

**ROTORK GROUP**  
**GENERAL CONDITIONS FOR THE PURCHASE OF GOODS**

The terms and conditions of this Contract shall apply to any purchase order for Goods issued by the Customer to the Supplier during the term of this Contract, whether or not this Contract or its terms and conditions are expressly referenced in the purchase order, unless the parties expressly agree in writing that the terms and conditions of this Contract 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 the terms of this Contract, the terms of this Contract shall prevail. All inconsistent or additional terms or conditions in any Supplier acknowledgement, packaging, invoice or other sales forms are expressly objected to and rejected by the Customer and shall not be applicable to any purchase orders issued under this Contract.

**1. INTERPRETATION**

1.1 **Definitions.** In these Terms and Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the Terms and Conditions set out in this document as amended from time to time in accordance with clause 16.6.

**Contract:** the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** means the Customer named in the Order.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the order by the Customer for the Goods, as set out in the purchase order form of the Customer.

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

**Supplier:** the person or firm from whom Customer purchases the Goods.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and e-mails.

**2. BASIS OF CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions and no others. Supplier, by accepting any Order from Customer, shall be deemed to have accepted all of the Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing a written acceptance of the Order; and
  - (b) the Supplier doing any act consistent with fulfilling the Order,
- at which point the Contract shall come into existence.
- 2.4 The Customer shall have the right, at any time, to make changes by submitting a change order regarding the quantity, Delivery Location (as defined below) and/or delivery date of the Goods that are subject to this Contractor or any Order. To the extent reasonably feasible, the Supplier shall comply with all such changes. Notwithstanding the foregoing, no changes shall be made except upon a written change order issued from the Customer to the Supplier and, if the change affects the Supplier's cost or time of performance, an equitable adjustment as provided for in the change order shall be made and the Order shall be deemed modified accordingly.
- 2.5 The Supplier agrees to provide the Goods to "Customer Affiliates" (as defined below) pursuant to Orders issued by such Customer Affiliates. A Customer Affiliate that issues an Order under this Contract shall be entitled to all of the rights and benefits afforded to the Customer hereunder and may enforce this Contract in its own name, and references to "Customer" in this Contract shall be deemed to include the applicable "Customer Affiliate" with respect to such Orders. For purposes of this Agreement, "Customer Affiliate" shall mean any entity that, (i) directly or indirectly, controls or is under common control with the Customer, or in which the Customer has control, and (ii) is deemed a Customer Affiliate by written notice from the Customer to the Supplier upon written request of such notice. For purposes of this Section 2, "control," whether used as a noun or a verb, 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.

### **3. GOODS**

- 3.1 The Supplier shall ensure that the Goods shall:
- (a) correspond and conform strictly with their description and any applicable Specification;
  - (b) be manufactured in accordance with the highest professional standards and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the skill and judgement of the Supplier;
  - (c) be merchantable, of good quality, material and workmanship, and free from defects, whether latent or patent, in design, material and workmanship, and remain so for 12 months after delivery;
  - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - (e) be manufactured at a location which has been approved by the Customer in writing. The Supplier shall not change the location at which the Goods are manufactured without obtaining the prior written consent of the Customer, and any such change without Customer's prior written consent shall be deemed a material breach of this Contract.

