shall not be liable for any actions it undertakes or Services which it provides in accordance with instructions issued by the Customer or which are dependent on such Information provided by the Customer.

3.2 Rotork reserves the right to amend the scope of the Services to ensure their continued compliance with law and good industry practice. Rotork will notify the Customer of any amendments made.

3.3 Rotork reserves the right to replace or recondition the Customer's plant or equipment or any part thereof which is unserviceable or inefficient as the Seller considers reasonably necessary in order to fulfil its obligations to provide the Services in accordance with the Contract scope and specification and shall detail its intentions to the Customer ahead of implementation. If the Customer does not agree to have the item(s) replaced or reconditioned, Rotork reserves the right to amend the scope of the Services as in its absolute discretion it considers necessary. Where the plant in question is a Rotork-provided Asset in breach of its Rotork product warranty and it is still within the warranty period applicable, the Customer may seek the costs of remedy/repair or replacement in accordance with that product warranty. Where the defect and/or the plant or Asset in question is not covered by warranty the costs of replacement shall be entirely at the Customer's cost, subject to the prices and costs which Rotork has agreed under the Contract to cover such costs, including where relevant where it falls within the remit of the Spares Contingency.

**4. Prices and Payment**

4.1 The price for the Services will be as set out or referenced in the Quotation or Acknowledgment. If no price is set out in such documents, the price will be the price set out in Rotork's published price list as at the date of Acknowledgment.

4.2 Unless otherwise expressly provided for in a Quotation, any Quotation issued by Rotork is valid for a period of thirty Business Days only after the date of its issue, provided that Rotork has not previously withdrawn it by notice to the Customer. Rotork reserves the right to give notice in writing of its withdrawal of a Quotation at any time within the period of validity of the Quotation before a Contract is formed.

4.3 The dates for submission of invoices by Rotork and dates for payment for any Services by Customer shall be as set out or referenced in the following documents (with the document listed higher taking priority):

- (a) Acknowledgment;
- (b) Purchase Order, provided that the document expressly calls out the deviation from the GCS or Quotation and is signed by Rotork without deviation or later deviation from such term in a later Acknowledgment.
- (c) Quotation;
- (d) Otherwise, under these GCS:
  - (i) Rotork will be entitled to submit invoices for Services on or after its performance, or if cancelled in accordance with clause 12.1, on or after the date of cancellation.; and
  - (ii) all invoices must be paid in full by the Customer in cleared funds within 30 Business Days of the date of the invoice.

4.4 If the Customer fails to make any payment due to Rotork under the Contract by the due date for payment, then the Customer will pay interest (both before and after judgment) on the overdue amount at a rate of 4% per annum above the Reserve Bank of Australia's cash rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount. The Customer will pay the interest together with the overdue amount.

4.5 Unless expressly stated otherwise in the Quotation or Acknowledgment all transportation, insurance and similar charges incidental to delivery of New Parts to any place other than Rotork's premises shall be paid by the Customer.

4.6 All payments made by the Customer under the Contract will be made without (and free and clear of any deduction for) set-off, counterclaim abatement or withholding.

4.7 The Customer will make all payments without any tax deduction, unless law requires a tax deduction to be made. If a tax deduction is required by law to be made by the Customer:

- (a) the Customer will make the minimum tax deduction allowed by law, and will make any payment required in connection with it within the time allowed; and
- (b) the Customer will, if available, deliver to Rotork an official receipt or other evidence satisfactory to Rotork (acting reasonably) that the Tax Deduction has been made or, as applicable, any appropriate payment has been paid to the relevant taxing authority.

4.8 Unless expressly stated otherwise in the Contract, any amount payable by the Customer pursuant to the Contract is exclusive of any value added tax, use tax, goods or services tax, sales or turnover tax or any other tax of a similar nature. The Customer will, on receipt of a valid invoice from Rotork, pay to Rotork such additional amounts in respect of such taxes as are chargeable on the Work.

4.9 If the Customer pays any amount to Rotork without apportioning it between specific debts or liabilities, the amount paid shall be apportioned as Rotork reasonably thinks fit. Rotork may attribute the entirety of an amount paid to one or more specific items in respect of which payment is due, rather than to all the items in respect of which payment is due.

## 5. On-Site Inspection and Quotation for Additional Services

5.1 Subject to clause 8.1 and unless otherwise provided for in the Quotation or Acknowledgement, Rotork will carry out an On-Site Inspection on the date set out in the Acknowledgement and, following such an On-Site Inspection, will:

- (a) report material findings of the On-Site Inspection to the Customer; and
- (b) use all reasonable endeavours to complete agreed Services On-Site on the date of the On-Site Inspection, using reasonable endeavours to minimise any disruption to the Customer's operations where practical.

5.2 If Rotork is not able to complete the Services On-Site during the date of the On-Site Inspection and/or within the Spares Contingency, Rotork will submit an Additional Services Quotation to the Customer with the following information, as applicable:

- (a) the price for any suggested or recommended Additional Services, including the price for any New Parts;
- (b) the estimated lead time for the delivery of the New Parts;
- (c) the estimated time required to carry out the Additional Services;
- (d) whether the Additional Services will be carried out On-Site or Off-Site; and
- (e) whether Rotork will provide and, if appropriate, install and commission, a Loan Asset whilst the Additional Services is ongoing.

5.3 If the Customer agrees to the Additional Services Quotation (whether orally or in writing), this Contract will be automatically amended to incorporate such Additional Services.

## 6. Off-Site Services

6.1 If Services are to be performed Off-Site:

- (a) unless otherwise agreed, the Customer will hand-over ("**Hand-over**") the Asset(s) to Rotork On-Site on the agreed date. All risk of loss of, or damage to, the Asset passes from the Customer to Rotork on Hand-over;
- (b) Rotork will re-deliver to the Customer and, if agreed re-install each Asset On-Site ("**Hand-back**") on the agreed date. All risk of loss of, or damage to, an Asset passes from Rotork to the Customer on Hand-back; and
- (c) if agreed, Rotork may provide to the Customer a temporary Asset on loan (the "**Loan Asset**") at Hand-over and the Customer shall return the Loan Asset to Rotork at Hand-back. All risk of loss or destruction of, or damage to, a Loan Asset shall pass to the Customer on Hand-over and back to Rotork on Hand-back.

6.2 Unless otherwise agreed, title to:

- (a) the Asset will remain with the Customer at all times;
- (b) any Loan Asset will remain with Rotork at all times;
- (c) the New Parts shall pass to the Customer on Hand-back; and

- (d) the Parts that are removed from any Asset during the performance of the Services (whether scrap or repairable) and that will be replaced by New Parts, shall pass to Rotork on their removal from the Asset.

