

**HYDRATIGHT LIMITED**  
**GENERAL TERMS AND CONDITIONS**  
**OPERATIONAL SERVICES AND/OR HIRE**

**1 DEFINITIONS & INTERPRETATIONS**

1.1 In these terms the following words shall have the following meanings:-

1.1.1 "ABAC Policy" means the Company's anti-bribery and corruption policy document as amended, varied or supplemented from time to time;

1.1.2 "Additional Works" means any services, plant, machinery, tools, equipment or works that the Company agrees to provide to the Customer under the Contract pursuant to Clause 3.4 in addition to those detailed in the Quotation;

1.1.3 "Affiliate" means in relation to a party, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with, that party from time to time;

1.1.4 "Company" means Hydratight Limited (Registered number: 03069889) whose registered office is at Bentley Road South, Darlaston, West Midlands, WS10 8LQ, England;

1.1.5 "Company Plant" means and shall include any and all plant, machinery, tools or equipment used by the Company in the course of performing the Services;

1.1.6 "Contract" means these terms and the Quotation (defined below) together with any and all documentation relating to the agreement between the Company and the Customer including, without limitation any documentation agreed by the Company pursuant to Clause 3.4;

1.1.7 "Customer" means the person, firm or corporate entity to whom the Company has agreed to provide the Works subject to these terms and conditions;

1.1.8 "Customer Group" means the Customer, its Affiliates and Customer Personnel;

1.1.9. "Customer Personnel" means any persons used by or acting for or on behalf of the Customer and/or its Affiliates in connection with the Contract, from time to time;

1.1.10 "Hire Period" means the period during which the Hired Plant is hired by the Customer, as determined in accordance with Clause 6.1;

1.1.11 "Hired Plant" means any plant, machinery, tools or equipment detailed in the Quotation and any and all plant, machinery, tools or equipment that the Company agrees to supply to the Customer under the Contract pursuant to Clause 3.4 but excluding (in each case) the Company Plant;

1.1.12 "Quotation" means the specification sheet to which these terms are attached, together with any and all documentation relating to the agreement between the Company and the Customer;

1.1.13 "Services" means any manpower detailed in the Quotation and any and all services that the Company agrees to provide to the Customer under the Contract pursuant to Clause 3.4;

1.1.14 "Site" means the place or places provided or made available by the Customer to the Company for the purposes of the Works; and

1.1.15 "Works" means all plant and/or services to be provided by the Company under the Contract including, without limitation, any Hired Plant, Services and Additional Works.

1.2 Reference to the singular shall include the plural, the masculine shall include the feminine, the whole shall include the part, the personal shall include the corporate and in all cases vice versa, as if they were set out separately and traversed seriatim.

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.4 The National Agreement for the Engineering Construction Industry (NAECI) does not apply to the Company's personnel due to the specialist nature of the Services.

**2 APPLICATION OF TERMS**

2.1 These terms shall apply to and be incorporated into the Contract and prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for the performance of Works by the Company, constitutes an offer by the Customer to engage the Company to perform the Works on these terms. No offer placed by the Customer shall be accepted by the Company other than by a written acknowledgment issued and executed by the Company or (if earlier) by the Company starting to provide the Works, when a contract for the supply and purchase of the Works on these terms will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.

2.3 Each order which is accepted by the Company in accordance with Clause 2.2 shall constitute a separate legally binding contract between the Company and the Customer.

2.4 No addition, alteration or substitution of these terms will bind the Company or form any part of any contract unless they are expressly accepted in writing by a person authorised to sign on the Company's behalf.

2.5 The Customer shall at its own expense supply the Company with all necessary data or other information relating to the Works, within sufficient time to enable the Company to provide the Works in accordance with the Contract. The Customer shall ensure the accuracy of all such information provided.

2.6 The Company's employees or agents are not authorised to make any representation with regard to the subject matter of the Contract. In entering into the Contract the Customer acknowledges that if it relies on any representation, advice or recommendation given by the Company, its employees or agents to the Customer as to the use of the Hired Plant or the provision of the Works it does so entirely at the Customer's own risk.

2.7 The Company reserves the right to refuse to provide the Works where, in the opinion of the Company,

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performance of the Works would pose a risk to the health and safety of any person including, without limitation, as a result of the Site, any facilities or equipment provided by the Customer or any failure of the Customer to comply with any of its obligations under the Contract.

