

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

These terms and conditions shall apply to any purchase order for Goods issued by the Customer to the Supplier or written quotation of the Supplier for Goods issued to the Customer, whether or not these terms and conditions are expressly referenced in the purchase order, unless the parties expressly agree in writing that the terms and conditions shall not apply to a specific purchase order. In the event of a conflict between the pre-printed terms provided in any purchase order and these terms and conditions, these terms and conditions shall prevail. All inconsistent or additional terms or conditions in any Customer acknowledgement, packaging, invoice or other sales forms are expressly objected to and rejected by the Supplier and shall not be applicable to any purchase orders issued to the Supplier.

**1. INTERPRETATION**

1.1. In these Conditions:

- 1.1.1. **'Atomic Energy Act'** has the meaning set forth in clause 17.1.
- 1.1.2. **'Bankruptcy Law'** has the meaning set forth in clause 15.2.1.
- 1.1.3. **'Computer Systems'** means integrated configurations of computer equipment and software programs which are customized for specific Customer requirements as defined in the Supplier's quotation.
- 1.1.4. **'Conditions'** means the general terms and conditions set out herein for the sale of Goods (unless the context otherwise requires), as amended from time to time, and any special terms and conditions agreed to in Writing between the Customer and the Supplier.
- 1.1.5. **'Contract'** means the contract for the purchase and sale of the Goods that is comprised of these Conditions, and to the extent agreed in Writing by the Supplier, any quotations, acceptance, purchase orders, specifications, schedules or any other connected documentation.
- 1.1.6. **'Control'** means the possession, directly or indirectly, of the power to affirmatively direct, or affirmatively cause the direction of, the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.
- 1.1.7. **'Customer'** means the person who accepts a quotation from the Supplier for the sale of Goods and whose order for the Goods is accepted by the Supplier.
- 1.1.8. **'Customer Default'** has the meaning set forth in clause 13.1.
- 1.1.9. **'Default Terms'** has the meaning set forth in clause 18.9.
- 1.1.10. **'Delivery'** has the meaning set forth in clause 6.1.
- 1.1.11. **'Export Controlled Technology'** has the meaning set forth in clause 16.1.
- 1.1.12. **'Goods'** means the goods (including any System), and including any installment of the Goods which the Supplier is to supply in accordance with the Contract.
- 1.1.13. **'Intellectual Property'** 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 owned or used by the Supplier or any of its affiliates, together with all registrations, applications and renewals of any of the foregoing.
- 1.1.14. **'ITAR'** has the meaning set forth in clause 16.1.
- 1.1.15. **'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.
- 1.1.16. **'Order'** has the meaning set forth in clause 2.1.

- 1.1.17. **'Person'** means a natural person, corporation, partnership, limited liability company or other entity (whether or not having a separate legal personality).
- 1.1.18. **'Relevant Policy'** has the meaning set forth in clause 19.2.3.
- 1.1.19. **'Relevant Requirements'** has the meaning set forth in clause 19.2.1
- 1.1.20. **'Resale Products'** means products that are not manufactured by the Supplier or any of Supplier's parent or subsidiary companies or products for which the Supplier has no engineering and/or manufacturing responsibility.
- 1.1.21. **'Supplier'** means the Supplying party named in the Contracts.
- 1.1.22. **'Supplier Affiliate'** means any entity that, (i) directly or indirectly, controls or is under common control with the Supplier, or in which the Supplier has control, and (ii) is deemed a Supplier Affiliate by written notice from the Supplier to the Customer upon written request of such notice.
- 1.1.23. **'Supplier Indemnitee'** has the meaning set forth in clause 3.4.
- 1.1.24. **'Standard Products'** means standard assemblies, accessories and similar products which are listed as one of the Supplier's products and which are furnished by the Supplier in accordance with its standard general specifications.
- 1.1.25. **'Supplied Systems'** means those systems that are supplied to the Customer and which incorporate Standard Products or Resale Products, or Manufactured Systems or Computer Systems.
- 1.1.26. **'System'** means any Computer System, Manufactured System or Supplied System.
- 1.1.27. **'TSR'** has the meaning set forth in clause 16.3.
- 1.1.28. **'Writing'** means a reference to a writing or written document, including telefax communications and e-mails.
- 1.2. A reference to a statute, statutory provision or any rules or regulations promulgated thereunder shall mean a reference to such statute, provision or, regulations or rules promulgated thereunder, as amended or re-enacted whether before or after the date of the Contract, and, in the case of a statute, includes any rules or regulations promulgated thereunder from time to time.
- 1.3. The clause and paragraph headings are for convenience only and shall not affect the interpretation of these Conditions.
- 1.4. A reference to a document is a reference to that document as varied, amended or restated (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 any written quotation of the Supplier which is accepted by the Customer in Writing, or any written order of the Customer which is accepted in Writing by the Supplier (**'Order'**), subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions, whether or not any such other terms and conditions are included with (i) any such quotation that is accepted or purported to be accepted, or (ii) any such Order that is made or purported to be made by the Customer.
- 2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specifications are complete and accurate. For the avoidance of doubt, a quotation from the Supplier shall not constitute an offer and shall not form a Contract until the Customer's acceptance of a quotation is agreed in Writing by the Supplier.
- 2.3. No variation to these Conditions shall be binding unless agreed in Writing between the authorized representatives of Customer and Supplier.
- 2.4. The Supplier's employees or agents are not authorized to make any representations concerning the Goods unless 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 in Writing by Supplier.

