

**ROTORK GROUP**  
**GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS**

These general terms and conditions for the Sales of Goods (these “Conditions”) between the Supplier and the Customer shall apply to (a) any purchase Order for Goods issued by the Customer to the Supplier or (b) any written quotation of the Supplier for Goods issued to the Customer during the entire term (including the original term and any extension thereof) of the Contract. The Supplier and the Customer hereby expressly agree that these Conditions herein shall be incorporated by reference in any Order, the Contract and any written quotation of the Supplier, made part of the Order, the Contract and the Supplier quotation and be at all time binding on the contractual parties set forth in the Order and the Contract with respect to sale and purchase of Goods in any Order and the Contract, unless the parties in a specific Order expressly agree in Writing that any, all or some of these Conditions shall not apply to the specific Order. In the event of a conflict between the pre-printed terms provided in any purchase order (or any Supplier quotation) and these Conditions, these Conditions shall prevail at all time. All inconsistent or additional terms or conditions in any Customer acknowledgement, packaging, Order, invoice or other sales or purchase forms are hereby expressly objected to and rejected by the Supplier and shall not be applicable to any Customer acknowledgement, packaging, Order, invoice or other sales or purchase forms issued by the Customer to the Supplier.

**1. INTERPRETATION**

1.1. In these Conditions, the following definitions apply:

- 1.1.1. **‘Business Day’** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.1.2. **‘Customer’** means the person who accepts a quotation of the Supplier for the sale of the Goods and whose Order for the Goods is accepted by the Supplier.
- 1.1.3. **‘Computer Systems’** means integrated configurations of computer equipment and software programmes which are customised for specific Customer requirements as defined in the Supplier’s quotation.
- 1.1.4. **‘Conditions’** means the general terms and conditions for the sale of goods set out herein (unless the context otherwise requires) as amended by the Supplier from time to time and any other special terms and conditions agreed in Writing between the Customer and the Supplier.
- 1.1.5. **‘Confidential Information’** of the Disclosing Party means any proprietary information the Disclosing Party discloses to the Receiving Party, whether developed by the Disclosing Party or by others and whether patented or patentable, including, without limitation, customer and supplier lists, trade secrets, technical or commercial know-how, inventions, processes, initiatives designs, processes, formulas, chemical compositions, plans, specifications, devices, research and development data, manufacturing and processing data, written materials provided by the Supplier, clinical and engineering data, purchasing and marketing data, samples and any other nature whatsoever provided directly or indirectly by the Disclosing Party to the Receiving Party, whether furnished in written or oral form, or derived from the Receiving Party’s review of the Disclosing Party’s products or technology or technical information relating thereto, or by way of models, biological or chemical materials or other tangible form or by demonstrations or any copy of any of the foregoing, and all notes, analyses or studies prepared by or on behalf of the Receiving Party as a result of receipt of the information described above, whether before, on or after the date of the Contract.
- 1.1.6. **‘Contract’** means the contract for the purchase and sale of the Goods between the Supplier and the Customer, comprising these Conditions, and any quotations, acceptance, Orders, specifications, schedules or any other connected documentation, in each case agreed in Writing by the Supplier.

- 1.1.7. **'Goods'** means the goods including any System, and including any instalment of the Goods or any parts for them which the Supplier is to supply to the Customer in accordance with the Contract.
- 1.1.8. **'Intellectual Property Rights'** means any (i) patent, patent applications, patent disclosures and inventions, and any reissue, continuation, extension or re-examination thereof, (ii) trademarks, service marks, trade dress, logos, trade names and corporate names, together with all derivations and/or combinations thereof, and any and all goodwill associated therewith, (iii) copyrights, registered or unregistered copyrightable works, (iv) domain names, registered design rights, unregistered design rights, or other industrial or intellectual property, together with all registrations, applications and renewals of any of the foregoing.
- 1.1.9. **'Manufactured Systems'** means integrated configurations of Resale Products or Standard Products which are assembled for specific Customer requirements as defined in the Supplier's quotation.
- 1.1.10. **'Order'** means a written purchase order issued by the Customer to the Supplier for purchase of the Goods from the Supplier.
- 1.1.11. **'Resale Products'** means products not manufactured by the Supplier or any of Supplier's parent, affiliate or subsidiary companies or for which the Supplier has no engineering and/or manufacturing responsibility.
- 1.1.12. **'Supplier'** means the Goods supplying party named in the Contract.
- 1.1.13. **'Standard Products'** means standard assemblies, accessories and similar products which are contained in the Supplier's regular product range and which are furnished in accordance with the Supplier's standard general specifications.
- 1.1.14. **'Supplied Systems'** means systems supplied to the Customer incorporating Standard Products or Resale Products, or Manufactured Systems or Computer Systems.
- 1.1.15. **"System"** means any Computer System, Manufactured System or Supplied System.
- 1.1.16. **'Writing'** means a reference to writing or written includes faxes and e-mails.
- 1.2. A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted whether before or after the date of this agreement and, in the case of a statute, includes any subordinate legislation made under that statute from time to time.
- 1.3. The clause and paragraph headings shall not affect the interpretation of these Conditions.
- 1.4. A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of these Conditions) at any time.