- 3.2 The Supplier represents and warrants that it is qualified to carry out and perform its obligations hereunder, and shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 All Goods manufactured by the Supplier in accordance with this Contract will be produced in compliance with all applicable requirements of Section 12 of the Fair Labor Standards Act, as amended, all applicable requirements of Sections 204(c), (d), 301-305, 401-403 and 501 of the Fair Labor Standards Act Amendments of 1996, and with all applicable requirements of regulations and orders of the United States Department of Labor issued under the Occupational Safety and Health Act of 1970, as applicable to the manufacture of such Goods.
- 3.4 Good and merchantable title to the Goods shall be transferred to the Customer upon acceptance of the Goods, and the Goods shall be free and clear of any and all liens, encumbrances and claims of any nature whatsoever.
- 3.5 The Customer shall have the right to inspect and test the Goods at the time of delivery and any time before delivery. The Customer shall have the right to appoint such persons as it considers necessary or desirable to inspect the Goods for which the Supplier must grant proper and reasonable facilities for such inspection to such persons and the Supplier shall, at the request of the Customer, provide the Customer with copies of test reports or data disclosed as a result of any inspection carried out by the Customer or his nominee.
- 3.6 The costs of any inspection tests shall be borne by the Supplier other than the salaries, travelling expenses and subsistence of relevant personnel employed by the Customer and unless otherwise specified in the Order.
- 3.7 The items to be tested and tests other than of a routine nature shall be specified in the Order. It shall be the Supplier's responsibility to inform the Customer if the Supplier does not have adequate facilities for carrying out the tests required by the Customer and it shall be the Supplier's responsibility and at its own cost to make the necessary arrangements for the testing of the Goods concerned either at the site or elsewhere convenient to both the Customer and Supplier.
- 3.8 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the undertakings of the Supplier at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.9 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the obligations of the Supplier under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.10 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier to the same extent as if the repaired or replacement Goods were the initial Goods purchase hereunder, and the Customer shall have all of its rights hereunder with respect to such Goods.
- 3.11 With respect to all material purchased by The Supplier from third parties for the manufacturing of Goods hereunder, the Supplier hereby assigns and transfers to the Customer all of its rights under all warranties received from such third parties. The Supplier shall use its reasonable best efforts to assist the Customer in obtaining the cooperation of such manufacturers in connection with the rejection or return of any Goods, and the Supplier shall obtain and assign or otherwise provide to the Customer the benefits of warranties provided by manufacturers or suppliers of material or equipment incorporated into the Goods. In addition to and without

limiting the foregoing, the Supplier will provide the Customer the same degree of warranty for all third-party material and equipment as it receives from its suppliers, and shall provide the Customer documentation of such warranties upon the Customer's request.

- 3.12 All materials furnished and used in connection with the Supplier manufacturing the Goods shall be new, and of good quality. The Supplier shall cause all materials to be readily available as and when required or needed for and in connection with the performance of its obligations under this Contract and any applicable Order.

#### **4. DELIVERY**

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition, free of any defects whatsoever;
- (b) each delivery of the Goods is accompanied by a delivery note which shows: the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any), any labelling requirements (such as barcoding) specified in the Order and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- (c) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact shall be clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2 Unless delayed by Force Majeure, time for delivery shall be of the essence. The Supplier shall deliver the Goods:

- (a) on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order;
- (b) to such location as is set out in the Order, or as instructed by the Customer prior to delivery (**Delivery Location**); and
- (c) during the normal business hours of the Customer, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.4 If the Supplier:

- (a) delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or
- (b) delivers more than 105% of the quantity of Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the risk and expense of the Supplier. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the prior written consent of the Customer. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 5.

## 5. REMEDIES

5.1 If the Goods are not delivered on the date they are due as referred to in clause 4.2(a), or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

- (a) to terminate the Contract;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the sole risk and expense of the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- (f) to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the failure of the Supplier to carry out its obligations under the Contract, including third party claims.

5.2 In addition to, and not in lieu of the Customer's rights under clause 5.1 above, if the Goods are not delivered on the due date, the Customer may, at its option, claim or deduct up to 5% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 50% of the total price of the Goods. The Parties agree that this sum is not a penalty but a reasonably limited substitute for actual damages which the Customer would be entitled to in the event of late delivery but which would be difficult to calculate with accuracy or certainty. If the Customer exercises its rights under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the late delivery of the Goods (but such remedies shall be available in respect of the condition of the Goods). In the event that the Customer elects not to exercise its rights under this clause 5.2, it shall be entitled to exercise all or any portion of its rights set forth in clause 5.1 above.

5.3 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is not attributable to Customer Materials or other intellectual property supplied to the Supplier by the Customer;
- (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause 5.3 shall survive termination of the Contract.

- 5.4 The rights and remedies of the Customer under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **6. PROGRESS INSPECTIONS**

6.1 In addition to and without prejudice to any other right that the Customer may have hereunder, the Customer shall have the right to inspect and analyse the progress of the manufacturing and/or production of the Goods. Specifically, throughout the term of this Agreement, the Customer shall have the right to:

- (a) obtain the engineering and production schedules, determine their reasonableness and appraise the progress of the engineering and production works against the schedules;
- (b) immediately obtain on request all drawings, design calculations, parts, lists, spare parts recommendations and any other document requested in the Order;
- (c) determine whether the Order has been released for manufacture or fabrication and if not find out the reasons for delay;
- (d) determine whether the bills of material have been issued;
- (e) check whether component material is stock material and if so check its allocation;
- (f) determine whether component material or any part of it is to be ordered from sub-suppliers, obtain the list of sub-orders, the sub-suppliers addresses, reference numbers and delivery schedules and to expedite these sub-suppliers if deemed necessary;
- (g) determine that sub-orders for critical materials have been placed far enough in advance to avoid fabrication delays and if castings are involved to obtain full information about the patterns;
- (h) check that sub-orders contain complete instructions about requested inspection requirements; and
- (i) indicate reasons for claiming reimbursement of additional costs through failure of the Supplier to fulfil its responsibility hereunder.