- 2.5. The Supplier shall not be liable for any advice or recommendation which is given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods unless the same is confirmed in Writing by the Supplier. Any advice or recommendations not so confirmed in Writing by the Supplier, to the extent followed or acted upon by Customer, shall be entirely at the Customer's own risk.
- 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 without any liability on the part of the Supplier.

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

- 3.1. No order shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorized representative.
- 3.2. The Customer shall be responsible to the Supplier for ensuring the accuracy of any terms of any Order (including any applicable specifications) submitted by the Customer and for giving the Supplier any necessary information relating to the Goods within sufficient time to enable the Supplier to perform the Contract in accordance with the terms and conditions thereof.
- 3.3. The quantity, quality and description of any specification for the Goods shall be those set forth in the Supplier's quotation (if accepted by the Customer) or in the Customer's order (if accepted by the Supplier).
- 3.4. If the Goods are to be manufactured, or any process is to be applied to the Goods, by the Supplier in accordance with the specifications submitted to the Supplier by the Customer, the Customer shall, and hereby covenants and agrees to, indemnify and hold the Supplier, its affiliated entities, and each the respective officers, directors, agents, representatives and employees of each such entity (each, a **'Supplier Indemnitee'**), harmless against any and all losses, damages, costs and expenses (including without limitation, any and all attorneys' fees and professional fees) awarded against or incurred by the Supplier Indemnitee in connection with, or paid or agreed to be paid by the Supplier Indemnitee in settlement of, any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other Person which results from the Supplier's use of the Customer's specification.
- 3.5. The Supplier reserves the right to make any changes in the specifications of the Goods 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.
- 3.6. All orders, once accepted by the Supplier shall be firm Orders and no such Order may be cancelled by the Customer except with the agreement in Writing of the Supplier and then only 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 labor and materials used through the date of cancellation), damages, charges, and expenses incurred by the Supplier as a result of cancellation.

### **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 by the Supplier (or a quoted price is no longer valid), the price for such Goods as listed in the Supplier's then current published price list.
- 4.2. The Supplier reserves the right, by giving notice to the Customer at any time before Delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation,

currency regulation, alteration of duties, significant increase in the cost of labor, materials or other costs of manufacture), or any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions regarding the Order.

- 4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Supplier, and unless otherwise agreed in Writing between the Customer and the Supplier, all prices are given by the Supplier on an ex-works basis. In the event that the Supplier agrees to deliver the Goods otherwise than to the Supplier's premises, the Customer shall be liable to pay for all costs and expenses incurred by the Supplier for transport, packaging and insurance.
- 4.4. The Customer shall be responsible for the payment of all sales, excise, export or other taxes, duties or charges, if any, applicable to the Goods provided by the Supplier. The Customer shall, on receipt of a valid invoice for sales and use tax or any other tax from the Supplier, pay to the Supplier such additional amounts in respect of such taxes as are chargeable on the supply of the Goods unless the Customer provides the Supplier with an appropriate tax exemption certificate. The Customer hereby agrees to defend, indemnify and hold harmless the Supplier and all Seller Indemnitees from and against any and all claims by any governmental or other taxing authority seeking payment of taxes for which the Customer is responsible.
- 4.5. The price of the Goods does not include the cost of pallets and returnable containers and all such costs shall be added to the invoice and paid by the Customer; provided, however, that in the event that the pallets and returnable containers are returned to the Supplier in good condition, the Customer will receive a credit for the costs of such pallets and returnable containers.