## 7. Performance and Delivery of Services on site

- 7.1 Rotork shall in no event have any liability for failure or delay in the delivery of any Service or Asset, including any Loan Asset or New Part where such failure or delay has been caused by the obstruction or failure by the Customer or its representatives to provide necessary access or information required in order for the delivery or performance to take place.
- 7.2 Where the Services or delivery location is to be at a Customer site:
- (a) the Customer will provide Rotork's employees, agents, consultants and subcontractors with all specialist safety clothing or equipment as may be necessary to meet the Customer's or the operator of the delivery site's health and safety and environmental rules unless otherwise agreed and set out in the Contract;
- (b) the Customer shall provide Rotork with all reasonable health and safety requirements applicable to the delivery site which Rotork should be aware of and Rotork shall to comply with them, provided that where Rotork's own health and safety requirements or requirements imposed by the applicable law are of a higher standard, Rotork shall take measures to ensure that the higher standard of health and safety is applied. Rotork reserves at all times the right to exit the site where it reasonably deems the site to be non-compliant with good industry practice for health and safety or otherwise poses a risk of harm to Rotork or any of its employees, agents, subcontractors or agents and in such an event shall not be liable for breach of Contract or delays to delivery for doing so.
- 7.3 If delivery of a New Part or Loan Asset is delayed due to any act or omission of the Customer, or if having been notified that such goods are ready for despatch, the Customer fails to take delivery or provide adequate shipping instructions, Rotork shall be entitled to place such goods into a suitable store at Customer's expense. Upon placing the goods into the store, delivery shall be deemed to be complete, risk in the relevant parts shall pass to the Customer and the Customer shall pay Rotork accordingly in such an event, for all related costs and expenses (including, without limitation, costs of transport in returning such parts from the Delivery Location to the storage site, re-delivery, storage and insurance.
- 7.4 In relation to On-Site Services, the Customer acknowledges and agrees that Rotork shall at no time own, occupy or control (or be deemed to control) any part of the site(s) and/or hold or be fixed with any duties or liabilities under health and safety laws or regulations or common law in relation to any part of the site other than are set out under the Contract.

## 8. Customer's Obligations

- 8.1 The Customer shall:
- (a) provide Rotork with such information, support, materials and equipment set out in the Contract and any other information, support, materials and equipment Rotork may reasonably require in order to perform the Services;
- (b) provide Rotork with reasonable advance notice prior to Rotork's scheduled site visit, with the Customer's On-Site health and safety protocols and requirements for its suppliers and workers one site which Rotork is required to comply with;
- (c) ensure that there is an adequate power supply On-Site to test the Asset and/or Services at Hand-back (if applicable) or upon completion of the Services and ensure that the SCADA, PLC and/or DCS On-Site (if applicable) are fully operational when Rotork is to perform the Services;
- (d) prepare the site for the performance of the On-Site Services and inform Rotork, with as much notice as is practicable, of any relevant site conditions or constraints that may impact the Services;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services is to start;
- (f) provide Rotork, its employees, agents, consultants and subcontractors with safe, continuous access and egress On-Site including but not limited to office accommodation and other facilities as reasonably required by Rotork and shall ensure that it has procured all licences/consents/authority necessary to ensure free and safe access to Rotork as necessary for the Services. This clause shall continue after the termination of the Contract to the extent necessary for Rotork to complete any post-Contract hand-over or retrieve Rotork equipment (including Rotork Service Equipment") from the site within a reasonable period of time;
- (g) if reasonably required by Rotork, make available to Rotork a secure storage area at the Customer's site(s) for storage of Rotork's service equipment and shall keep all materials, equipment, documents and other property of Rotork (the "Rotork Service Equipment") in such storage area in safe custody and at the Customer's risk. The Customer shall not dispose of the Rotork Service Equipment other than in accordance with Rotork's instructions in writing; and
- (h) if reasonably requested by Rotork, prior to any visits by Rotork On-Site (including any On-Site Inspection) the Buyer will:
- i. strip back any pipe lagging;
  - ii. supply and erect suitable scaffolding (if required) to allow working access to the Customer's Asset and other relevant plant and equipment; and
  - iii. supply any necessary lifting equipment and required operators;
- (i) following any visits by Rotork, be responsible for the reinstatement of any pipe lagging and the dismantling of any scaffolding erected On-Site.
- (j) at its own cost, provide the Seller and all representatives and subcontractors appointed to perform the Services or be On-Site, with all specialist safety clothing or equipment as may be necessary to meet the Buyer's health and