**3 SPECIFICATION & ADDITIONAL WORKS**

3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order including any specification submitted by the Customer and for checking and ensuring the accuracy of any order acknowledgement form.

3.2 The quantity, quality, description of, and any specification for the Works shall be as expressly set out in the Company's Quotation, additional documentation (including any additional documentation agreed by the Company pursuant to Clause 3.4 in respect of any Additional Works) and order acknowledgement form and no other specification, content of any descriptive material, correspondence or statement, promotion or sales literature shall form part of or be incorporated by reference into the Contract.

3.3 The Company reserves the right to make changes in the specification of the Works which are required to conform with any applicable statutory or regulatory requirement which do not materially affect quality or performance.

3.4 The Company may agree from time to time in writing to perform services and or to hire items of plant, machinery, tools or equipment to the Customer under the Contract in addition to those detailed in the Quotation.

3.5 Unless agreed otherwise by the Company in writing Additional Works will be provided by the Company on the following basis:

3.5.1 any additional services will be provided by the Company on a time and materials basis so that Customer shall pay to the Company the full amount of any costs incurred by the Company in the course of supplying the Additional Works (including, without limitation, the full cost of any materials and other goods supplied) and the Company's charges for any such services shall be calculated in accordance with any applicable fee rates set out in the Quotation or, if no applicable rates are set out in the Quotation, the Company's standard daily fee rate in force from time to time; and

3.5.2 the charges payable by the Customer in respect of any additional items of plant, machinery, tools or equipment to be hired by the Customer shall be calculated in accordance with any applicable rates set out in the Quotation or, if no applicable rates are set out in the Quotation, the Company's standard hire charges in force in respect of the relevant item from time to time;

**4 CUSTOMER'S OBLIGATIONS**

4.1 The Customer shall:

4.1.1 co-operate with the Company in all matters relating to the Works;

4.1.2 provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Site and the Customer's

premises, office accommodation, data and other facilities as reasonably required by the Company for the purposes of providing the Works;

4.1.3 provide to the Company, in a timely manner, such information as the Company may reasonably require for the purposes of providing the Works and ensure that it is accurate in all material respects;

4.1.4 be responsible (at its own cost) for preparing and maintaining the Site for the supply of the Works;

4.1.5 provide all personnel employed by the Company in providing the Works with a full induction in relation to all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;

4.1.6 procure that Customer's premises comply with the site requirements set out at Clause 5;

4.1.7 provide, at the Customer's cost, to all personnel employed by the Company in providing the Works, welfare facilities as required under the Workplace (Health, Safety and Welfare) Regulations 1992 (including, without limitation, regulations 20, 23, 24 and 25);

4.1.8 provide at the Site and at the Customer's cost such facilities and utilities as the Company may require for the purposes of performing the Works including, without limitation, electricity, lighting, compressed air supplies and hoses, lifting equipment, cranes, rigging, and scaffolding;

4.1.9 permit the Company, where required, to deliver and store any items of Company Plant or any other items necessary for the performance of the Works to the Site prior to the agreed date for commencement of the Works;

4.1.10 inspect the Works upon completion and approve the appropriate timesheet and joint completion certificates before the Company's technicians depart from the Site. For the avoidance of doubt this obligation under this Clause 4.1.10 does not apply to Works which relate to Hired Plant.

4.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

4.3 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

4.4 Unless otherwise agreed by the Company in writing, the Company Plant shall be collected by the Customer from such location and on such date as the

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Company may notify to the Customer and shall be transported by the Customer to the Site. The Customer shall ensure that the Company Plant is stored safely and securely at all times that they are kept at the Site and in accordance with any instructions issued by the Company from time to time.

**5 SITE CONDITIONS**

5.1. The Customer shall, if required by the Company, provide to the Company, at the Customer's cost:

5.1.1 scaffolding and/ or an air supply of 140 cfm at 100 psi at the point where the Services are to be carried out at the Site;

5.1.2 such assistance as the Company may require at the Site for the purposes of off-loading, positioning and reloading any item of Hired Plant or Company Plant.

5.2 The Company shall provide its employees with adequate personal clothing and equipment to ensure their safety under normal working conditions. Special or additional equipment required due to particularly hazardous conditions will be subject to separate negotiation between the parties duly authorised representatives.

5.3 The Customer shall be responsible for ensuring that its technicians remain a safe distance as indicated by the Company from any area where any Works are being undertaken at the Site.

5.4 The Company shall be permitted to locate its vehicles as close to the area where the Works are being undertaken at the Site works as is possible consistent with site safety.