## **5. TERMS OF PAYMENT**

- 5.1. Subject to any special terms agreed to in Writing between the Customer and the Supplier, the Supplier shall be entitled to invoice the Customer for the price of Goods on or at any time after the shipment of the Goods, unless the Goods are to be collected by the Customer, in which event the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Goods are ready for collection.
- 5.2. The Customer shall pay the price of the Goods (less any discount to which the Customer is entitled as set forth in Writing, but without any other deduction) within thirty (30) days of the end of the month in which the Delivery takes place, notwithstanding that Delivery may not have taken place and the property in the Goods has not 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.
- 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;
  - 5.3.2. appropriate any payment made to Customer to such of the Goods (or the Goods supplied under any other contract between the Customer and Supplier) as the Supplier may deem appropriate in its sole and absolute discretion (notwithstanding any purported appropriation by the Customer); and/or
  - 5.3.3. charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above the Barclays Bank PLC base rate from time to time, until payment in full is made.
- 5.4. Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Customer in favor of the Supplier and confirmed by a bank in the United States of America acceptable to the Supplier or, if the Supplier has agreed in Writing on or before acceptance of the 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 sixty (60) days after sight to the order of the Supplier at such branch as may be specified in the bill of exchange for a bank reasonably acceptable to Supplier.

## 6. DELIVERY

- 6.1. Delivery of the Goods shall be ex works the Supplier's loading dock or, if some other place for delivery is agreed by the Supplier in Writing, by the Supplier delivering the Goods to that place ('Delivery'). Delivery shall be deemed to have occurred upon receipt of notice from the Supplier that the Goods have been delivered and are ready for collection.
- 6.2. Any dates quoted for Delivery of the Goods are approximate only and the Supplier shall not be liable for any delay in the 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 installments, each Delivery shall constitute a separate Contract and failure by the Supplier to deliver any one or more installments shall not entitle the Customer to claim that the Supplier is in full breach of the Contract.
- 6.4. 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 any cause beyond the Customer's reasonable control or by reason of the Supplier's breach of its obligations hereunder with respect to the Delivery of the Goods) then, without prejudice to any other right or remedy that the Supplier may have hereunder or under applicable law, the Supplier may:
  - 6.4.1. store the Goods until actual Delivery and charge the Customer for the reasonable cost (including insurance) of storage; or
  - 6.4.2. sell the Goods to a third party and, after deducting all reasonable storage and selling expenses relating thereto, invoice the Customer for the difference between (i) the net price obtained by the Supplier for the Goods, and (ii) the price that the Supplier was due for said Goods from the Customer under the Contract. Upon receipt of said invoice, the Customer shall promptly pay said invoice amount to the Supplier.
- 6.5. Without prejudice to the provisions of clauses 6.1 to 6.4, in respect of an Order to provide a System to the Customer, the Supplier will include a production and Delivery schedule for the System and, where relevant, site installation drawings for the System. In connection therewith approval time shall be incorporated into the production schedule of each of the components of the System and delays by the Customer in providing appropriate approvals in a timely manner (as set forth in the schedule) and/or supplying complete information to the Supplier, may extend the production schedule and Delivery of the relevant System.
- 6.6. Unless otherwise specified by the Supplier in the Supplier's quotation or other Writing, the Customer shall be responsible for accepting Delivery of, starting up and maintaining the Goods.
- 6.7. **Notwithstanding any provision to the contrary set forth herein but further subject to clauses 9.9, 9.10 and 9.11, in the event that the Supplier fails to cause Delivery of the Goods solely due to its own negligence (and not due to any reason or cause that is beyond the Supplier's reasonable control or the Customer's fault), the maximum amount of damages that the Supplier may be liable for under this Contract shall not exceed the Customer's cost of cover (i.e., the difference between (i) the cost to the Customer to purchase the same quantity of similar Goods to replace those not delivered (in the cheapest available market) and (ii) the price of the Goods that the Customer was to have paid the Supplier under the Contract).**

## 7. RISK AND PROPERTY

- 7.1. Risk of damage to or loss of the Goods shall pass to the Customer upon Delivery of the Goods in accordance with clause 6.1 above.