- safety and environmental rules (excluding hard hat, safety glasses, overalls and protective shoes or other items which have been set out in the Contract as items to be provided by Rotork).
- 8.2 The Customer agrees that the Customer's site, plant and equipment operates to the standards and functionality required as specified in the Contract or any Specification agreed by the Parties and is compliant with any additional requirements in writing notified by Rotork to the Customer in respect of the Customer's plant and equipment (subject to issues or concerns which the scope of the Services are designed to investigate or remedy). Rotork excludes all liability for losses arising directly or indirectly out of any failure of Services or any failure or diminution in performance of the Asset or the Customer's plant or equipment or any part thereof which is caused directly or indirectly by a breach by the Customer of this clause.
- 8.3 Unless otherwise stated in the Quotation or Acknowledgment, the Buyer will procure that Rotork's employees, agents, consultants and subcontractors are covered by the Customer's or operator of the Site's third party liability insurance policy of an amount of not less than three million pounds (£3,000,000) per occurrence whilst such employees or subcontractors are On-Site.
- 8.4 If the performance by Rotork 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, including but not limited to the obligations set out in clause 8.1, including but not limited to any false, inaccurate or out of date information provided by the Customer upon which Rotork relies (the "**Customer Default**"):
  - (a) Rotork shall not be held responsible for any delay or failure in performance of its Services caused by the Customer Default;
  - (b) Rotork shall, without limiting its other rights or remedies, have the right to suspend performance of the Services 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 to the extent the Customer Default prevents or delays the performance by Rotork of any of its obligations;
  - (c) Rotork shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the failure or delay of Rotork to perform any of its obligations; and
  - (d) subject to Rotork using reasonable endeavours to mitigate any costs or losses it sustains, the Customer shall reimburse Rotork on written demand for any costs or losses sustained or incurred by Rotork arising directly or indirectly from the Customer Default, which shall include but not be limited to reasonable charges for waiting (charged on a daily basis as set out in Rotork's quotation) for the Customer Default to be remedied.
- 8.5 Subject to Customer compliance with clause 8.1(b), Rotork shall comply with the Customer's On-Site health and safety requirements and policies provided to Rotork with reasonable notice in advance of attending the site, provided that where Rotork's own health and safety requirements or requirements imposed by the applicable law are of a higher standard, Rotork apply the higher standard of health and safety requirements. Rotork reserves at all times the right to suspend the Services and exit the Customer's site where it reasonably deems the site conditions or the actions or omissions of the other personnel at the Customer site to be non-compliant with good industry practice or otherwise pose a risk of harm to Rotork or any of its employees, agents, subcontractors or agents and in such event Rotork shall not be liable for breach of Contract or delays to delivery for doing so. Rotork shall be entitled to suspend Services until it is reasonably satisfied that the conditions On-Site are at an adequate safety level in accordance with its own health and safety policy and the applicable law.
- 9. Services Warranty**
- 9.1 Rotork warrants to the Customer that the Services will be performed with reasonable care and skill and that any Asset repaired or replaced during the performance of the Services will be free from defects in material and workmanship ("**Services Warranty**").
- 9.2 If Rotork breaches the Services Warranty, then as the Customer's sole remedy and Rotork's sole liability for such a breach, Rotork will:
  - (a) re-perform the relevant Services within a reasonable time or, if it is not practicable to re-perform such Services, refund the Customer the amounts paid by the Customer in respect of such Services; and
  - (b) repair or replace (at Rotork's sole discretion), on a free of charge basis, any Asset damaged as a result of Rotork's breach of the Services Warranty
- 9.3 The Customer's remedy under clause 9.2 is conditional on the Customer notifying Rotork of the breach of Services Warranty within the shorter of:
  - (a) 12 months of the Services in breach being performed; or
  - (b) 21 days of the date the Customer discovered, or should reasonably have discovered, the breach
 (the "**Services Warranty Period**") with reasonable evidence and supporting documentation, including photographs of the suspected defect and location and details of the relevant order number under which the defective Services had been performed and details of the Asset. Failure to comply with these notice requirements will invalidate the relevant warranty claim. Without limiting clause 9.2, the cost of making a warranty claim itself will be borne by the Customer.
- 9.4 Rotork shall not be liable for the Services' failure to comply with the Services Warranty in any of the following events:
  - (a) the failure arises because the Customer failed to follow Rotork's oral or written instructions in respect of the Services and/or the Asset or (if there are none) good trade practice;
  - (b) the failure arises as a result of Rotork following any drawing or design supplied by the Customer;
  - (c) a Customer Default prevented Rotork from testing the Asset and/or Services at Hand-back (if applicable) or upon completion of the Services;



- (d) the Customer alters or repairs such Services or relevant Asset (as applicable) without the written consent of Rotork; or
- (e) the breach or suspected breach of the Services Warranty arises as a result of fair wear and tear; or the Customer's wilful damage; negligence; abnormal storage or working conditions; any abnormal conditions such as hydraulic shock, corrosive attach or excessive dirt in the system; electrical supply failure or any failure by anyone but an Affiliate of Rotork (or personnel authorised and certified by Rotork) to follow the Asset's technical documentation (including any instructions or procedures for installation, commissioning, operation or maintenance, storage or use);
- (f) failure by the Customer or ultimate end user of the Asset to follow good trade practice in the use or handling of the Asset or the facility or equipment to which the Asset is attached.

9.5 Where any Asset is repaired in accordance with clause 9.2, the unexpired balance of the Warranty Period applicable to that Asset as at the date of replacement or repair will apply to the replaced or repaired Asset.

9.6 Where any Asset is entirely replaced in accordance with clause 8.2(b) the Services Warranty Period in relation to the Services involved in replacing the Asset will cease and a new Services Warranty Period will apply to the Services provided for such replacement Asset. In addition, the replacement Asset will be subject to a new product warranty period in accordance with the warranty period given by Rotork under Rotork's standard terms and conditions for provision of Products, as available on Rotork's website or on request. For the avoidance of doubt, a New Part provided shall not constitute a replacement of an Asset for the purposes of this clause. Where a New Part pursuant to clause 9.2 **Error! Reference source not found.** is provided then the unexpired balance of the Services Warranty Period will apply to the replaced or New Part.

9.7 When the Customer makes any warranty claim under the Services Warranty, Rotork may provide the Customer with a quotation for the Services and the Customer shall issue a Purchase Order at Rotork's request in advance of any investigation or arrival On-Site. The Customer shall pay such a price for the works and services and investigations undertaken by Rotork unless Rotork determines that the claim made under the warranty is a valid claim. Where Rotork has determined that a warranty claim made by a Customer is valid, no price shall be payable by the Customer to Rotork for the remedial Services offered under the warranty.

9.8 If the Customer is deemed to be a "consumer" under the Australian Consumer Law, then the following statement applies: "Our Work comes with guarantees that cannot be excluded under the Australian Consumer Law. Where the Australian Consumer Law is applicable, for major failures with the Work, you are entitled:

- (a) to cancel your Contract with us; and
- (b) to a refund for the unused portion of the Work, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the Work rectified in a reasonable time and, if this is not done, to cancel the Contract and obtain a refund for the unused portion of the Work."

## 10. Limitation of Liability

10.1 In the event that Rotork is prevented from performing any obligation under this Contract which would (in Rotork's opinion) cause it or any of its Affiliates to violate or be exposed to negative consequences under Sanctions or Export Controls, Rotork shall have no liability to the Customer, notwithstanding anything to the contrary in the Contract.

10.2 Subject to clause 10.4 and to the extent permitted by law, Rotork's total liability (if any) to the Customer and the Customer's remedies in respect of:

- (c) claims for infringement of Third Party IPR will be limited to those remedies set out in clause 13;
- (d) the infringement of the Services Warranty will be limited to the remedies set out in clause 9.2.

The total liability of Rotork to the Customer in respect of all other matters arising under or in connection with the Contract (including under any indemnity) will be limited to the total price of the Services to be performed under the Contract.

10.3 Rotork assumes no collateral duty in tort or negligence to the Customer with respect of the performance of the Services and excludes any liability for claims arising from the Customer's buyers or end-user customers to the extent legally permissible.