5.5 All vehicles, equipment and excess materials taken into or onto the Customer's site will at all times remain the property of the Company. Should such vehicles, equipment or material be retained by the Customer for any reason for which Company is not responsible then the Customer shall pay a daily compensation rate equal to the daily rate in the Quotation, or (if no such rates are specified in the Quotation) in accordance with the Company's standard daily rates and in the event that such vehicle equipment or material is retained for a period in excess of fourteen (14) days then the Customer shall forthwith pay compensation to the Company for such items in an amount equal to their full replacement cost, and the Customer hereby agrees to indemnify the Company for any losses (both direct and consequential) that result from the Company being unable to use the equipment, vehicles and excess material during the period of retention.

**6 HIRED PLANT**

**6.1 Hire Period**

6.1.1 Unless otherwise agreed in writing by the Company the hiring by the Customer of the Hired Plant will commence on:

(a) the date upon which the Company has notified the Customer that the Hired Plant will be available for collection; or

(b) where the Company has agreed to deliver the Hired Plant to the Customer, the date that the Hired Plant is despatched to the Customer.

6.1.2 Certain items of Hired Plant are subject to minimum hire periods as notified by the Company to the Customer and unless otherwise notified by the Company, the minimum period of hire shall be three (3) days.

6.1.3 Subject to the minimum hire period specified in Clause 6.1.2 and the terms of the Contract, the Hired Plant remains on hire until returned by or collected from the Customer in accordance with Clause 6.3.

6.1.4 The Company shall undertake to supply with the Hired Plant adequate information as to their design and conditions of and instruction for operation for compliance with its obligations under Section 6 (1) (c) of the Health and Safety at Work Act 1974.

6.1.5 The Customer undertakes that all necessary steps will be taken to ensure that the Hired Plant will be safe and without risk to health when properly used in accordance with Clause 6 (8) of the Health and Safety at Work Act 1974.

6.1.6 The Hired Plant is hired on the basis of only being used for its designated function within the limits of design and all information as detailed in the operating instructions supplied.

**6.2 Delivery**

6.2.1 Delivery of the Hired Plant shall be made either:

(a) by the Customer collecting the Hired Plant from the Company's premises; or

(b) if the Company has agreed to deliver the Hired Plant, by the Company delivering the Hired Plant (at the Customer's cost) to the Site or such other location as the Company may agree.

6.2.2 The Company will prepare a delivery and acceptance form for each item of Hired Plant which will specify the precise details of the Hired Plant. At the time of delivery or collection of the Hired Plant the said form will be signed by the Customer or by a person authorised on its behalf, and such signature shall constitute the Customer's acceptance that the Hired Plant is in good working order upon delivery.

6.2.3 The Company will use reasonable endeavours to have each item of Hired Plant available for delivery or collection on the date requested by the Customer. However, time for delivery of the Hired Plant by the Company shall not be of the essence of the Contract and any dates quoted for delivery or collection of the Hired Plant is approximate only and the Company shall not be liable for any delay in delivery howsoever caused.

6.2.4 Where the Hired Plant is to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

6.2.5 All containers and other articles enclosing or supporting the Hired Plant (postal packaging always excepted) shall remain the Company's property and

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shall be returned to the Company in their original state and condition within such time as the Company may consider reasonable, failing which the Customer shall be liable to the Company for their re-instatement value. The Company may at its option charge the Customer the whole or part of the value of such items and refund such sum or any appropriate part thereof on their return as aforesaid.

**6.3 Return**

6.3.1 On the termination or expiry by effluxion of time of the Hire Period the Customer shall, unless agreed otherwise by the Company in writing, return the Hired Plant at its own risk and expense to the Company at such place in the United Kingdom as the Company requires. The Hired Plant shall be returned in a good, safe and serviceable condition and state of repair (fair wear and tear excepted) and otherwise in the condition required under the Contract.

6.3.2 In the event that the Company agrees in writing pursuant to Clause 6.3.1 to collect the Hired Plant from the Customer it shall do so at the expense of the Customer and subject to such terms and conditions as the Company may notify to the Customer.

**6.4 Risk & Property**

6.4.1 Risk of damage to or loss of the Hired Plant shall pass to the Customer upon delivery and shall remain with the Customer until the Hired Plant is returned by or collected from the Customer in accordance with Clause 6.3.