- 7.2. Notwithstanding Delivery and the passing of the risk of damage or loss of the Goods, or any other provision of these Conditions, title to the Goods shall remain with the Supplier and shall not be conveyed to the Customer until the Supplier has received, in cash or cleared funds, payment in full of the price of the Goods and all other Goods agreed to be sold by the Supplier to the Customer for which payment is then due.
- 7.3. Until such time as the title in the Goods passes to the Customer, the Customer shall hold the Goods as 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 such time as title to the Goods is conveyed to the Customer, the Customer shall (i) not pledge, grant a security interest or permit the Goods to otherwise be encumbered, and (ii) subject to clause (i), have the right to resell or use the Goods in the ordinary course of its business but 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 title to the Goods has been conveyed to the Customer (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 the Goods to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer (or any third party where the Goods are stored) and repossess the Goods. In such event, the Customer shall reimburse the Supplier for any and all costs and expenses incurred by the Supplier in connection therewith including, without limitation, re-delivery of the Goods.
- 7.5. In the event that the Customer sells any of the Goods prior to title being conveyed to the Customer, all moneys due and owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

## 8. INSPECTION AND MAINTENANCE

- 8.1. The Supplier welcomes visual inspection of the completed Goods but reserves the right to charge for any functional or special tests requested on or on behalf of the Customer. If inspections (or tests) are called for in the Order, the Customer will be notified when the Goods are ready for inspection. If inspections (or tests) have not been carried out within seven (7) days of such notification, the Goods will be sent for Delivery. The terms and conditions associated with the installation, commissioning and/or maintenance services to the Customer shall be the subject of separate negotiations unless specifically offered in the Supplier's quotation.
- 8.2. The Customer shall give both the Supplier and the carrier written notice of any damage or loss to the Goods within three (3) days of its receipt of the Goods, followed by a detailed notice of the particulars not more than two (2) days thereafter. The Customer's obligations under this clause are of the essence, and if the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

## 9. WARRANTIES AND LIABILITY

- 9.1. **Warranties of Goods (other than Systems).** Subject to the conditions set out below, the Supplier warrants that the Goods will (i) correspond in all aspects with the specifications set forth in the Supplier's quotation or other Writing agreed to by the Supplier, and (ii) be free from all defects in material and workmanship for a period of eighteen (18) months from and after Delivery or twelve (12) months from commissioning the Goods, whichever is sooner.
- 9.2. The warranties provided in this clause 9.19 are given by the Supplier subject to the following conditions:

- 9.2.1. the Supplier shall be under no liability or obligation in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
  - 9.2.2. the Supplier shall be under no liability or obligation in respect of any defects arising from (i) fair wear and tear of the Goods, (ii) willful damage to the Goods, (iii) the Customer's negligence or the negligence of the Customer's employees, representatives or agents, (iv) abnormal working conditions, (v) failure to follow the Supplier's instructions, or (vi) the misuse or alteration or repair of the Goods without the Supplier's prior written approval;
  - 9.2.3. the above warranty does not extend to any 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 to Supplier;
  - 9.2.4. the Supplier shall be under no liability or obligation of the Customer makes any further use of the Goods after giving the Supplier notice of an alleged warranty claim in accordance with clause 9.4 below; and
  - 9.2.5. the Supplier shall be under no liability or obligation under this clause 9 (or under any other warranty, condition or guarantee) if the total price of the Goods has not been paid to the Supplier by the date that said payment is due.
- 9.3. Any warranty claim by the Customer must be made by delivering written notice to the Supplier within seven (7) days from the date of Delivery unless the defect or failure was not apparent on reasonable inspection on the date of Delivery in which case the warranty claim must be made within a reasonable time after discovery of the defect or failure. The Supplier shall have no obligation or liability with respect to any claim made in violation of the provisions set forth in this clause 9.
  - 9.4. In the event that the Customer properly notifies the Supplier of a valid warranty claim in accordance with the terms and conditions set forth above, the Supplier's sole obligation hereunder shall be to replace the Goods (or the part in question) free of charge or, at the Supplier's sole discretion, refund the Customer the price of the Goods in question (or a proportionate part of the price). Any such replacement goods shall be warranted only for the remainder of the original warranty period.
  - 9.5. All costs of diagnosing any defect in the Goods, except those incurred at the premises of the Supplier, shall be borne and paid for by Customer.
  - 9.6. **Warranties specific to Systems.** Subject to clause 9.7 the Supplier warrants that any System at Delivery will be substantially in accordance with the Supplier's functional specification as provided to the Customer. Subject to clause 9.7, 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 applicable specifications and to correct any error or failure to perform in a Computer System which the Supplier accepts as materially affecting the functional performance of a System. The cost of diagnosing any such correction shall be for the responsibility 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 of poor signal quality, incomplete or inaccurate process data supplied to the Supplier by the Customer and unauthorized modification by the Customer. Any additional expenses of the Supplier which can be shown to the reasonable satisfaction of the Customer to have resulted from such deficiencies or inaccuracies shall be the responsibility of the Customer. No warranty is made or implied that any Computer System supplied will be compatible with future equipment and/or software programs.
  - 9.7. **Performance of poor computer systems.** The Supplier warrants that any Computer System supplied will be free from clerical error and will perform the functions defined in the application specifications for use with the relevant systems as originally designed and shipped. The Supplier agrees to correct any equipment supplied by the Supplier that 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 functional performance of the environment in which the System is

used. The cost of diagnosing any such correction shall be the responsibility of the Customer. This warranty shall not be available to the Customer in the event of influencing deficiencies including but not limited to input signal of poor quality or incomplete or inaccurate process data supplied to the Supplier by the Customer. Any additional expenses of the Supplier which can be shown to the reasonable satisfaction of the Customer to have resulted in such deficiencies or inaccuracies or from such modifications or improper loading shall be the responsibility of Customer. No warranty is made or implied that any Computer System supplied will be compatible with future equipment and/or software program generations or versions of the Computer System as originally designed and shipped.

- 9.8. The warranties set out in clauses 9.5 and 9.6 will be conditional upon the return of the defective equipment or part to the Supplier's works within one year of Delivery and adequately packed and insured with transportation charges prepaid by the Customer. Warranties in clause 9.6 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 (1) year of the date of Delivery of the relevant equipment ex the Supplier's works. Warranties in respect of any Computer System will be conditional upon the giving by the Customer of written notice as aforesaid within three (3) months of Delivery of the relevant equipment. **The warranties in clauses 9.6 and 9.7 shall be of no force or effect if the defects are wholly or partially caused by any fault of the Customer or by any failure to comply with the Supplier's installation/operating maintenance instructions. The Supplier shall not be liable for any losses arising from any fault of the Customer or by any failure to comply with the Supplier's installation/operating maintenance instructions.** The warranties in clauses 9.6 and 9.7 will not apply to Resale Products, whether or not incorporated into Systems, but the Supplier will as far as practicable (and on such indemnity for costs as the Supplier deems reasonable) exercise for the Customer its rights under any warranty of the manufacturer or supplier to the Supplier.

9.9. **Limitations**

9.9.1. The warranties set out in this clause 9 do not extend to cover responsibility for the functioning of any equipment or software delivered 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.

9.9.2. **Where materials are supplied by the Customer free of charge to the Supplier for integration within Systems, all work is accepted entirely at the risk of the Customer and the warranty in this clause 9 shall not extend to such materials.**

9.10. **Limitation of liability**

9.10.1. **Notwithstanding anything to the contrary herein and clause 6.7, this clause 9 sets out the entire financial liability of the Supplier (including any liability for the acts of omissions of their respective employees, agents and subcontractors) to the Customer in respect of: (i) any breach of this agreement 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 tortious act or omission (including negligence) arising under or in connection with the Contract.**

9.10.2. **TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE SUPPLIER SHALL NOT UNDER ANY CIRCUMSTANCES WHATEVER BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY, 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) 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 OR (VIII) PUNITIVE DAMAGES.**

9.10.3. **To the fullest extent permitted under applicable law and notwithstanding anything to the contrary herein, including, without limitation, clause 6.7, the Supplier's total liability arising under or in connection with the 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 monetary value of the Order.**

**9.11. THE WARRANTIES PROVIDED IN THIS CLAUSE 9 ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**9.12. Force Majeure**

9.12.1. Neither party shall be liable to the other, or be deemed to be in breach of the Contract, by reason of any delay in performing, or failure to perform, any of its obligations under the Contract 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 performance of the Contract and which is not in force on the date of the Contract.