## 2. BASIS OF THIS SALE

- 2.1. The Supplier shall sell and the Customer shall purchase the Goods in accordance with (a) any written quotation of the Supplier, which is accepted in Writing by the Customers whose acceptance is agreed in Writing by the Supplier, or (b) any written Order of the Customer which is accepted in Writing by the Supplier, subject to these Conditions in either case. Subject to these Conditions in either case below, a Contract between the Supplier and the Customer shall be formed at the point where (a) the Supplier agrees in Writing to the acceptance by the Customer of the written quotation of the Supplier, or (b) the Supplier accepts in Writing any written Order of the Customer. These Conditions shall govern the Contract to the exclusion of (a) any other additional or different terms and conditions subject to which any such Supplier quotation is accepted or purported to be accepted by the Customer, or any such Order is made or purported to be made by the Customer, and (b) any other additional or different terms and conditions which are implied by trade, custom, practice or course of dealing.

- 2.2. The Order constitutes a written offer issued by the Customer to the Supplier for purchase of the Goods in accordance with these Conditions. Once the Order is accepted by the Supplier in Writing, the Customer shall not make any change to the accepted Order (unless the Supplier agrees otherwise in Writing), so accordingly the Customer is responsible for ensuring that the terms of the Order and any applicable specifications therein are complete and accurate. For the avoidance of doubt, a quotation from the Supplier shall not constitute an offer to the Customer and shall not form a Contract between the Supplier and the Customer until the Customer's acceptance of a Supplier quotation is agreed in Writing by the Supplier.
- 2.3. No variation to these Conditions shall be binding between the Customer and Supplier unless agreed in Writing between the authorised representatives of the Customer and the Supplier.
- 2.4. Any employees or agents of the Supplier are not authorised to make any representations on behalf of the Supplier concerning the Goods unless such representations so made are confirmed by Supplier in Writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed by the Supplier in Writing.
- 2.5. The Customer understands and acknowledges that it, and it shall procure its employees or agents to understand and acknowledge that they, shall not and will not rely on any oral or written advice or recommendation given by the Supplier or its employees or agents as to the storage and any application or use of the Goods which is not confirmed in Writing by the Supplier. The Customer fully understands and acknowledges that it is entirely at its own risk and expenses if the Customer or its employees or agents follow or act upon any such oral or written advice or recommendation which is not confirmed in Writing by the Supplier, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed in Writing by the Supplier.
- 2.6. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documents or information issued by the Supplier shall be subject to correction by the Supplier at any time without any liability on the part of the Supplier.

### **3. ORDERS AND SPECIFICATIONS**

- 3.1. No Order unless submitted by the Customer to the Supplier shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorised representative.
- 3.2. The Customer shall be responsible to the Supplier for ensuring the accuracy and completion of any terms of any Order (including any applicable specification) submitted by the Customer and for timely and promptly giving the Supplier any and all necessary information relating to the Goods to enable the Supplier to timely perform the Contract in accordance with the terms of the Contract.
- 3.3. The quantity, quality and description of any specification for the Goods shall be those set forth and sent out in the Supplier's quotation (if accepted by the Customer without any change) or the Customer's Order (if accepted by the Supplier in Writing).
- 3.4. If the Goods are to be manufactured or any process to be applied to the Goods by the Supplier in accordance with the specification submitted by the Customer, the Customer shall indemnify the Supplier against all losses, damages, costs and expenses awarded against or incurred by the Supplier or its affiliate or subsidiary in connection with or paid or agreed to be paid by the Supplier or its affiliate or subsidiary in settlement of any claim for infringement of any Intellectual Property Rights of any other person which results in the Supplier's use of the Customer's specification.
- 3.5. The Supplier reserves the right to make any changes in the specification of the Goods (set forth in its quotations) which are required to conform to any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance. In the later case, the Supplier will make the changes known to the Customer and the Customer agrees to the changes

- 3.6. No Order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all losses (including loss of profit), costs (including all the costs of all labour and materials used), damages, charges, and expenses incurred by the Supplier as a result of cancellation.
- 3.7. The Customer shall not change or alter the Goods in any way without the prior written approval of the Supplier.

#### **4. PRICE OF THE GOODS**

- 4.1. The price of the Goods shall be the Supplier's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Supplier's published price list current at the date of acceptance of the relevant Order. Where the Goods are supplied for export from the United Kingdom, the Supplier's published export price list shall apply to the Goods so supplied.
- 4.2. The Supplier reserves the right, by giving notice to the Customer at any time before Delivery (defined in clause 5.1), to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to (a) any factor beyond the control of the Supplier (such as, including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), or (b) any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or (c) any delay caused by any instructions of the Customer or failure of the Customer to timely give the Supplier adequate information or instructions as requested by the Supplier.
- 4.3. Except as otherwise stated in any quotation of the Supplier or in any price list of the Supplier or unless otherwise agreed in Writing between the Customer and Supplier, all prices for any Goods are given therein by the Supplier on an ex-works basis. If the Supplier agrees in Writing to deliver the Goods to the Customer otherwise than at the Supplier's designated premises, the Customer shall be liable to pay any charges for transport, packaging and insurance for the Goods and reimburse the Supplier for such costs if they have been paid by the Supplier.
- 4.4. The price is exclusive of any applicable Value Added Tax, tariffs and other governmental charges, which the Customer shall be solely and additionally liable. If the Supplier incurs such above expenses, the Customer shall promptly and timely reimburse the same to the Supplier.
- 4.5. In addition to all the purchase prices of the Goods, the Customer shall be responsible to pay for any related transportation and other cost for returning pallets and returnable containers to the Supplier as required by the Supplier, but full credit for returned pallets and returnable containers will be given to the Customer provided they are returned to the Supplier by the due payment date for the Goods.