## **7. TITLE AND RISK**

7.1 Title and risk in the Goods shall pass to the Customer on completion of delivery. Risk of Loss for all Goods shall remain with the Supplier until the Goods are delivered at the Delivery Location.

## **8. PRICE AND PAYMENT**

8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the published price of the Supplier list in force as at the date the Contract came into existence. In connection with the foregoing, the parties intend that the Customer shall have the status of a "most-favored customer" with respect to matters of pricing, availability, and other terms. The Supplier represents and warrants that the prices and other terms provided to the Customer under this Contract are not less favorable than those extended to any of its other customers for similar quantities of products and services under reasonably similar circumstances and, in the event that the Supplier provides any of its other customers with more favorable prices or other terms, the Supplier shall immediately provide that more favorable price or other term to the Customer.

- 8.2 The price of the Goods is exclusive of amounts in respect of federal, state and local taxes (including sales and use taxes), and any value added tax (**VAT**), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless previously agreed in writing and signed by the Customer.
- 8.3 The Customer shall, on receipt of a valid invoice for sales and use tax or VAT from the Supplier, pay to the Supplier such additional amounts in respect of such taxes as are chargeable on the supply of the Goods.
- 8.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.5 The Customer shall pay correctly rendered invoices within time specified in the Order, or if there is no time specified, 60 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.6 The Customer may, without limiting any other rights or remedies it may have, set-off any amount owed to it by the Supplier against any amounts payable by it to the Supplier.

## **9. CUSTOMER PROPERTY**

- 9.1 The Supplier acknowledges that all materials, equipment, patterns, dies, moulds, other tooling, drawings, Specifications or data supplied by the Customer to the Supplier (**Customer Materials**) and all rights in the Customer material are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the written instructions or authorisation of the Customer.
- 9.2 The Supplier shall maintain all Customer Materials in good order and condition and insure them against all risks whilst in his custody and on completion of the Contract or as otherwise directed by the Customer shall return them to the Customer in good order and condition. Should the Supplier fail so to return them, the Customer may, at its option, either withhold payment until they are so returned or withhold such part of the payment due as may be required to replace them or restore them to good order and condition.
- 9.3 The Supplier shall not use Customer Materials nor shall it authorise or permit them to be used by anyone else for, or in connection with, any purpose other than the supply of Goods to Customer unless such use is expressly authorised by the Customer in writing prior to such use.
- 9.4 Where the Customer, for the purposes of the Contract, issues materials, including Customer Materials, free of charge to the Supplier, such materials shall be and remain the property of the Customer. The Supplier shall maintain all such materials in good order and condition and repair subject, in the case of Customer Materials (to the extent applicable), to normal wear and tear. The Supplier shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Customer's discretion. The Supplier shall be responsible, at its sole cost and expense, to replace any and all waste of such materials arising from bad workmanship or negligence of the Supplier.
- 9.5 **THE SUPPLIER ACKNOWLEDGES AND AGREES THAT IT IS A BAILEE OF THE CUSTOMER MATERIALS AND THAT IT HAS NO RIGHT TO THE CUSTOMER MATERIALS EXCEPT TO PERFORM ITS OBLIGATIONS HEREUNDER.** The Supplier, its agents, employees, subcontractors or suppliers shall not use the Customer Materials without the express prior written consent of the Customer. The Supplier shall segregate and clearly mark Customer Materials to show the Customer's ownership and shall preserve the Customer's title

thereto, free and clear of all liens, security interests and encumbrances whatsoever. The Supplier shall, if requested by the Customer, submit to the Customer an itemized inventory showing the description and location of each item of Customer Materials, and the Customer shall have the right to enter the Supplier's premises to inspect the Customer Materials. The Supplier further agrees that:

- (a) should the Supplier fail to perform the duties imposed by it under this Contract, or should the Customer at any time desire to possess the Customer Materials, the Customer shall have the right to enter upon the Supplier's premises and remove the the Customer Materials, including any and all copies thereof. In connection therewith, the Supplier shall fully cooperate with the Customer in making all such Customer Materials available to the Customer. In addition, upon completion or termination of this Contract, the Supplier shall segregate all of the Customer Materials and shall return the same to the Customer in accordance with the directions of the Customer; and
- (b) the Supplier shall cooperate with the Customer in preserving, defending and protecting the Customer Materials as against any rights of all third parties and in assisting the Customer to defend the Customer Materials against all setoffs, claims, counterclaims, demands and defenses. At the request of the Customer, the Supplier shall obtain, make, execute and deliver all such additional deeds, assurances and instruments as the Customer may deem necessary or advisable from time to time in order to preserve and/or protect the Customer Materials (all in a form and content acceptable to the Customer and its counsel) from landlords, warehousemen, lienholders and mortgagees. The Supplier hereby irrevocably appoints the Customer, its officers, employees and agents, or any of them, as attorneys-in-fact for the Supplier with full power and authority in the place and stead of the Supplier in the name of the Supplier or the Customer (as determined by the Customer) from time to time in its sole discretion, to perform all acts which the Customer deems appropriate to preserve the Customer Materials, including the execution on behalf of the Supplier (to the extent such signature may be required by applicable law), a UCC-1 financing statement and/or other documents to accomplish the purposes of this clause 9.5. This power of attorney, being coupled with an interest, is irrevocable and shall remain in effect until such time as the Customer Materials are delivered to the Customer.

## **10. INSURANCE**

10.1 Throughout the term of this Contract and continuing until all of the Customer Materials has been returned to the Customer, the Supplier shall provide and maintain insurance coverage in accordance with the following:

- (a) All Risk, Property Coverage at full replacement Cost for the Customer Materials,
- (b) Commercial General Liability ('CGL') insurance with the following limits and forms/endorsements:
  - (i) Each Occurrence \$2,000,000
  - (ii) Products and Completed Operations Aggregate \$2,000,000
  - (iii) General Aggregate \$2,000,000



- (iv) The CGL general aggregate coverage limit, shall apply separately to each project.
- (c) In addition,
  - (i) CGL coverage shall be written on ISO Occurrence form CG00 01 (10/01) or a substitute form providing equivalent coverage and shall cover liability arising from premise and operations, independent contractors, products-completed operations and personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  - (ii) The Customer shall be included as additional insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 (11/85) (on going and product completed operations) or both CG 20 10 (10/01) (on going operations) and CG 20 37 (10/01) (product completed operations) or an equivalent coverage to the additional insured. This insurance for the additional insured shall be as broad as the coverage provided for the named insured Vendor/Subcontractor. It shall apply as primary insurance on a non-contributing basis before any other insurance or self-insurance, including any deductible, maintained by or provided to, the additional insured.
  - (iii) There shall be no endorsement of modification of the Subcontractors CGL policy arising from pollution, explosion, collapse, underground property damage of work performed by subcontractors.
  - (iv) Supplier shall waive all rights of subrogation against Customer and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability policy (CGL).
  - (v) Supplier shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain completed operations coverage for itself and each additional insured for at least 2 years after completion of the Work.
- (d) If the Supplier is providing any design services or other professional services, it shall obtain Professional Liability or Errors & Omissions insurance for the services performed. Such insurance shall have a limit of \$2,000,000 per occurrence and in the aggregate.
- (e) Umbrella (Excess) Liability Coverage in an amount not less than \$5,000,000 per occurrence and in the aggregate.
  - (i) Umbrella coverage must follow form primary coverage
  - (ii) Customer and all other parties required of Customer shall be included as additional insureds on a primary and non-contributory basis.
- (f) Any and all deductibles for such insurance policies shall be assumed by, for the account of, and at the Supplier's sole risk.

(g) The following insurances shall also be required in the event that Supplier comes onto Customer's site:

(i) Automobile Liability

(A) Business auto liability with limits not less than \$1,000,000 each accident.

(B) Business auto coverage must include coverage for the liability arising out of the use of all owned, leased hired and non-owned automobiles.

(C) Customer and all other parties required of Customer shall be included as additional insureds on a primary basis.

(ii) Workers Compensation and Employers Liability

(A) Statutory Employers Liability insurance limits of \$500,000 each accident, \$500,000 each employee and \$500,000 policy limit as required by law.

(B) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.

(C) Where applicable, the Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy.