9.12.2. A party claiming to be unable to perform its obligations under these Conditions or the Contract as a whole (either on time or at all) in any of the circumstances set out in clause 9.12.1 shall notify the other party of the nature and extent of the circumstances in question as soon as practicable.

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 (6) months, the other party shall be entitled to terminate the Contract by giving thirty (30) days' notice.

**9.13. Indemnity from Customer; Settlement of Claims Relevant to Supplier**

9.13.1. **The Customer agrees that it shall indemnify and hold the Supplier and the Supplier's parents, subsidiaries, officers, directors, employees, agents and other affiliates harmless from and against and any and all losses, suits, proceedings, judgments, fines, awards, penalties, demands, assessments, damages, claims, deficiencies, including interest and attorneys' fees, settlement costs, arbitration costs and any legal and other expenses for investigating or defending or settling, any action or threatened action and any other liabilities based upon, resulting from, arising out of or otherwise relating to third party claims related to the Customer's direct or indirect unauthorized modification or other misuse of the Goods.**

9.13.2. **The Customer agrees that it will not settle any third party claim, suit or complaint where any Goods are deemed defective or responsible for any damage, claim or injury without the Supplier's prior written consent, which the Supplier may withhold in its absolute and sole discretion.**

**10. INTELLECTUAL PROPERTY**

10.1. The Customer acknowledges that the Intellectual Property in any Goods (save for any Resale Products or other third party product or software) is the Supplier's property and that nothing in the Contract shall be construed as conferring any license or granting any rights in favor of the Customer in relation to

such Intellectual Property. Any Intellectual Property in Resale Products or other third party product or software is subject to the rights of the applicable third party owner of such rights.

- 10.2. The Customer shall not use (other than pursuant to the Contract) or seek to register any trademark or trade name (including any company name) which is identical to, confusingly similar to or incorporates any trademark or trade name which the Supplier or any associated company or Supplier owns or claims rights in anywhere in the world
- 10.3. If any claim is made against the Customer that the Goods or System (always excluding any Resale Products or other third party product or software) infringe or that their use 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 give the Supplier all reasonable assistance for the purpose of any such proceedings or negotiations;
  - 10.3.3. the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier (which shall not be unreasonably withheld);
  - 10.3.4. the Customer shall do nothing which would or might vitiate any policy of insurance or insurance coverage 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 coverage (which the Customer shall use its best efforts 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 favor 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;
  - 10.3.6. without prejudice to any duty of the Customer at common law, the Supplier shall be entitled to require the Customer to take such 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; and
  - 10.3.7. this clause 10.3 shall be the sole remedy for Customer for the infringement of any Goods of any patent, copyright, design, trademark or other industrial or intellectual property rights of any third party.

## **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. The Customer undertakes to Supplier to keep confidential all information (written or oral) concerning the business and affairs of the Supplier or any Supplier Affiliate which the Customer has obtained or received as a result of discussions leading up to entry into the Contract, or which it has obtained during the course of the Contract, except any information that is:
  - 12.1.1. subject to an obligation to disclose under applicable law, or that is required to be disclosed by any competent regulatory authority, by notice or otherwise; or
  - 12.1.2. already in its possession other than as a result of a breach of this clause 12; or
  - 12.1.3. in the public domain other than as a result of a breach of this clause 12.
- 12.2. Customer undertakes to Supplier to take all steps necessary from time to time to ensure compliance with the provisions of this clause 12 by its employees, agents and subcontractors.
- 12.3. The Customer hereby acknowledges and agrees that monetary damages would be an inadequate remedy for any breach or threatened breach of the terms and conditions of the provisions of this clause

12, and that, in the event of any such breach or threatened breach, injunctive relief will be necessary to prevent irreparable injury to the Supplier. Accordingly, the Customer hereby agrees that, in addition to any other relief to which the Supplier may be entitled, any court having jurisdiction may enter an appropriate injunctive order or other equitable relief (without any obligation to post a bond or other security therefor) to prevent such breach or threatened breach. In addition, the Customer agrees that the provisions of this clause 12.3 should not be interpreted to limit the remedies for any breach or threatened breach of the provisions of this clause 12, and that all remedies available under law or in equity with respect to such breach or threatened breach shall be available to the Supplier.