10.4 Nothing in the Contract will limit or exclude a Party's liability for fraud (including fraudulent misrepresentation), wilful breach, death or personal injury or to the extent such limitation or exclusion is not permitted by law. To the extent any part of the Contract has such effect, the Parties agree to replace such part of the Contract with provisions modified to the extent necessary to ensure such exclusion or limitation is permissible by law, but no further.

10.5 Except to the extent such limitation or exclusion is not permitted by law, Rotork will under no circumstances be liable to the Customer, whether in contract, breach of statutory duty or otherwise, for any Consequential Loss suffered by the Customer that arises under or in connection with the Contract.

10.6 Neither Party will be liable if delayed in or prevented from performing its obligations under the Contract due to a Force Majeure Event, provided that the Party promptly notifies the other Party of the Force Majeure Event and its expected duration and uses reasonable endeavours to minimise the effects of the Force Majeure Event.

10.7 If any Information provided by the Customer to Rotork is either incorrect, incomplete or misleading and Rotork uses such Information, the Customer will:

- (a) waive any claims it has against Rotork (including under clause 9 or clause 13) for any losses the Customer incurs as a result of Rotork not performing its obligations correctly due, directly or indirectly, to the incorrect, incomplete or misleading information; and
- (b) indemnify Rotork in full against all losses, costs or liabilities Rotork incurs in connection with a Third Party claim Rotork receives, to the extent that Rotork would not have suffered such losses, expenses, costs or liabilities if the Information provided by the Customer had not been incorrect, incomplete or misleading.

- 10.8 The Customer will indemnify Rotork for all losses, costs or liabilities Rotork incurs in connection with any claim that Rotork receives from any Affiliate of the Customer in connection with the Contract.
- 10.9 Rotork shall have no liability under any Contract where its performance or ability to perform the Contract to the standards required is reasonably reliant on an obligation, action or omission of the Customer under the Contract or implied by the applicable law where the Customer has failed or unreasonably delayed in fulfilling such obligation (including but not limited to the event of Customer Default), or where the event which would otherwise have given rise to Rotork's liability is otherwise caused or substantially contributed to by the breach of Contract by the Customer.
- 10.10 All performance figures, descriptions (other than any description set out in the Specification for the relevant Services), drawings and samples of Products provided by Rotork are approximate only being intended to serve merely as a guide. Rotork shall not be liable for their accuracy and they shall not form part of the Contract. No Contract shall be deemed a contract by sample.
- 10.11 The Customer acknowledges and agrees that the limited warranties and all limitations and exclusions of Rotork's liability set out in these GCS are reasonable and are reflected in the price of the Products and any Services quoted (as applicable) and the Customer shall accept risk or insure accordingly (or both).

## 11. Confidentiality

- 11.1 Subject to clause 11.2 to 11.3, each Party will hold in confidence any Confidential Information which it acquires directly or indirectly from the other Party or the other Party's Affiliates on behalf of the other Party and will protect such Confidential Information with a reasonable degree of care and at least the same degree of care used to protect its own Confidential Information and not use such Confidential Information other than for the purposes of performing or exercising its rights under the Contract it was provided under.
- 11.2 The provisions of clause 11.1 do not apply to Information which is:
  - (a) already in the public domain; or
  - (b) received, without restriction, from a Third Party who is without an obligation of non-disclosure.
- 11.3 Where a Party is subject to an obligation to disclose Confidential Information of the other Party under law, or Confidential Information of the other Party is required to be disclosed by any court of competent jurisdiction or competent regulatory authority, by notice or otherwise such party may make such disclosure but otherwise the Confidential Information will continue to be subject to clause 11.1.
- 11.4 Each Party may disclose the other Party's Confidential Information to its employees, agents, advisors, insurers, Affiliates or subcontractors ("**Representatives**") for the purpose of carrying out the Party's obligations under the Contract, provided that they ensure that its Representatives' comply with the confidentiality obligations set out in this clause.

## 12. Cancellation, Termination and Suspension

- 12.1 Unless otherwise specified by Rotork in the Quotation or Acknowledgment, in the event that the cancels all or any part of the Services at any time Rotork shall invoice the Customer and the Customer shall pay the following amounts:
  - (a) if notice to cancel is received by Rotork 48 hours or more before the date on which the Services is due to start: 50% of the price for the Services (excluding the Spares Contingency) plus the cost of (i) any equipment hired by Rotork; and (ii) any non-standard components or materials reasonably incurred by Rotork in anticipation of doing the Services (subject to a maximum of 100% of the Contract price of the Services); or
  - (b) if notice to cancel is received by Rotork 48 hours or less before the date on which the Services is due to start: 100% of the price for the Services (excluding the Spares Contingency).

The Customer acknowledges that the amounts payable by the Customer pursuant to this clause 10.1 are a genuine pre-estimate of the loss which will be suffered by Rotork arising from such cancellation and are necessary to protect Rotork's legitimate business interests.
- 12.2 To the fullest extent permitted by law, either Party may terminate the Contract immediately on written notice to the other Party if:
  - (a) it becomes unlawful in any applicable jurisdiction for either Party to perform any of its obligations under the Contract;
  - (b) the other Party suffers an Insolvency Event; or
  - (c) a Force Majeure Event stops Rotork performing its obligations under the Contract for a continuous period of one month.
- 12.3 Rotork may terminate the Contract immediately on written notice to the Customer if the Customer is in breach of any obligation to make payment under the Contract and such a breach continues for a period of ninety (90) days from the due date.
- 12.4 Without prejudice to any other rights and remedies which may be available to it, Rotork may suspend this Contract for any reason at its sole discretion at any time.
- 12.5 Without limiting its other rights and remedies, Rotork may suspend performance under the Contract or any other contract between the Customer and Rotork if:
  - (a) the Customer fails (or Rotork reasonably believes the Customer is about to fail) to make a payment under the Contract by the due date;
  - (b) the Customer is in Customer Default or otherwise Rotork has assessed the site conditions or operations of the Customer's staff or operators on site to be unsafe in accordance with Rotork's health and safety policy the applicable law and/or standard good industry practice.
  - (c) If Rotork has suspended performance and the circumstances entitling Rotork to suspend performance subsequently cease (and Rotork has not elected to terminate the Contract in accordance with its other rights and

remedies), Rotork will resume performance but any time limits for such performance will be extended by the duration of the suspension. and Rotork shall be entitled to a reasonable variation to the Contract price for the prolongation, demobilisation and remobilisation resulting from the Customer's defaults or causation.