#### **5. TERMS OF PAYMENT**

- 5.1. Subject to any special terms agreed in Writing between the Customer and the Supplier, the Supplier shall be entitled to invoice the Customer for the total price of the relevant Goods including any applicable taxes and other charges on or at any time after the delivery of the Goods at the Supplier's designated premises, unless the Goods are to be collected by the Customer at another location agreed in Writing by the Supplier and the Customer, in which event the Supplier shall be entitled to invoice the Customer for the total price including any applicable taxes and other charges at any time after the Supplier has notified the Customer that the Goods are ready for collection at such location (in each case, a "**Delivery**" of the Goods from the Supplier to the Customer).
- 5.2. The Customer shall pay the price of the Goods invoiced by the Supplier (less any discount to which the Supplier agrees to give in Writing, but without any other deduction) within 30 days upon the Delivery of the relevant Goods, notwithstanding that Delivery may not physically have taken place and the property in the Goods has not actually passed to the Customer. The time for payment of the price

shall be of the essence of the Contract. Receipts for payment will be issued only upon request by the Customer.

- 5.3. If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
  - 5.3.1. cancel the Contract or suspend any further Deliveries to the Customer and make a claim for breach of contract and damages;
  - 5.3.2. appropriate any payment made to the Supplier to such of the Goods (or the Goods supplied under any other contract between the Customer and Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and
  - 5.3.3. Charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above the base rate of the Barclays Bank PLC in London from time to time, until payment in full is made.

## 6. DELIVERY

- 6.1. The Supplier shall make available and deliver the Goods at the Supplier's designated premises, and the Customer shall promptly and timely without any delay take the Delivery of the Goods at such designated premises within 10 days after the Supplier has notified the Customer that the Goods are ready for the Customer's collection or, if some other place for Delivery is agreed in Writing by the Supplier, the Supplier shall make available and deliver the Goods at such other place, and the Customer shall promptly and timely take the Delivery at such other place without any delay within 10 days after the Supplier has notified the Customer that the Goods are ready for the Customer's collection at such other place.
- 6.2. Any dates quoted for Delivery of the Goods in the Supplier's quotation are estimated and approximate only and the Supplier shall not be liable for any delay in Delivery of the Goods howsoever caused. Time for Delivery shall not be of the essence unless previously agreed by the Supplier in Writing. The Goods may be delivered by the Supplier in advance of the quoted Delivery date upon giving reasonable notice to the Customer.
- 6.3. Where the Goods are to be delivered in instalments, each Delivery shall constitute a separate Contract and failure by the Supplier to deliver any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.4. If the Supplier fails to timely deliver the Goods for any reason other than (a) a force majeure event set forth in clause 9.12 affecting the Contract performance of the Supplier or (b) the Customer's fault, and if the Supplier is accordingly liable to the Customer, the Supplier's liability shall be limited to the excess (if any) of the direct cost incurred by the Customer (in the cheapest available market) for similar Goods to replace those not delivered by the Supplier over the price of the Goods ascertained in accordance with clause 4 herein or otherwise agreed by the Supplier in Writing.
- 6.5. If the Customer fails to take Delivery of the Goods or fails to give the Supplier adequate Delivery instructions at the time stated for the Delivery (otherwise than by reason of a force majeure event set forth in clause 9.12 affecting the Contract performance of the Customer or by reason of the Supplier's fault) then, without prejudice to any other right or remedy to the Supplier, the Customer agrees that the Supplier is entitled to:
  - 6.5.1. store the Goods until actual Delivery is made and charge the Customer for the reasonable storage cost (including insurance); or
  - 6.5.2. sell the Goods at the highest price readily available and (after deducting all reasonable storage, insurance and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the Contract price.
- 6.6. Without prejudice to the provisions of clauses 6.1 to 6.5, after the Supplier receives an Order from the Customer for purchasing Systems from the Supplier, at the Customer's request in Writing, the Supplier

shall provide the Customer with a System specification, production schedule, Delivery schedule and relevant site installation drawings. The Supplier will incorporate an approval time of the Customer into the production schedule. Delays by the Customer in providing approvals of the System specification, the production schedule, Delivery schedule and relevant site installation drawings and/or supplying complete information about may extend the schedules as provided by the Supplier for production and Delivery of the relevant System to the Customer.

- 6.7. The Customer shall promptly and timely give both the Supplier and the carrier written notice of any damage or loss to the Goods within 3 days after the Customer takes Delivery of the Goods and follow by written notice to both the Supplier and the carrier with detailed particulars of the damage or loss within two days thereafter. Time is of the essence.
- 6.8. The Customer shall be responsible for promptly and timely accepting Delivery of, starting up and maintaining the Goods unless otherwise specified by the Supplier in the Supplier's quotation.
- 6.9. The Customer shall notify the Supplier promptly of any changes in the laws, regulations or standards specifications of the Customer's jurisdiction or the country to which the Goods are to be shipped or in which the Goods are to be used by the Customer relating to the nature, importation, packaging, labelling, storage, payment, or sale of the Goods. If the Customer becomes aware that the Supplier or any of the Goods are or may be in violation of any of such laws, regulations or standards specifications, the Customer shall immediately notify the Supplier of such violation or possible violation.