12.4. This clause 12 shall survive termination of the Contract for a period of ten (10) years.

### **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 by the Customer or failure of the Customer to perform any relevant obligation ('**Customer Default**')

13.1.1. the Supplier shall, without limiting its other rights or remedies, have the right to suspend performance of the Contract until the Customer remedies the Customer Default, any to rely on the Customer Default to relieve 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 set out in this clause 13; 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. Where quoted prices are stated to be based in whole or in part on a conversion into the customary currency of the Supplier, or any other currency the Customer shall, subject to any applicable law relating to the regulation of prices, indemnify and hold the Supplier harmless against any loss incurred by the Supplier which arises or results from any variation in the rate of exchange between the date of the quotation and the date upon which the Customer places the Order.

### **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 Customer, and all outstanding sums in respect of any Goods or System delivered to the Customer shall become immediately due.

15.2. For the purposes of clause 15.1, a relevant event is deemed to occur if:

15.2.1. pursuant to or within the meaning of any United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a '**Bankruptcy Law**'), the Customer shall (a) commence a voluntary case or proceeding; (b) consent to the entry of an order for relief against it in an involuntary case; (c) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (d) make an assignment for the benefit of creditors; or (e) admit in writing its inability to pay its debts as they become due;

15.2.2. a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (a) is for relief against the Customer in an involuntary case; (b) appoints a trustee, receiver, assignee, liquidator or similar official for the Customer or substantially all of the Customer's properties, or (c) orders the liquidation of the Customer, and in each case the order or decree is not dismissed within sixty (60) days;

15.2.3. 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 15.2.2(inclusive);

15.2.4. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or

- 15.2.5. 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. 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. The Customer acknowledges that the Supplier may provide the Customer with technical data/technology, services, and/or, products, in finished or unfinished state that may be subject to U.S. export controls under the laws and regulations of the United States (collectively '**Export Controlled Technology**'). U.S. export control laws and regulations include, but are not limited to, the International Traffic in Arms Regulations ('**ITAR**'), 22 C.F.R. §§ 120 et seq., and/or the Export Administration Regulations, 15 C.F.R. §§ 730 et seq.
- 16.2. The Customer warrants and agrees that it shall not export or re-export any Export Controlled Technology or any technical data/technology or product derived from the Export Controlled Technology, except pursuant to a U.S. government license or other approval, or upon determination that such export may be lawfully exported without prior approval under a license exception, exemption, or other authority.
- 16.3. The Customer acknowledges and understands that the Supplier may need to apply for export licenses in order to ship Export Controlled Technology to the Customer. The Customer agrees to provide such information, assurances, documentation or take such other steps as necessary to assist the Supplier in obtaining any export licenses, including, but not limited to, execution of end-user certifications, document marking, and supplemental agreements with respect to control and handling of Export Controlled Technology. In compliance with U.S. regulations regarding Technology and Software under Restriction ('**TSR**'), The Customer hereby agrees that, without express approval of the Supplier (pursuant to issuance of an export license from the Bureau of Industry and Security), the Customer will not re-export or release any technology, direct product of the technology, software, or source code related to the technology provided by the Supplier to the Customer to a national of a country specified in Country Groups D:1 or E:2 as set forth in 15 C.F.R. Part 740, Supplement No. 1 and as amended. The Supplier shall have no responsibility for delayed delivery or nondelivery resulting from: (i) any governmental action under U.S. or other applicable law suspending or revoking a necessary export license or authorization; (ii) any failure by the Customer to furnish reasonable assurance, upon request, of its compliance with applicable export requirements; or (iii) obtaining a necessary export license for the goods to be shipped hereunder.
- 16.4. The Customer undertakes not to offer the Goods for resale in any country where export of the Goods is prohibited by the United States government, the UN, the government of the United Kingdom, the European Union or any other relevant organization.
- 16.5. The Customer shall indemnify and hold the Supplier and all Supplier Affiliates harmless for all liabilities, loss, damages, costs and expenses awarded against or incurred by the Supplier or any Supplier Affiliate arising out of or in connection with any breach of the Customer's obligations contained in this clause 16.