- 12.6 Termination of the Contract, however arising, will not affect any of the Parties' rights, remedies, obligations and liabilities that have accrued as at termination, however, where the Contract is terminated further to clauses 13.4 or 15.13 then in the event there is a conflict with this clause 12.6, clause 15.13 shall apply and take priority.
- 12.7 To the fullest extent permitted by law, the Customer's right to terminate or cancel the Contract as set out in this clause 12 represent its only rights to terminate the Contract with the exception of the right to terminate by way of clauses 13.4 and 15.13.
- 12.8 In the event that the Contract is terminated following commencement of the Services but prior to performance of all or part of the Services to be provided under the Contract, Rotork shall be entitled to the pro-rata Contract price reflective of the Services performed and irrecoverable costs committed to in the performance of the Services up to the date of the termination. This clause shall have the effect that any milestone payments or payments made in advance by the Customer may be applied to such value due to Rotork accordingly.

### 13. Intellectual Property Rights

- 13.1 Subject to clause 13.2, the Customer will not acquire any title, right or interest in or to any IPR belonging to, licensed to or developed by Rotork relating to the Assets (including any New Parts) provided or Services performed under the Contract.
- 13.2 The Customer will have a non-exclusive, irrevocable, perpetual, worldwide, royalty-free licence to use any IPR in any written documentation provided to the Customer by Rotork as a deliverable in accordance with the Contract, solely for the purpose of installing, commissioning, operating and maintaining the Assets.
- 13.3 For the avoidance of doubt, the Customer will not sublicense any IPR relating to the Services, and will not use any IPR or other Information relating to the Services or any Rotork supplied Assets in connection with goods or services that may be intended for sale, supply, transfer or export (directly or indirectly) to or for use in Russia or Belarus. The Customer further undertakes to prohibit any potential sublicensee of IPR (or third parties to which it provides Information relating to the Assets or Services) from using such IPR or Information in connection with goods or services that may be intended for sale, supply, transfer or export (directly or indirectly) to or for use in Russia or Belarus.
- 13.4 A breach of clause 13.3 shall constitute a material breach of an essential element of these GCS and the Contract, and Rotork shall be entitled to seek appropriate remedies, including, but not limited to immediate and unilateral termination of the Contract without recourse and the Customer will not be entitled to claim for damages, specific performance or other relief.
- 13.5 The Customer will be responsible for and will release, indemnify and hold harmless Rotork and its Affiliates from and against any claims, losses, damages, costs (including legal fees), expenses, penalties and liabilities caused by any violation, error, mistake, failure or omission by the Customer or its own customers to comply with this Clause 13.5.
- 13.6 Rotork will have a non-exclusive, irrevocable, perpetual, worldwide, royalty-free licence to use any Asset configuration and performance data obtained during the provision of the Services to help improve its products and Services generally.
- 13.7 The Customer shall not use (other than pursuant to the Contract) or seek to register any trade mark or trade name (including any company name) which is identical to, confusingly similar to, or incorporates any trade mark or trade name which Rotork or claims rights in anywhere in the world.
- 13.8 Subject to 13.9, the sole liability of Rotork to the Customer in respect of any claims for infringement of a Third Party's IPR, will be to indemnify the Customer against any reasonably and properly incurred liabilities resulting from a Third Party claim that the use by the Customer of any Asset provided or Services performed by Rotork under the Contract infringes any IPR owned by such Third Party.
- 13.9 The indemnity contained in clause 13.8 will not apply for claims for infringement in respect of:
- (a) any modification to any Asset or Services which is carried out by or on behalf of the Customer, if such modification is not authorised by Rotork in writing;
  - (b) any Asset manufactured to the specific instructions of the Customer;
  - (c) losses resulting from the Customer failing to observe its obligations under any Contract; and/or
  - (d) losses that the Customer could have mitigated but did not.
- 13.10 The indemnity at 13.8 is conditional upon the Customer promptly notifying Rotork of a claim. The Customer shall not admit or settle any claim without Rotork's prior written agreement. Rotork shall be entitled to defend or conduct the defence of such claims. The Customer shall provide all reasonable assistance.

### 14. Export Terms

- 14.1 The exporting Party is responsible for obtaining all necessary licences, authorisations and certifications required in connection with any export and re-export under the Contract; the importing Party is responsible for obtaining all necessary licences, authorisations and certifications required in connection with any import.
- 14.2 The Parties will co-operate with each other in securing any required licenses, authorisations and certifications. Each Party will provide documentation regarding transfer, use, disposition, end-use, source of supply, nationalities and re-export of the Products as may be required in connection with the other Party's application for any required license authorisation or certification.
- 14.3 Each Party is responsible for government fees and other charges relating to the licences, authorisations and certifications it applied for as set out in clause 14.1.
- 14.4 The Customer agrees to provide Rotork with any information Rotork reasonably requires concerning the destination and use of the Assets subject to Services, to allow Rotork to comply in full with any relevant export legislation or to meet or minimise its tax obligations.