## **7. RISK AND PROPERTY**

- 7.1. Risk of damage to or loss of the Goods shall pass to the Customer:
  - 7.1.1. in the case of Goods to be delivered at the Supplier's designated premises, at a time when the Supplier notifies the Customer that the Goods are available for Delivery at the Supplier's designated premises; or
  - 7.1.2. in the case of Goods to be delivered at some other location agreed by the Supplier and the Customer in Writing, at the time when the Supplier notifies the Customer that the Goods are available for Delivery at such other location agreed by the Supplier and the Customer in Writing.
- 7.2. Notwithstanding Delivery and the passing of risk in the relevant Goods set forth in clause 7.1, or any other provision of these Conditions, the property and title in the Goods shall not pass to the Customer until the Supplier has received from the Customer the full purchase price for the relevant Goods in cash or cleared funds and any and all other applicable payments in full with respect to the relevant Goods, including, without limitation, VAT and interest (if applicable).
- 7.3. Until such time as the full payment is made and the property and title in the Goods pass to the Customer in accordance with clause 7.2, the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, maintained in satisfactory condition, protected and insured and identified as the Supplier's property. Until that time the Customer is allowed to resell or use the Goods in the ordinary course of its business (otherwise than by creating any security interest on the Goods, including pledge, lien or any other types of encumbrances on the Goods in favour of any third party), but the Customer shall account to the Supplier for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4. Until such time as the full payment is made and the property and title in the Goods pass to the Customer in accordance with clause 7.2 (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Customer to deliver up or otherwise return the Goods to the Supplier and, if the Customer fails to do so forthwith, the Customer hereby expressly agrees that the Supplier shall be allowed to enter upon any premises of the Customer

where the Goods are stored and repossess the Goods. The Customer hereby expressly agrees to render any and all assistance to the Supplier in the Supplier's endeavours to repossess the Goods in the possession or the custody of the Customer.

- 7.5. The Customer shall not for whatever reasons create any security interest on the Goods in favour of any third party, including pledge, lien or any other types of encumbrances on any of the Goods which remain the property of the Supplier before the property and the title of the Goods pass to the Customer pursuant to clause 7.2, but if the Customer does resell the Goods all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable by the Customer to the Supplier. The Customer agrees to pay all the moneys owed to the Supplier within 2 days after such resale.

## **8. INSPECTION AND MAINTENANCE**

- 8.1. The Supplier welcomes visual inspection by the Customer of the completed Goods for one day but reserves the right to charge for functional or special tests requested by the Customer. If inspections (or tests) are called for in the Order the Customer will be notified when the Goods are ready for inspection (or tests). If the Customer has not carried out inspections (or tests) within 7 days after such notification is sent by the Supplier to the Customer, the Goods will be sent for Delivery in accordance with clause 6.1. The Customer is entitled to a one-time inspection for one delivery of the completed Goods and a one-time functional or special test for the same delivery of the completed Goods. The Customer shall complete the one-time inspection in one day or the one-time test in three days. The provision of installation, commissioning or maintenance services to the Customer shall be the subject of separate negotiation unless specifically offered in the Supplier's written quotation.

## **9. WARRANTIES AND LIABILITY**

- 9.1. Subject to the conditions set out below in this clause 9, the Supplier warrants that the Goods (hereby expressly and always excluding the Systems out of the Goods) (a) will correspond with their specification set forth in clause 3 at the time of Goods Delivery as set forth in clause 6.1 and (b) will be free from defects in material and workmanship for a period of 18 months from such Delivery or 12 months from commissioning, whichever is sooner.
- 9.2. Notwithstanding the above provision set forth in clause 9.1,
- 9.2.1. the Supplier shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer or any written instructions of the Customer;
- 9.2.2. the Supplier shall be under no liability in respect of any defects arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions, misuse or alteration or repair of the Goods without the Supplier's written approval;
- 9.2.3. the Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the Goods has not been paid by the due date for payment and the Supplier has not received the same;
- 9.2.4. the warranty set forth in clause 9.1 does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer directly to the Supplier.
- 9.2.5. the Supplier shall be under no liability if the Customer makes any further use of the Goods after giving notice in accordance with clause 9.4.
- 9.3. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by applicable law.
- 9.4. Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not Delivery is refused by the Customer)

be notified to the Supplier within 7 days from the date of relevant Delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. The Customer shall supply such documents as the Supplier requests to support its claim. The Supplier shall have the right, but no obligation, upon reasonable notice to the Customer, send a representative to the Customer to review and resolve the issues involved if practicable and the parties shall act in good faith to work together to resolve the issues. In no event shall the Supplier be liable for any claim based on any defect in the quality or condition of the Goods or their failure to correspond with specification if such a claim has not been made in writing via facsimile and email by the Customer within 30 days from the date of the relevant Delivery. If the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with these Conditions and the Contract. Failure by the Customer to make any relevant claims in the timeframe set forth in this clause 9.4 shall constitute a waiver by the Customer of all claims for damages due to any defect in the quality or condition of the Goods or their failure to correspond with specification.