(D) Workers Compensation coverage will be written to include all employees, including all executive officers.

10.2 Certificates of insurance acceptable to the Customer shall be filed with Customer prior to commencement of the Order. Attached to each certificate of insurance shall be a copy of the additional insured endorsement that is part of the Supplier's CGL policy.

10.3 Certificates of insurance and the insurance policies required shall contain a provision that coverages afforded under the policies will not be cancelled, changed or allowed to expire until at least 30 days prior written notice has been given to Customer.

10.4 In the event that Supplier fails to obtain or maintain any required insurance, Customer may purchase such insurance and back charge the expenses thereof to the Subcontract amount, or may terminate the contract.

## **11. CONFIDENTIAL INFORMATION**

11.1 The Customer may disclose to Supplier information (whether transmitted orally or in writing or other tangible form) that is confidential or proprietary to the Customer and/or one or more of the Customer Affiliates ("Confidential Information"). Confidential Information includes but is not limited to, any (a) trade secrets of the Customer; (b) programs, systems and related documentation; (c) business or technical data such as information regarding the Customer's plans, plants, processes, products, costs, equipment, operations, marketing plans, forecasts, customers or suppliers; (d) the Specifications or other specifications, drawings, samples and

models relating to the Customer Materials, and (e) correspondence, documents, reports, computer software, codes, printouts, programs, files, artwork, know-how, works of authorship, inventions, ideas, expression of ideas, discoveries, techniques, concepts, procedures, and improvements and modifications to the Customer Materials.

11.2 The Supplier will not, and will cause each of its employees, agents, subcontractors and affiliates not to, either during the term of this Contract or for a period of ten (10) years thereafter: (a) disclose any Confidential Information to any third party (except as required by applicable law, regulation or legal process, but only after compliance with this clause 11.2) or to any employee of the Supplier who does not have a strict need to know such information to perform obligations hereunder; or (b) use Confidential Information for its own advantage, other than in the performance of this Contract and its obligations under Orders issued hereunder. The Supplier will hold in confidence the Confidential Information and will use Confidential Information solely to perform its obligations hereunder. The Supplier will take all reasonable precautions necessary to safeguard the Customer's Materials and other Confidential Information. Upon the Customer's request, the Supplier will promptly return all Confidential Information and all copies thereof to the Customer. In the event that the Supplier or any of its employees, agents, subcontractors or affiliates is required by applicable law, regulation or legal process to disclose any Confidential Information, the Supplier will (a) notify the Customer immediately so that the Customer may seek a protective order or other appropriate remedy, and (b) exercise all reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information.

11.3 Except as may be required under clause 11.2 above, the Supplier agrees not to disclose to any third party the nature or content of the obligations which the Supplier performs for the Customer pursuant to this Agreement.

11.4 The Supplier 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 11, and that, in the event of any such breach or threatened breach, injunctive relief will be necessary to prevent irreparable injury to the Customer. Accordingly, the Supplier hereby agrees that, in addition to any other relief to which the Customer 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 Supplier agrees that the provisions of this clause 11.4 should not be interpreted to limit the remedies for any breach or threatened breach of the provisions of this clause 11, and that all remedies available under law or in equity with respect to such breach or threatened breach shall be available to the Customer.

## **12. TERMINATION**

12.1 The Customer may, for any reason or no reason whatsoever, terminate the Contract or any Order in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice thereof.

12.2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

- (a) the failure of the Supplier to perform any obligation hereunder. Without limiting the generality of the foregoing, the Supplier shall be deemed to be in material breach of this Contract if it (i) fails to deliver one or more shipments of Goods in accordance with the scheduled delivery date set forth in an Order or repeated deliveries of non-

conforming Goods, or (ii) fails to satisfy any of its obligations under clauses 3,4,9 or 11 hereof;

- (b) the Supplier (i) becomes insolvent, (ii) makes an assignment for the benefit of creditors under the United States Bankruptcy Law or similar state bankruptcy statute, (iii) files or has filed against it a petition in bankruptcy under the United States Bankruptcy Law or similar state bankruptcy statute, (iv) has a receiver appointed for its assets, or (v) is dissolved or liquidated;
- (c) a change in control occurs in the Supplier, whether as a result of one transaction or a series of transactions. For purposes of this Section 12, "control," whether used as a noun or a verb, 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;
- (d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (e) the sale of all or a substantial portion of the Supplier's assets; or
- (f) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Customer, the capability of the Supplier to adequately fulfil its obligations under the Contract or any Order has been placed in jeopardy.