- 14.5 The Customer acknowledges and agrees in performing this Contract that it is familiar with the Sanctions and Export Controls which are relevant to its performance of this Contract, that it must comply with Sanctions and Export Controls and that it alone is responsible for ensuring its compliance with Sanctions and Export Controls.
- 15. Sanctions and Export Controls**
- 15.1 The Customer acknowledges and agrees in performing this Contract that it is familiar with the Sanctions and Export Controls which are relevant to its performance of this Contract, that it must comply with Sanctions and Export Controls and that it alone is responsible for ensuring its compliance with Sanctions and Export Controls.
- 15.2 The Customer shall not take any action that would cause Rotork or any of its Affiliates to be in violation of, or otherwise exposed to negative consequences under, any Sanctions or Export Controls.
- 15.3 The Customer warrants that it is not a Sanctioned Person.
- 15.4 The Customer warrants that it is not subject to any claim, proceeding, formal notice or investigation (in respect of which it has been notified) with respect to a breach or alleged breach of Sanctions and there are no circumstances likely to give rise to such claim, proceeding, formal notice or investigation.
- 15.5 The Customer warrants that it is not engaging in any transaction that circumvents or is intended to directly or indirectly breach Sanctions or Export Controls.
- 15.6 The Customer shall not directly or indirectly sell, provide, export, re-export, transfer, release, lease, consign or make available (or facilitate the aforementioned) the Products or Services (or Information or IPR connected to those Products) to or for the benefit of a Sanctioned Person.
- 15.7 The Customer must not directly or indirectly sell, provide, export, re-export, transfer, release, lease or consign or make available (or facilitate the aforementioned activities in respect of) the Products or Services (or Information or IPR connected to those Products) to (a) any entity located, incorporated, constituted, headquartered in a Sanctioned Territory; (b) an individual who is ordinarily resident in a Sanctioned Territory; (c) the government of a Sanctioned Territory; or (d) any entity owned, controlled by, or acting on behalf of any of the aforementioned.
- 15.8 The Customer must not directly or indirectly sell, provide, export, re-export, transfer, release, lease or consign or make available (or facilitate the aforementioned activities in respect of) the Products or Services (or Information or IPR connected to those Products) to any Person in, or for use in, a Sanctioned Territory.
- 15.9 The Customer shall undertake its best efforts to ensure that the purpose of Clause 15.8 is not frustrated by any third parties further down the commercial chain.
- 15.10 The Customer shall not directly or indirectly sell, provide, export, re-export, transfer, release, lease or consign the Products or Services (or Information or IPR connected to those Products) to be used for any WMD Purpose, and the Customer shall not provide indirect assistance or technical assistance to any WMD programme.
- 15.11 The Customer shall not directly or indirectly sell, provide, export, re-export, transfer, release, lease or consign the Products or Services (or Information or IPR connected to those Products) to Customers in violation of applicable Export Controls, including applicable US Export Controls related to the Entity List, the Unverified List, the Denied Persons List, the Military End User List and other end user- and end use-based restrictions (maintained by BIS) or the Debarred Parties List (maintained by DDTC).
- 15.12 The Customer shall not directly or indirectly sell, provide, export, re-export, transfer, release, lease or consign the Products or Services to be used for any military end use (including end-uses related to the manufacture, maintenance, design or use of military items, use by military or paramilitary forces, or police, security or intelligence agencies) in any jurisdiction subject to a UN, OSCE, EU, UK or US arms embargo.
- 15.13 Any violation of clauses 15.1 to 15.12 shall constitute a material breach of an essential element of the Contract, and Rotork shall be entitled to seek appropriate remedies, including, but not limited to immediate and unilateral termination of the Contract without recourse and the Customer will not be entitled to claim for damages, specific performance or other relief.
- 15.14 The Customer shall immediately and without delay notify Rotork if it (a) becomes aware that any one of clauses 15.1 to 15.12 is no longer true; (b) detects any activities by third parties that could frustrate the purpose of paragraph 15.8; or (c) there has been, or there is a risk of, a violation of (or negative consequences for Rotork or its Affiliates under) Sanctions or Export Controls.
- 15.15 At any time upon request, the Customer agrees to provide Rotork without delay any Information (including the end destination and end user) reasonably requested for the purpose of ensuring compliance with the obligations under this clause 15 as well as to meet tax obligations.
- 15.16 Where the Customer has informed Rotork of downstream third parties and the end destination of the Products and Services (whether during negotiation or at the time of entering into the Contract), the Customer shall inform Rotork before making any changes, and Rotork reserves its right to terminate the Contract if it has reasonable cause to suspect the change gives rise to a risk of a violation of Sanctions, Export Controls or Rotork's own policies and /or is detrimental to Rotork's reputation.
- 15.17 The Customer shall implement adequate policies and procedures to ensure compliance with Sanctions and Export Controls and shall conduct appropriate due diligence on its own customers, maintaining an adequate monitoring mechanism to detect conduct by its own customers that would frustrate the purpose of Clause 15.8.
- 15.18 The Customer will be responsible for and will release, indemnify and hold harmless Rotork and its Affiliates from and against any claims, losses, damages, costs (including legal fees), expenses, penalties and liabilities caused by any violation, error, mistake, failure or omission by the Customer, or its own customers, to comply with this Clause 15.
- 15.19 Any provision of this clause 15 shall not apply to any person if and to the extent that it is or would be unenforceable by or in respect of that person by reason of breach of any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based



thereon or resulting therefrom (the "Blocking Regulation") (or any law or regulation implementing such Regulation in any member state of the European Union or the United Kingdom). For the avoidance of any doubt, nothing in this Clause 15 is intended or should be interpreted or construed, as inducing any party to act in a manner that would be in breach of any provision of the Blocking Regulation.

## **16. Miscellaneous**

- 16.1 Rotork reserves the right, at its discretion, to employ subcontractors to perform all or any part of the Contract (including, without limitation, to design, manufacture or deliver any New Parts or to repair or replace any Assets or parts thereof and to remedy or investigate any alleged breach of the Services Warranty.
- 16.2 Unless it otherwise specifies, 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.
- 16.3 No action, including but not limited to any claim against Rotork in a competent court or place of arbitration, regardless of form, arising out of transactions under a Contract, may be brought by the Customer more than twelve months after the cause of action has occurred.
- 16.4 English shall be the legal language of the GCS and Contracts, and all parties waive any right to use and/or rely upon any other language, translation or interpretation albeit Rotork may provide translated versions for assistance or for information to Customers. The parties specifically agree that in the case of any inconsistencies or interpretation disputes, the English language version of these GCS or any Contract issued shall take priority.
- 16.5 Rotork reserves the right to make adjustments to the Services to ensure its continued compliance with law. Rotork will notify the Customer of such adjustments made.
- 16.6 Save as otherwise expressly provided in the Contract, any notice given to a Party under or in connection with the Contract will be in writing and posted to that other Party at its registered office or its principal place of business, addressed for the attention of the General Counsel or Head of Contracts.
- 16.7 The rights of each Party under the Contract may be exercised as often as needed, are cumulative and apply (except where expressly stated in the Contract) in addition to its rights under law and may be waived only in writing and specifically. Not exercising or a delay in exercising any right is not a waiver of that right.
- 16.8 Clauses 9, 10, 11, 13, 14, 16, 17, 18 and 19 (and any other provision which expressly or impliedly survives termination or expiration of the contract) will survive the expiration or termination of the Contract and will continue in full force and effect after expiration or termination.
- 16.9 Neither Party will:
- (a) offer to give or agree to give to any employee of the other Party, any gift or consideration of any kind as an inducement or reward for doing or omitting to do or for having done or omitted to do any act in relation to the obtaining or execution of the Contract; or
  - (b) commit any offence in connection with the Contract under the Ethical Legislation.