- 9.5. Where any valid claim in respect of any of the Goods is made based on the warranty provided for in clause 9.1 and other provisions in clause 9, the Supplier shall in its sole discretion be entitled to replace the Goods (or the part in question) free of charge or, refund the Customer the price of the Goods (or a proportionate part of the price) if it has been duly paid by the Customer, but the Supplier shall have no further liability to the Customer. Any such replacement Goods shall be warranted only for the remainder of the original warranty period set forth in clause 9.1.
- 9.6. All costs of diagnosing any defect in the Goods, except those incurred at the premises of the Supplier before Delivery, shall be borne and paid for by the Customer.
- 9.7. Warranties specific to Systems. Subject to clause 9.9, the Supplier warrants that any System at Delivery will be substantially in accordance with the Supplier's functional specification as provided in Writing by the Supplier to the Customer. Subject to clause 9.8., the Supplier agrees to correct any equipment in a Manufactured System or Supplied System which the Customer can demonstrate to the Supplier's satisfaction does not meet the application specifications as provided in Writing by the Supplier to the Customer and to correct any error or failure to perform in a System which the Supplier accepts as materially affecting the normal functional performance of the System. The cost of diagnosing any such correction shall be for the account of the Customer. This warranty shall not be available to the Customer if deficiencies are caused by factors outside the Supplier's control including but not limited to input signal of poor quality, incomplete or inaccurate process data supplied to the Supplier by the Customer or any unauthorised modification of the System by the Customer. Any additional expenses of the Supplier which can be shown to the reasonable satisfaction of the Customer to have resulted from correction by the Supplier of such deficiencies or inaccuracies shall be for the account of the Customer. No warranty is made or implied that any System supplied will be compatible with future equipment and/or software programs.
- 9.8. Performance of poor Computer Systems. The Supplier warrants that any Computer System supplied will be free from clerical error and will perform the normal functions defined in the application specifications for use as provided in Writing by the Supplier to the Customer with the relevant systems as originally designed and shipped by the Supplier. The Supplier agrees to correct any Computer Systems supplied by the Supplier the Customer can demonstrate to the Supplier's satisfaction does not meet the application specifications and to correct any such error or failure to perform which the Supplier accepts as affecting the normal functional performance of the Computer System. The cost of diagnosing any such correction shall be for the account of the Customer. This warranty shall not be available to the Customer if deficiencies are caused by factors outside the Supplier's control including but not limited to input signal of poor quality, incomplete or inaccurate process data supplied to the



Supplier by the Customer or any unauthorised modification or improper loading of the System by the Customer. Any additional expenses of the Supplier which can be shown to the reasonable satisfaction of the Customer to have resulted from correction by the Supplier of such deficiencies or inaccuracies or from any unauthorized modifications or improper loading by the Customer shall be for the account of the Customer. No warranty is made or implied that any Computer System supplied will be compatible with future equipment and/or software programme generations or versions of the system as originally designed and shipped.

9.9. The warranties set out in clause 9.5 will be conditional upon the return of the defective Goods, equipment or part to the Supplier's designated premises within one year of the relevant Delivery and adequately packed and insured with transportation charges prepaid by the Customer. Warranties in clause 9.7 in respect of any System, except Computer Systems, will be conditional upon the giving by the Customer of written notice to the Supplier of the alleged error or failure to perform within one year of the date of Delivery of the relevant equipment to the Supplier's designated premises. Warranties in clause 9.8 in respect of any Computer System will be conditional upon the giving by the Customer of written notice as aforesaid within three months of the relevant Delivery of the relevant equipment to the Supplier's designated premises. **These warranties shall be void and of no effect if the defects are wholly or partially caused by any fault of the Customer or by any of its failure to comply with the Supplier's written installation/ operating maintenance instructions. The Supplier shall not be liable for any losses arising from any fault of the Customer or by any of its failure to comply with the Supplier's written installation/ operating maintenance instructions.** These warranties will not apply to any Resale Products, whether or not incorporated into Systems, but the Supplier will as far as practicable and use its reasonable efforts (and on such indemnity for costs as the Supplier deems reasonable) to exercise its rights under any warranty of the manufacturer or supplier provided directly to the Supplier for the benefit of the Customer.

#### 9.10. Limitations

9.10.1. Any warranties set out in Clauses 9.5 to 9.8 (inclusive) do not extend to cover responsibility for the functioning of any equipment or software delivered hereunder in accordance with the Customer's Order, in combination with any other plant equipment or instrumentation. The functioning of such items of equipment or software in combination as aforesaid shall be the responsibility of the Customer notwithstanding any recommendations made by the Supplier.

9.10.2. **Where materials are supplied by the Customer free of charge to the Supplier for integration within Systems, all work is accepted by the Supplier entirely at risk of the Customer and the warranty in Clause 9.7 shall not extend to such materials.**

#### 9.11. Limitation of liability

9.11.1. **This clause 9.11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of acts of the Supplier, its employees, agents, affiliates, subsidiaries and subcontractors) to the Customer in respect of: (i) any breach of these Conditions, any Order and/or any Contract however arising; (ii) any use made or resale of the Goods by the Customer, or of any product incorporating any of the Goods; and (iii) any representation, statement or act or omission of an act (including negligence) arising under or in connection with these Conditions, any Order and/or any Contract.**

9.11.2. **Nothing in this Contract shall limit or exclude any liability for: (i) death or personal injury resulting from wilful misconduct or gross negligence; or (ii) fraud or fraudulent representation; or (iii) breach of the terms implied by section**

**12 of the Sale of Goods Act 1979; or (iii) the indemnity in clause 10. The Customer shall report immediately to the Supplier any incident of which the Customer has knowledge which might involve any Goods and the loss of life, personal injury or property damage, and participate in an investigation of the incident at the Supplier's reasonable request.**

- 9.11.3. **Without prejudice to clause 9.11.2, the Supplier shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any: (i) loss of profit; or (ii) loss of goodwill; or (iii) loss of business; or (iv) loss of business opportunity; or (v) loss of anticipated saving; or (vi) loss of or corruption of data or information; or (vii) other special, indirect or consequential damage suffered by Customer that arises under or in connection with the Contract, even if the Supplier is advised in advance of the possibility of such losses or damages.**
- 9.11.4. **Without prejudice to clause 9.11.2, the Supplier's total financial liability arising under or in connection with a Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the purchase price (the monetary value) of the Goods Ex Works at the Supplier's premises in the relevant Order associated with that Contract.**