6.4.2 The Hired Plant shall at all times remain the property of the Company and the Customer shall have no rights to the Hired Plant other than as hirer and the Customer shall not do or permit or cause to be done any matter or thing whereby the rights of the Company in respect of the Hired Plant are or may be prejudicially affected.

**6.5 Use**

6.5.1 The Customer may use the Hired Plant for the purposes of its business. The Hired Plant is not to be used and the Customer will not permit it to be used, for any purposes for which it is not expressly designed.

6.5.2 The Customer shall during the continuance of the hire period:

- (a) ensure that the Hired Plant is in good working order and advise the Company immediately on taking possession of any shortage, damage or faults relating to the Hired Plant;
- (b) ensure that the Hired Plant is operated properly and safely by personnel who are properly trained so to do;
- (c) indemnify the Company against all fines, penalties and liabilities imposed on the Company or arising in respect of any non-compliance or contravention of any law or regulation in the un-authorized use of the Hired Plant together with any cost or expense relating thereto incurred by the Company;

(d) bear the cost of the repair or rectification of any damage to the Hired Plant resulting from negligence or improper use of the Hired Plant by the Customer or any person permitted by the Customer to use the Hired Plant;

(e) not sell, assign, mortgage, let on hire or otherwise dispose of or part with possession of any Hired Plant or part thereof or charge the benefit of the Contract nor attempt or purport to do so;

(f) take all necessary steps at its own expense to retain and recover possession and control of any Hired Plant of which the Customer loses possession or control;

(g) notify the Company of any change in the Customer's address and upon request by the Company promptly inform the Company of the whereabouts of the Hired Plant;

(h) keep the Hired Plant at the Site;

(i) in respect of the condition and maintenance of the Hired Plant, be solely responsible at its own cost for using, cleaning, tuning and adjusting the Hired Plant solely in accordance with the operating instructions provided by the Company; and

(j) not to use or permit the Hired Plant to be used or operated in a manner contrary to any statutory provision or regulation or in any way contrary to law, having regard in particular (but without prejudice to the generality of the foregoing) to the regulations affecting maintenance and usage thereof.

6.5.3 The Customer agrees that it will not:

(a) effect any mechanical or other modification, make any alterations or additions, fit any equipment or other accessories to the Hired Plant;

(b) remove or interfere with any identification marks fixed to the Hired Plant nor attempt or purport to do so nor permit the same; or

(c) deface the paintwork or exterior of the Hired Plant nor add or erect any painting, sign writing, lettering or advertising to or on the Hired Plant.

**6.6 Export**

6.6.1 Where the Hired Plant is supplied for export from the United Kingdom, the provisions of this Clause 6.6 shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provisions of these terms.

6.6.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Hired Plant into the country of destination and for the payment of any duties on them.

6.6.3 The Company shall be responsible for arranging for testing and inspection of the Hired Plant at the Company's premises before shipment. The Company

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shall have no liability for any claim in respect of any damage caused during transit.

until the date of return or collection of the Hired Plant in accordance with Clause 6.3.

6.6.4 Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company unless otherwise agreed in writing between the Company and the Customer.

7.2.2 The hire charges shall continue to accrue and be payable by the Customer irrespective of whether the Company has agreed to a fixed hire period for the Hired Plant and irrespective of whether the Hired Plant is unavailable for use by the Customer (including, without limitation, due to any loss or damage caused to the Hired Plant) except where the unavailability of the Hired Plant is caused directly by any act or omission of the Company

6.6.5 The price payable by the Customer to the Company under these terms and conditions must be paid in the currency specified in the Company's invoice to the Customer

### **7.3 Service Charges**

## **7 CHARGES**

### **7.1 General**

7.3.1 Where it is agreed that the Services will be charged on an hourly basis charges will be made for time spent by the Company's personnel in travelling to and from the Site and time spent in respect of preparation prior to departure. Timesheets will be submitted to the Customer or the Customer's representative on a weekly basis for the necessary approval and endorsement. Where a work period is less than a week, the timesheet will be submitted prior to leaving the Site. The Company's decision relating to data inputted on timesheets will be final and binding on the Customer. In the event of any conflict between the Company's timesheets and any other information or records obtained or kept by either party in respect of hours spent by the Company and its relevant personnel in the course of performing the Services, the Company's timesheets shall prevail.

7.1.1 The price payable by the Customer for the Works shall be:

(a) in respect of any Works detailed in the Quotation, the Company's price as set out in the Quotation;

(b) in respect of any Additional Works, the price determined in accordance with Clause 3.5;

all prices quoted are valid for thirty (30) days from the date of the relevant quotation only or until earlier acceptance by the Customer, after which they may be altered by the Company without giving notice to the Customer.