## **17. Entire Agreement**

- 17.1 The Contract constitutes the entire agreement between the Parties with respect to its subject matter.
- 17.2 Neither Party has placed any reliance on and will have no remedies in respect of any representations, agreements, understandings or warranties (whether made innocently or negligently) that is not set out in the Contract whether orally or in writing, relating to the performance of the Services other than those expressly incorporated in the Contract.
- 17.3 To the fullest extent permitted by law, Rotork assumes no contractual obligation with respect to the performance of the Services other than as expressly set out in the Contract, whether arising under any term, condition or warranty of merchantability, fitness for purpose or satisfactory quality or any other contractual term, condition or warranty express or implied by statute or otherwise and all such terms, conditions and warranties are excluded.

## **18. Nuclear Liability**

- 18.1 This clause shall only apply in the event that the Assets are used on or as a component or part of a Nuclear Installation.
- 18.2 Except for where liability or damage to the property of the Customer is caused by a corporate act or omission of Rotork done with intention to cause injury or damage, the Customer will indemnify and hold harmless Rotork, its directors, officers, employees, contractors, affiliates and suppliers in full against any liability arising out of any claim, including any Third Party claim, (regardless of the jurisdiction the claim arises or was filed in) where such claim arises out of or in connection with:
- (a) ionising radiation from a Nuclear Installation or contamination by radioactivity from any nuclear fuel or nuclear waste at a Nuclear Installation; and/or
  - (b) any precautions taken against the possibility of ionising radiation from a Nuclear Installation or contamination by radioactivity from any nuclear fuel or nuclear waste at a Nuclear Installation,
- regardless of whether the liability arises out of or in connection with damage, costs or losses occurring on or off a Nuclear Installation.
- 18.3 The Customer will not use the Assets and shall procure that the Assets shall not be used at, or enter onto a Nuclear Installation, at any time without the prior written consent of Rotork.

## **19. Law and Jurisdiction**

- 19.1 The Contract, and any non-contractual obligations arising out of or in relation to the Contract, will be governed by and construed in accordance with the laws of the State of Victoria.

- 19.2 Any dispute, controversies or claims arising out of or in connection with the Contract ("Dispute"), whether arising in contract, tort, equity, for breach of statutory duty or otherwise, will be finally resolved in accordance with the Rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The seat and place of any such arbitration will be Melbourne, Australia and the language of the arbitration will be English.
- 19.3 There will be one arbitrator, selected and appointed by the Parties, except where the Dispute involves an amount in excess of \$10,000,000 AUD or equivalent (exclusive of costs and fees) in which case three arbitrators will be appointed. Where one arbitrator is to be used, if the Parties cannot agree the identity of the arbitrator within 30 days, then the ICC will make the relevant appointment. Where three arbitrators are to be used, each Party will select one arbitrator within 30 days after giving or receiving the demand for arbitration, and the two arbitrators so selected will jointly select the third arbitrator. If the two arbitrators fail to select the third arbitrator within 30 days, then the ICC will make the relevant appointment.
- 19.4 The Parties agree that the appointed arbitrators will assign responsibility for the costs and fees of the arbitration, including administrative costs and fees and legal, witness and expert costs and fees, in light of its determination on the merits and taking into consideration the conduct of the arbitration proceedings, including the conduct of the Parties.
- 19.5 This clause 19 does not limit the right of any Party at any time to seek interim measures of protection in any appropriate courts. Such preservation of rights will not be construed as a waiver or limitation of either Party's consent to arbitration.
- 19.6 The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Products and any successors thereto does not apply to the Contract or any transaction under it.

## SCHEDULE 1 INTERPRETATION

### 1. Definitions

“**Acknowledgement**” means Rotork’s written acknowledgement of the Customer’s Purchaser Order (which shall be considered as a counter-offer by Rotork if it is not in strict accordance with the Customer’s Purchase Order).

“**Additional Services**” means any additional Services required following an On-Site Inspection that was not included in Rotork’s quotation.

“**Additional Services Quotation**” means a valid quotation for Additional Services submitted in accordance with clause 5.1.

“**Affiliate**” means as to any person, any other person that, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such person.

“**Asset**” means, as applicable, the Rotork-supplied product owned by the Customer which is subject to the Services.

“**Australian Consumer Law**” means schedule 2 to the Competition and Consumer Act 2010 (Cth), in force as a law of the Commonwealth under that Act, and as in force as a law of each State and Territory.

“**Business Day**” means a day when banks are open for business in Rotork’s jurisdiction of incorporation.

“**Confidential Information**” any Information which is Confidential, whether as implied by its nature and the circumstances in which it is shared, or which is expressly stipulated by the disclosing Party to be confidential in nature and shall include but in no way be limited to sensitive commercial Information of a Party including information relating to its prices, customers, suppliers, designs or business relationships, know-how or trade secrets in whatever form or medium and copies and reductions thereof.

“**Consequential Loss**” means any claims for pure economic loss, loss of rents, loss of income, loss of products and loss of production, loss of use, loss of revenue and loss of profit, loss of business opportunities and the opportunity to earn revenue and profits, increased operating costs or any other form of special or indirect loss.

“**Contract**” means as set out in clause 2.1.

“**Control**” shall mean the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **Controls, Controlled** and the expression **Change of Control** shall be interpreted accordingly.

“**Customer**” means the person placing the Purchase Order.

“**Customer Default**” means as set out in clause 8.2.

“**Dispute**” has the meaning given to it in clause 19.2.

“**Ethical Legislation**” means: (a) any legislation enacted in Rotork’s or the Customer’s jurisdiction of incorporation, or in any other jurisdiction where any Asset, Loan Asset or New Part is delivered or Work performed, to enforce or implement either the United Nations Convention against Corruption (being the subject of General Resolution 58/4 of 31 October 2003 of the General Assembly of the United Nations) or the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997; and (b) the United Kingdom Bribery Act 2010, the United States Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.), the Australian Criminal Code and the Crimes Act/Criminal Code (as applicable) of each Australian State and Territory, the Australian Proceeds of Crime Act 2002 and the Australian Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

“**Export Controls**” means any law, regulation, order or restriction that regulates the export, reexport, and/or transfer of goods, software, or technology implemented, administered, enacted or enforced by an Export Controls Authority.

“**Export Controls Authority**” means the government institutions of any one of the following: the United Kingdom (including the Export Control Joint Unit, “**ECJU**”), the European Union (including EU Member States), the United States of America (including the Bureau of Industry and Security of the US Department of Commerce, “**BIS**”, the Directorate of Defense Trade Controls of the US Department of State, “**DDTC**”, the US Nuclear Regulatory Commission, “**NRC**” or the US Department of Energy), and any other government institution that administers Export Controls in a jurisdiction that is applicable to the Contract and/or the Products.