#### 9.12. Force Majeure

- 9.12.1. Neither party shall be liable to the other, or be deemed to be in breach of these Conditions, by reason of any delay in performing, or failure to perform, any of its obligations under these Conditions if the delay or failure was due to flood, fire, riot, act of God, war or any prohibition or restriction by any government or other legal authority which prevents the affected party's performance of the Contract and/or renders the performance of such Contract so difficult or costly as to make such performance commercially unreasonable or inoperable and are beyond the reasonable control of the affected party and which is not foreseeable on the date of the Contract (an event of "**force majeure**"), but only to the extent for the period that such performance is so affected by the event of force majeure and the event of force majeure shall not affect the respective rights and liabilities of each of the parties accrued prior to such an event of force majeure.
- 9.12.2. A party claiming to be unable to perform its obligations under these Conditions (either on time or at all) in any of the circumstances set out in clause 9.12.1 shall promptly notify the other party in Writing describing the nature and extent of the event of force majeure, its cause and possible consequences and, no later than 14 days after the force majeure event, deliver to the other party authoritative evidence confirming the event of force majeure. After such an incident aforesaid happens, the parties shall make efforts to take necessary measures to reduce the impact of the force majeure event.
- 9.12.3. This clause 9.12 shall cease to apply when such circumstances have ceased to have effect on the performance of the Contract and the party affected shall give notice to the other party that the circumstances have ceased.
- 9.12.4. If any circumstance relied on by the other party for the purposes of this clause 9.12 continues for more than six months, the other party shall be entitled to terminate the Contract by giving one month's notice.

## **10. INTELLECTUAL PROPERTY**

- 10.1. The Customer acknowledges that the Intellectual Property in any and all materials, quotations, equipment, specifications, data, software, Goods or System provided by the Supplier to the Customer (save for any Resale Products or other third party product or software) is the Supplier's exclusive property and that nothing in the Contract shall be construed as conferring any license or granting any rights in favour of the Customer in relation to such Intellectual Property Rights. Any Intellectual Property Rights in Resale Products or other third party product or software is subject to the rights of the applicable third party owner of such rights. The Customer covenants that it shall not, and it shall procure its affiliates or subsidiaries not to, contest the Supplier's above Intellectual Property Rights anywhere. Unless otherwise agreed to in a writing signed by the Supplier's duly authorized representative, all right, title and interest in any inventions, developments, improvements or modifications of the Goods made by the Supplier or its affiliate or the Customer or its affiliate shall exclusively remain with the Supplier or its affiliate. The materials, information, drawings, plans, standards, and specifications furnished by the Supplier were developed at the Supplier and its affiliated companies' expense and may not, without the Supplier's prior written consent, be used nor disclosed by the Customer for any purpose other than to install, own, operate, and maintain the subject Goods.
- 10.2. 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 the Supplier or any associated company or the Supplier owns or claims rights in anywhere in the world
- 10.3. If any claim is made against the Customer that the Customer's use of the Goods (always excluding any Resale Products or other third party product or software) infringes the patent, copyright, design, trademark or other industrial or intellectual property rights of any other person, the Supplier shall indemnify the Customer against all loss, damages, costs and expenses awarded against the Customer in connection with the claim, provided that:
- 10.3.1. the Supplier is given full control of any proceedings or negotiations in connection with any such claim;
- 10.3.2. the Customer shall promptly give the Supplier all reasonable assistance for the purpose of any such proceedings or negotiations at the Supplier's request;
- 10.3.3. the Customer shall not pay or accept any such claim, settlement or compromise any such proceedings without the consent of the Supplier;
- 10.3.4. the Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- 10.3.5. the Supplier shall be entitled to the benefit of, and the Customer shall accordingly account to the Supplier for, all damages or costs (if any) awarded in favour of the Customer which are payable by or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 10.3.6. without prejudice to any duty of the Customer at common law, the Customer shall take all necessary steps as the Supplier may reasonably require to mitigate or reduce any such loss or damages, costs or expenses for which the Supplier is liable to indemnify the Customer under this clause.

## **11. DESIGN AND MANUFACTURE RIGHTS**

- 11.1. The Supplier retains full ownership of all inventions, designs and processes and all Intellectual Property Rights therein made or evolved by it in preparing its quotation or during the course of any work on any contract or order resulting therefrom.

## **12. CONFIDENTIALITY**

- 12.1. During the entire term of the Contract and any time thereafter, a party (Receiving party) shall and it shall procure its directors, officers, employees, agents, consultants, professional advisors, affiliates and subcontractors and the respective directors, officers, employees and agents of each such affiliate and subcontractor to, keep in strict confidence the Confidential Information disclosed by the other party (Disclosing party) to the Receiving Party. The Receiving Party undertakes to the Disclosing Party that it shall not, and that it shall procure that its respective directors, officers, employees, agents, consultants, professional advisors, affiliates and subcontractors and the respective directors, officers, employees and agents of each such affiliate and subcontractors will not, during the entire term of the Contract and anytime thereafter, for whatever reason or in whatever manner, except in the proper performance of any Contract, use or divulge to any person, or publish or disclose or permit to be published or disclosed, any Confidential Information of the Disclosing Party, or an affiliate thereof, that the Receiving Party or its directors, officers, employees, agents, consultants, professional advisors, affiliates and subcontractors and the respective directors, officers, employees and agents of each such affiliate and subcontractor have received or obtained or may receive or obtain (whether or not, in the case of documents, they are marked as confidential) from the Disclosing Party or its directors, officers, employees, agents, consultants, professional advisors or affiliates under or in connection with the Contract or any Order or the transactions contemplated thereby.
- 12.2. The Receiving Party shall only disclose such Confidential Information to those of its above personnel who need to know the same for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such personnel shall keep such Confidential Information confidential.
- 12.3. The Receiving Party undertakes to the Disclosing Party to take all steps necessary from time to time to ensure compliance with the provisions of this clause 12 by its directors, officers, employees, agents, consultants, professional advisors, affiliates and subcontractors and the respective directors, officers, employees and agents of each such affiliate and subcontractor.
- 12.4. This clause 12 shall survive termination or expiration of the Contract.