7.3.2 Charges for transportation of equipment and mobilisation will be made in respect of both despatch of the relevant equipment from and return of the relevant equipment to the Company's premises.

7.1.2 Any technical support charges incurred additional to any quotation or agreement made by the Company with the Customer, shall be paid by the Customer and governed by the Company's price ruling.

7.3.3 Expenses covering meals, accommodation etc will be charged on the basis of Company's current daily rates or rates mutually agreed between the parties and specified in the Quotation.

7.1.3 Where a composite price is agreed by the Company for the provision of Works such price shall be subject to any limits or assumptions notified by the Company in respect of that price. Unless agreed otherwise by the Company in writing any Works provided by the Company that are outside of the scope of the relevant limits and/or assumptions will be charged in accordance with Clause 3.5.

7.3.4 The following additional conditions shall also apply to the provision of the Services for offshore locations:

7.1.4 Any quotation given by the Company is only applicable to locations where there is adequate access for the Company Plant and on the understanding that work can be progressed continuously upon arrival of technicians on site.

(a) the Customer will be charged mobilisation from the Company's premises to the relevant embarkation point at the Company's fixed mobilisation rates unless varied within the Quotation;

7.1.5 The Company reserves the right by giving notice in writing to the Customer at any time before commencement of the Works to increase the price of the Works to reflect any increase in cost to the Company which is beyond the control of the Company (such as, without limitation, any foreign exchange fluctuations, currency regulation, alteration of duties, significant increase in the cost of labour) any change in dates for performance of the Works, any change to the specification of the Works which is requested by the Customer, or which is due to any failure by the Customer to give the Company adequate information or instructions.

(b) the Customer shall be charged demobilisation from the relevant disembarkation point to the Company's premises, the Company's fixed demobilisation rates apply unless varied within the Quotation;

(c) the Customer shall be invoiced a minimum twelve (12) hours shift irrespective of times spent travelling to and from offshore locations; and

(d) should an early commencement be required by the Customer, the Customer shall be charged for the previous evening's accommodation and expenses at cost.

### **7.2 Hire Charges**

## **8 PAYMENT**

7.2.1 Hire charges shall accrue and be payable by the Customer from the date of delivery or collection of the Hired Plant in accordance with Clause 6.2 and

8.1 Invoices will be raised at the end of each calendar month, or on completion of Works, whichever is

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sooner, unless alternative invoicing arrangements have been agreed, in writing by the Company.

8.2 All charges payable by the Customer under the Contract are exclusive of any applicable Value Added Tax and any other tax or duty, which the Customer shall pay to the Company in addition at the applicable rate from time to time.

8.3 The Company shall use its reasonable endeavours to comply with any specific invoicing requirements of the Customer, but failure to comply shall not invalidate the invoice rendered. Any such requests must be communicated to the Company by the Customer before the commencement of the Works.

8.4 The Customer shall pay each invoice issued by the Company within thirty (30) days of the date of the invoice or within such credit terms as are agreed between the Company and the Customer in writing.

8.5 All payments due hereunder (if not made by BACS or EFT) shall be made to the Company at its address stated herein or at such other address as the Company may from time to time communicate to the Customer. Any payments sent by post shall be so sent at the risk of the Customer.

8.6 Time shall be of the essence in respect of the payment of all sums due under the Contract and the Customer shall be deemed to have repudiated the Contract if any rental or other payments shall remain unpaid for more than fourteen (14) days after becoming overdue.

8.7 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

8.7.1 cancel the Contract and suspend any further hire of the Hired Plant to the Customer and/or the provision of any further Works;

8.7.2 appropriate any payment made by the Customer to such Contracts made between the Customer and the Company as the Company may think fit notwithstanding any purported appropriation by the Customer; and

8.7.3 claim interest and/or compensation for reasonable debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the late Payment of Commercial Debts Regulations 2002.

**9 DUTIES OF THE COMPANY**

9.1 Save as provided in Clause 9.2 the Company shall during the continuance of the Hire Period:

9.1.1 pay for the cost of regular service and maintenance of the Hired Plant and the cost of any necessary repairs or replacements to the Hired Plant. The said service and maintenance shall be carried out only by the Company, its agents or subcontractors.