“**Force Majeure Event**” means an event that is any or all of the following: (a) beyond the reasonable control of Rotork; and/or (b) an act of God, compliance in good faith with any applicable foreign or domestic law, introduction of essential modifications; any other government or other legal or regulatory authority action or inaction, fires, flood, war or threat of war, riots, accidents, national labour disputes, sabotage, malicious damage, acts of terrorism or terrorist activities, disruption to essential Services such as electrical power, unusually severe weather, quarantine or any precautions against contagious disease epidemics or pandemics.

“**Hand-back**” means as set out in clause 6.1(b).

“**Hand-over**” means as set out in clause 6.1(a).

“**ICC**” means the International Chamber of Commerce.

“**Information**” means any commercial, financial, technical or operational information, know-how, trade secrets Service site information, Asset-specific information, or other information of or in the possession of a Party (including specifications, performance requirements, documents, materials or designs) in any form or medium which has been or may be disclosed or otherwise made available to the other Party, whether orally or in written, electronic or other form, including the provisions and subject matter of the Contract and any other agreements or documents executed by the Parties in connection with the Contract.

“**Insolvency Event**” means where a person: (a) is deemed to be or states in writing that it is insolvent or is unable to pay its debts or suspends payments of its debts or threatens to do so or is unable to pay its debts as they fall due or admits its inability to pay its debts, (b) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the person other than for the sole purpose of a scheme for a solvent amalgamation; (d) a creditor or encumbrancer of the person attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; (e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the person; (f) the holder of a qualifying charge over the assets of the person has become entitled to appoint or has appointed an administrative receiver; (g) another party becomes entitled to appoint a receiver over the assets of the person or a receiver is appointed over the assets of the person; (h) any event occurs, or proceeding is taken, with respect to the person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in above in this definition subsections (a) to (h).

“**IPR**” means patents, registered designs, trademarks, service marks (whether registered or not), domain names, copyright, design rights, database rights, moral rights, trade secrets, know-how, metatags, petty patents, utility models and all similar or equivalent property rights including those subsisting in any part of the world in inventions, designs, drawings, computer programs, semiconductor topographies, business names, IP addresses, goodwill, ‘get-up’ and the style and presentation of goods or Services and in applications for protection of the same and any continuations, re-issues or division relating to them in any part of the world.

“**Loan Asset**” means as set out in clause 4.1(c).

“**New Part**” means any component assembled or attached to an Asset that was not owned by the Customer before being assembled into or attached to an Asset.

“**Nuclear Installation**” means (a) anything defined as a ‘Nuclear Installation’ in the Nuclear Installations Act 1965, the Paris Convention (Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as subsequently amended) or the Vienna Convention (Vienna Convention on Civil Liability for Nuclear Damage); (b) any vessel or means of transport incorporating a nuclear reactor; or (c) any other facility or site containing a nuclear reactor or storing or handling any nuclear fuel or waste.

“**Off-Site**” means the site where the Services will be performed if the Services is unable to be performed On-Site.

“**On-Site**” means the Customer’s site where the Asset is installed or located.

“**On-Site Inspection**” means the inspection of the Assets carried out by Rotork On-Site.

“**Part**” means any new, used or repaired: (a) component; or (b) part assembled into or attached to an Asset.

“**Party**” means a party to the Contract and “**Parties**” means the parties to the Contract.

“**Person**” means an individual or entity.

“**Products**” means those products which Rotork are providing in connection to these Services under this Contract.

“**Quotation**” means the formal quotation issued by Rotork. Estimates, informal statements of price provided by e-mail or otherwise, or rough order of magnitude pricing statements shall not be binding until incorporated into a re-issued Quotation.

“**Purchase Order**” means the order placed by the Customer with Rotork for the Work.

“**Representatives**” means as set out in clause 11.4.

“**Rotork**” means the supplying party named in the Contract and shall include, where relevant, Rotork’s appointed employees, subcontractors, agents and representatives who may be assigned the undertaking of the performance of the Services or any part of them.

“**Sanctions**” means any economic, financial, sectoral or trade sanctions or restrictive measures implemented, administered, enacted or enforced by a Sanctions Authority (including, for the avoidance of doubt, secondary sanctions).

“**Sanctions Authority**” means the government institutions of any one of the following: the United Nations (including the United Nations Security Council, “**UNSC**”), the United Kingdom (including His Majesty’s Treasury, “**HMT**”), the European Union (including the European Commission, “**EC**”), the United States of America (including the Office of Foreign Assets Control of the US Department of the Treasury, “**OFAC**”, and the US Department of State), and any other government institution that administers Sanctions in a jurisdiction that is applicable to the Contract.

“**Sanctioned Person**” means a Person (a) listed on any one of the following: the Consolidated List of Financial Sanctions Targets in the UK issued by HM Treasury, the Consolidated list of persons, groups and entities subject to EU financial sanctions issued by the European Commission, the US Specially Designated Nationals and Blocked Persons List, Sectoral Sanctions Identification List or Foreign Sanctions Evader List issued by OFAC or any similar list issued by another Sanctions Authority (as amended from time to time); (b) listed in Annex XIX of Regulation (EU) No 833/2014 (as amended from time to time); (c) who is otherwise the target of Sanctions; or (d) who is 50 percent or more owned by, or controlled by, any of the foregoing..

“**Sanctioned Territory**” means Cuba, Syria, Iran, North Korea, Russia, Crimea, Belarus and any non-government controlled Ukraine territory as defined by UK or EU legislation (whichever is broader).

“**Services**” means those works and services which Rotork is to perform in accordance with the Contract, as set out or referenced in the Acknowledgment or any Additional Services Quotation (to the extent such Additional Services Quotation is accepted by the Customer).

“**Services Warranty**” has the meaning given to it in clause 8.1.

“**Spares Contingency**” means the amount set out in the Contract to cover the costs of any New Parts required when performing the Services or, if no amount is set out in the Contract, an amount of £750.00.

“**Third Party**” means any legal or natural person other than the Parties to the Contract.

“**Warranty Period**” means the period set out in clause 9.3

“**WMD Purpose**” means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons.

## 2. Construction

2.1 In these terms and conditions and the Contract unless the context otherwise requires a reference to:

- (a) “include”, “includes”, “including” or similar terms will not be construed as exclusive or limiting examples of matters in question and will mean “including, without limitation”;
- (b) a Party or any other person includes its successors in title, permitted assigns and permitted transferees;
- (c) words imparting the singular include the plural and vice versa; and
- (d) unless the context otherwise requires, a reference to one gender will include a reference to the other genders.