### **13. DEFAULT**

- 13.1. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of an act by the Customer or failure of the Customer to perform any relevant obligation other than due to an event of force majeure set forth in clause 9.12 ('Customer Default'):
- 13.1.1. the Supplier shall without limiting its other rights or remedies it may have at equity or at law have the right (a) to suspend its performance of the Contract until the Customer remedies the Customer Default, or (b) to rely on the Customer Default to release it from the performance of any of its obligations to the extent that the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 13.1.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as a result of the Customer Default; and
- 13.1.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

### **14. CURRENCY FLUCTUATIONS**

- 14.1. If any losses incurred by the Supplier due to that any prices for the Goods quoted from one party to the other require any currency conversion from one currency to another currency, the Customer shall indemnify and hold the Supplier harmless against any such losses incurred by the Supplier which arises or results from any variation in the exchange rate between the two currencies between the date of the relevant price quotation and the date upon which the Customer places its Order. The Customer shall promptly pay the price shortfalls to the Supplier based on the Supplier's invoice of such shortfalls.

### **15. INSOLVENCY OF CUSTOMER**

- 15.1. If the Customer becomes subject to any of the events listed in clause 15.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may

cancel or suspend all further Deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Supplier, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due and payable by the Customer to the Supplier.

15.2. For the purposes of clause 15.1, the relevant events are:

- 15.2.1. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 15.2.2. the Customer 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
- 15.2.3. 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 15.2.4. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 15.2.5. 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 Customer;
- 15.2.6. a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 15.2.7. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 15.2.8. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.1 to 15.2.7(inclusive);
- 15.2.9. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business
- 15.2.10. the Customer engages in any activity that is considered a conflict of interest with the Supplier, or the Customer directly or indirectly competes with the Goods or any business of the Supplier or any of its affiliates;
- 15.2.11. the Customer breaches or is in default of any of the terms, obligations, covenants, representations or warranties under the Contract and these Conditions, and it fails to correct such breach or default within ten (10) days after the Supplier has given the Customer a written notice thereof; or
- 15.2.12. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.3. The Supplier may terminate the Contract in whole or in part at any time if any of the events set forth in 15.2 occurs with immediate effect by giving the Customer a written notice, whereupon the Supplier shall be entitled to discontinue all work on the Contract at its sole discretion. The Customer shall promptly pay the Supplier adequate compensation for work-in-progress at the time of termination

together with any unpaid purchase prices, interest thereon (if applicable) and any other payables by the Customer to the Supplier in all the Contracts.

- 15.4. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **16. EXPORT TERMS**

- 16.1. Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 16 shall (subject to any special terms agreed in Writing between the Customer and the Supplier) apply notwithstanding any other provision of these Conditions provide for otherwise herein.
- 16.2. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon. For the avoidance of doubt, the Customer shall be solely responsible obtaining any and all relevant import licenses.
- 16.3. Unless otherwise agreed in Writing between the Customer and the Supplier, the Goods shall be delivered FOB (INCOTERM then current) the air or sea port of shipment, which port shall be designated by the Supplier, and the Supplier shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979 (as amended and re-enacted from time to time). The Customer shall be responsible for timely obtaining any relevant import licenses for the Goods to be delivered by the Supplier and shipped into the country of destination. Risk of damage to or loss of the Goods shall pass to the Customer when the Goods are handed over to the relevant third party forwarder.
- 16.4. The Customer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment and clearing the customs at the country of Goods destination. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection which is made after shipment, or in respect of any damage during transit.
- 16.5. Payment of all amounts due to the Supplier shall be made by irrevocable and divisible letter of credit with a revolving credit facility opened by the Customer in favour of the Supplier in a currency of the Supplier's option and confirmed by a bank in England acceptable to the Supplier or, if the Supplier has agreed in Writing on or before acceptance of the Customer's Order to waive this requirement, by acceptance by the Customer and delivery to the Supplier of a Bill of Exchange drawn on the Customer payable 60 days after sight to the order of the Supplier at such branch of Barclays Bank PLC in England as may be specified in the Bill of Exchange. The terms of the letter of credit must be reasonably acceptable to the Supplier.
- 16.6. The Parties agree that the title to the relevant Goods does not pass from the Supplier to the Customer until full payment of the purchase price of the relevant Goods is duly made by the Customer.
- 16.7. The Customer undertakes not to offer the Goods for resale in any country where export of the Goods is prohibited by the UK Government, the UN, the EU or other relevant organisation.
- 16.8. The Customer shall indemnify the Supplier or its affiliates for all liabilities, loss, damages, costs and expenses awarded against or incurred by the Supplier arising out of or in connection with any breach of the Customer's obligations contained in clause 16.7.