### 12.3 Effect of Termination.

- (a) If this Agreement is terminated by the Customer under clause 12.1 above, the Supplier shall immediately discontinue all work on the Contract and any Order so terminated. The Customer shall pay the Supplier fair and reasonable compensation for work-in-progress as of the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss or damage.
- (b) If this Agreement is terminated by the Customer under clause 12.2 above, the Customer shall have the right to terminate all then existing Orders and shall have no further obligation to purchase Goods hereunder or under then outstanding Orders.
- (c) Notwithstanding any provision to the contrary set forth herein, in the event that this Contract is terminated for any reason, the Supplier shall promptly package all of the Customer Materials in the Supplier's possession and deliver all such Customer Materials to the Customer, all in accordance with the instructions of the Customer.
- (d) Subject to Clause 12.3(e) below, 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.
- (e) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CUSTOMER SHALL NOT BE LIABLE TO THE SUPPLIER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS OR BUSINESS INTERRUPTION), ARISING OUT OF OR RELATED TO THE CUSTOMER'S TERMINATION OF THIS AGREEMENT OR ANY ORDER,

WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW OR OTHERWISE.

**13. COMPLIANCE WITH LAWS; ANTI-BRIBERY AND CORRUPTION**

13.1 The Supplier shall comply with, and the Supplier represents and warrants that all Goods provided hereunder will comply with, all applicable federal, state, provincial and local laws, orders, rules and regulations.

13.2 In addition to the foregoing, the Supplier shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) 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;
- (c) comply with the Customer's Ethics and Values Statement, available from <http://www.rotork.com/en/investors/index/ethicsvalues> in each case as the Customer may update it from time to time (**Ethics Statement**);
- (d) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
- (e) immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier (and the Supplier warrants that it has no foreign public officials as officers or employees at the date of the Contract; and
- (f) 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, Ethics Statement and clause 13.2(b), and will enforce them where appropriate.

13.3 This clause 13 shall be a condition of the Contract, and the Parties therefore agree, without prejudice to any other rights they may have under the Contract or at law in respect of breaches of these, that the Customer shall be entitled to terminate the Contract and recover damages for loss of bargain.

13.4 The Supplier shall ensure that any person associated with the Supplier who is providing goods in connection with the Contract 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 Supplier. The Supplier shall be responsible for the observance and performance by such persons of the Relevant Requirements, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Requirements.

13.5 For the purpose of this clause 13, the meaning of adequate procedures and foreign public official 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), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 13, a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

13.6 If the Customer suspects the Supplier, or any person associated with the Supplier, to be in breach of this clause 13, the Customer and its third party representatives shall have the right to immediately access and take copies of any records and any other information held at the

Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 13. The Supplier shall give all necessary assistance to the conduct of such audit during the term of this Contract and for a period of six (6) years after the termination or expiration of the Contract.

**14. LICENSES, PERMITS, APPROVALS AND ORIGIN**

14.1 The Supplier shall be responsible for obtaining the necessary inspection or code approvals from the relevant authorities, all as require under applicable laws, rules, regulations and customary business practice. All costs resulting from following the applicable code and/or the Customer's requirements shall be borne by the Supplier.

14.2 If the performance of the Contract requires any government license or permit, it shall be the Supplier's responsibility, at its sole cost and expense, to obtain the same prior to performing its obligations hereunder.

14.3 The Supplier shall, when required to do so by the Customer, provide the Customer with evidence of the place of origin of the Goods or any part thereof and of the raw materials used in the manufacture thereof.

**15. FORCE MAJEURE**

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 20 Business Days, the Customer may terminate this Contract immediately by giving written notice to the Supplier.

**16. GENERAL**

**16.1 Assignment and Subcontracting.**

- (a) The Customer may, at any time, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Supplier 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 Customer.

**16.2 Notices.**

- (a) 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.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a); 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.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.3 **Severability.**

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the remaining portion of said provision (if any) and the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.5 **Third party rights.** 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 PLC group of companies, or any other affiliate of the Customer, shall have the right to enforce its rights against the Supplier in respect of any Goods purchased by the Customer on that company's behalf.

16.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

16.7 **Governing law and jurisdiction.** 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, the substantive laws of the State of New York, without regard to conflict of law principles. 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 this Agreement 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 this Contract or such Order.