## 17. NUCLEAR INDEMNITY

- 17.1. **Notwithstanding anything in the Contract to the contrary, neither the Supplier nor any Supplier Affiliate shall be required to indemnify, defend, or hold harmless the Customer from or against any and all losses, claims, damages, expenses, or liabilities arising out of or based upon bodily injury or death to the extent that such bodily injury or death results from or is caused in whole or in part directly or indirectly by a 'nuclear incident' as such term is defined in the Atomic Energy Act of 1954, as amended (the 'Atomic Energy Act').**
- 17.2. **The Customer shall not use any Goods or System and shall ensure that the Goods or System shall not be used at or enter onto any 'utilization facility' or 'production facility' as such terms are defined in the Atomic Energy Act or any other facility used to produce nuclear energy, nuclear weapons or fissile materials at any time unless the Supplier provides prior consent in Writing to the Customer.**

17.3. **The Customer shall indemnify and hold Supplier and each Supplier Indemnitee harmless from and against any and all losses, claims, damages, expenses, or liabilities arising out of or based upon bodily injury or death to the extent that such bodily injury or death results from the use or misuse of the Goods or any System in any 'utilization facility' or 'production facility' as such term is defined in the Atomic Energy Act or any other facility used to produce nuclear energy, nuclear weapons or fissile materials regardless of whether the Customer has prior consent in Writing or otherwise from the Supplier for any use of the Goods or System in such facility.**

## 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 any such other member shall be deemed to be the act or omission of the Supplier.
- 18.2. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 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 or the Contract as a whole 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 or the Contract as a whole and the remainder of the provision in question shall not be affected thereby.
- 18.5. A Person who is not a party to the Contract shall not have any rights under or in connection with it, save that any member of the Rotork p.l.c. group of companies, or any other Supplier Affiliate, shall have the right to enforce its rights against the Customer in respect of any Goods or System provided to the Customer on that company's behalf.
- 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.
- 18.7. Nothing in these Conditions or the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.8. All actions under this Contract shall be brought in a court of competent subject matter jurisdiction in the State of New York and both parties agree to accept the personal jurisdiction of such court. The parties hereto hereby irrevocably consent to the jurisdiction of state courts or federal courts located within Monroe County, State of New York, and irrevocably agree that all actions or proceedings related to the Contract and any Order issued hereunder shall be litigated in such courts, and each party waives any defense of *forum non conveniens* and agrees to be bound by any judgment rendered thereby in connection with the Contract or such Order.
- 18.9. The Supplier and the Customer agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract including, without limitation, these Conditions. Any and all matters of dispute between the parties to the Contract, whether arising from the Contract itself or arising from alleged extra contractual facts prior to, during, or subsequent to the parties entering into the Contract, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of the contract, shall be governed by, construed and enforced in accordance with the laws of the State of New York, United States of America, but not including its conflicts of laws that would cause another jurisdiction's laws to apply, regardless of the legal theory upon which such matter is asserted. The default terms of the New York Uniform Commercial Code and of all other laws of the State of New York (the '**Default Terms**') that would otherwise apply to the Order shall apply to the Order but only to the extent that the Default Terms do not conflict with or limit the Supplier's rights and remedies under the Contract.

## 19. COMPLIANCE WITH LAWS; ANTI-BRIBERY AND CORRUPTION

- 19.1. The Customer shall comply with, and the Customer represents and warrants that its purchase of the Goods and Services provided hereunder will comply with, all applicable federal, state, provincial and local laws, orders, rules and regulations.
- 19.2. In addition to the foregoing, the Customer shall:
- 19.2.1. 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'**);
  - 19.2.2. 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;
  - 19.2.3. 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'**).
  - 19.2.4. have and shall maintain in place throughout the term of this agreement 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;
  - 19.2.5. 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 this agreement;
- 19.3. 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. 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.
- 19.4. Breach of this clause 19 shall be deemed a material breach of the Contract and the Supplier shall be entitled to immediately terminate the Contract without liability to the Customer.
- 19.5. 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.