## **17. NUCLEAR INDEMNITY**

- 17.1. **This clause shall only apply in the event that the Goods are used on or as a component or part of a Nuclear Installation.**
- 17.2. **In this clause 'Nuclear Installation' shall have the same meaning in the Nuclear Installations Act 1965 but shall also include a nuclear reactor comprised in a means of transport.**
- 17.3. **In this clause "Nuclear Liabilities" means any claim by a third party regardless of the jurisdiction in which any such claim arises or is brought for:**
- 17.3.1. **loss of life or personal injury;**
  - 17.3.2. **damage to, or destruction of, property;**
  - 17.3.3. **economic loss arising from the loss or damage referred to in 17.3.1 or 17.3.2 to the extent not included in those paragraphs;**
  - 17.3.4. **the costs of any measures of reinstatement of impaired environment if such measures have been taken or are to be taken, and to the extent not included in 17.3.2;**

- 17.3.5. **loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and to the extent not included in 17.3.2; and**
- 17.3.6. **the cost of preventative measures, and further loss or damage caused by such measures.**
- 17.4. **Except to the extent prohibited by law the Customer hereby indemnifies and holds harmless the Supplier, its directors, officers, employees, affiliates and agents against all liabilities, losses, costs and expenses incurred by the Supplier arising in respect of Nuclear Liabilities.**
- 17.5. **The Customer shall not use the Goods and shall procure that the Goods shall not be used at or enter onto a Nuclear Installation at any time unless the Customer obtain a prior consent in Writing from the Supplier.**

## **18. GENERAL**

- 18.1. The Supplier is a member of the group of companies whose holding company is Rotork p.l.c., and accordingly the Supplier may perform any of its obligations to exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of an act of any such other member shall be deemed to be the act or omission of an act of the Supplier.
- 18.2. Notices.
  - 18.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in Writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
  - 18.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
  - 18.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 18.3. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 18.4. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby. The parties shall endeavour in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.
- 18.5. A person who is not party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions or the Contract.
- 18.6. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier. The Supplier may assign, transfer or subcontract its rights or obligations under the Contract to any of its affiliate with a prior written notice to the Customer.
- 18.7. Each party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations applicable to such party. Except as expressly provided herein, nothing in the Contract shall constitute or be deemed to constitute a relationship of employer and employee, principal and agent, or partnership between the parties (or any thereof), and neither party has the power or the right to bind, commit or pledge the credit of the other party without the prior written consent of the other party. Each party shall indemnify the other for any loss, damage, liability, claim, demand or penalty that may be sustained by the other party for reason of such party's failure to comply with this provision. This provision shall survive any termination and expiration of the Contract.

18.8. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law.

## 19. **Dispute Resolution**

- 19.1. Any dispute, controversy or claim arising out of or relating to the Contract, or the performance, interpretation, breach, termination or validity hereof, shall first be resolved through friendly consultation. Such consultation shall begin immediately after one party has delivered to the other party written request for such consultation stating specifically the nature of the dispute, controversy or claim. If the dispute cannot be resolved within thirty (30) days following the date on which such notice is given, the dispute shall be submitted to arbitration upon the request of any party with notice to the other party. The parties acknowledge and agree that any dispute, controversy or claim arising out of or relating to the Contract shall be raised by one party as against the other party herein and shall be resolved as between the parties. Therefore, the parties acknowledge and agree that any dispute, controversy or claim arising out of or relating to the Contract shall not be raised by one party herein as against an affiliate of the other party.
- 19.2. The arbitration shall be conducted in Hong Kong under the auspices of the London Court of International Arbitration (the "Arbitration Centre"). There shall be three arbitrators. The Supplier shall select one arbitrator and the Customer shall select one arbitrator within thirty (30) days after giving or receiving the demand for arbitration. Such arbitrators shall be freely selected, and the parties shall not be limited in their selection to any prescribed list. The Arbitration Centre shall appoint the third arbitrator. If either Party does not appoint an arbitrator who has consented to participate within thirty (30) days after the appointment of the first arbitrator, the relevant appointment shall be made by the Arbitration Centre.
- 19.3. The arbitration proceedings shall be conducted in English. The arbitration tribunal shall apply the arbitration rules of the Arbitration Centre in effect at the time of the arbitration. However, if such rules are in conflict with the provisions of this section, the provisions of this section shall prevail.
- 19.4. The award of the arbitration tribunal shall be final and binding upon the disputing parties, and either of the parties may, at the cost and expense of the losing party, apply to a court of competent jurisdiction for enforcement of such award.
- 19.5. In order to preserve its rights and remedies, either party shall be entitled to seek preliminary injunctive relief from any court of competent jurisdiction or other temporary relief from such a court or from the arbitration tribunal pending the final decision or award of the arbitrators.
- 19.6. During the period when a dispute is being resolved, except for the matter being disputed, the Contract shall, in all other respects, continue to be implemented.

## 20. **BRIBERY AND CORRUPTION**

20.1. The Customer shall:

- 20.1.1. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- 20.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 20.1.3. comply with the Supplier's Ethics and Values Statement (the latest version of which is available to download from <http://www.rotork.com/master-popup/4433>) (Relevant Policy).
- 20.1.4. have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and clause 19.1.2, and will enforce them where appropriate;



- 20.1.5. promptly report to the Supplier any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract;
- 20.2. The Customer shall ensure that any person associated with the Customer who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 19 (**Relevant Terms**). The Customer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Supplier for any breach by such persons of any of the Relevant Terms.
- 20.3. Breach of this clause 19 shall be deemed a material breach and the Supplier shall be entitled to immediately terminate the Contract without liability to the Customer.
- 20.4. For the purpose of this clause 19, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act) and section 8 of that Act respectively. For the purposes of this clause 19 a person associated with the Customer includes but is not limited to any subcontractor of the Customer.