9.1.2 provide and pay for all Hired Plant required to be replaced through fair wear and tear or faulty manufacture; and

9.1.3 in the event an item of Hired Plant becomes temporarily unusable (other than as a result of accident damage theft or vandalism), make available

replacement Hired Plant within forty eight (48) hours (or so soon thereafter as is practical) after the receipt of notification from the Customer requesting the same.

9.2 The Company shall be under no liability in respect of any repairs or replacements of any item of Hired Plant arising from theft, wilful damage, negligence, accidental damage, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Hired Plant without the Company's approval.

9.3 The Company warrants to the Customer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Quotation and at the intervals and within the times referred to in the Quotation but any such times shall be estimates only and time shall not be of the essence for performance of the Services.

9.4 Where the Company supplies in connection with the provision of the Service any goods supplied by a third party, the Company does not give any warranty guarantee or other term as to their quality, fitness for purpose or otherwise, but shall where possible assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Company.

**10 RESERVATION OF TITLE**

10.1 The Company Plant and the Hired Plant shall at all times remain the property of the Company and the Customer shall have no rights to the Company Plant and the Hired Plant except as is expressly stated in these terms and the Customer shall not do or permit or cause to be done any matter or thing whereby the rights of the Company in respect of the Company Plant or the Hired Plant are or may be prejudicially affected.

**11 INSURANCE**

11.1 The Customer will throughout the continuance and force of the Contract without prejudice to the liability of the Company keep the Hired Plant (including any replacement Hired Plant provided under Clause 9 above) insured with an insurance company of good repute against loss or damage from all risks including third party risk in an amount equal to the new replacement value of the Hired Plant. The Customer shall notify it's insurers that the Hired Plant is on hire from the Company and request the insurers to endorse a notice that shall rest on the policy of insurance naming the Company as loss payee, shall on demand show to the Company the policy of insurance premium receipts and the insurance certificate and shall not use or allow the Hired Plant to be used for any purposes not permitted by the terms and conditions of the policy of insurance or do or allow to be done any act or thing whereby the insurance may be invalidated. The Customer shall indemnify the Company against all loss or damage to the Hired Plant not recoverable under the policy of insurance.

11.2 Where any event or accident shall occur which is a risk covered by the Customer's insurance under Clause 11.1, the Customer shall immediately notify the Company thereof, shall not compromise any claim without the consent of the Company and shall allow the Company to take over the conduct of negotiations (except in relation to claims of the Customer for personal injuries, loss of use of the Hired Plant or

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damage to the property of the Customer and connected with the Hired Plant) and shall at the expense of the Customer take such proceedings as the Company shall direct holding all sums recovered together with any monies received by the Customer under its policy of insurance on trust for the Company and paying or applying the same as the Company directs and as herein provided.

11.3 If any of the Hired Plant is declared by the Company (in its reasonable opinion) to be a total loss:

11.3.1 the Company may at its absolute discretion:

(a) terminate the Contract in relation to the affected item of Hired Plant with immediate effect by giving written notice to the Customer; or

(b) replace the affected item of Hired Plant for the remainder of the hire period, subject to these terms and conditions;

11.3.2 the Customer shall pay to the Company not later than thirty (30) days of the date upon which the total loss of the Hired Plant occurred:

(a) an amount equal to the sum determined by the Company to be the new replacement value of the relevant item of Hired Plant; and

(b) in the event that the Company terminates the Contract under Clause 11.3.1 (a), all hire charges that would have become payable by the Customer to the Company in respect of that item of Plant under the Contract had the Contract not been terminated.

11.4 the Company shall apply any proceeds of insurance received by it in respect of the Hired Plant at its option:

11.4.1 towards a replacement of equivalent value; or

11.4.2 in or towards payment to the Company in respect of any sums payable to the Company in respect of that item of Hired Plant under the Contract.

## **12 LIABILITY**

12.1 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special, consequential loss or damage (whether for loss of profit, goodwill or turnover or otherwise), costs, expenses, revenue anticipated savings or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees, agents or otherwise) which arise out of or in connection with the Works or their use by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the total price payable by the Customer under the Contract in respect of the Works or two hundred and fifty thousand (£250,000.00) pounds (whichever is the lower) save as otherwise expressly provided in these terms.

12.2 The Company shall not be liable for any delay or non performance of its obligations which is caused wholly

or partly by reason of an act of God, delay in transportation, labour disputes, fire, flood, war, accident, government action, inability to obtain adequate labour, materials, manufacturing facilities, or energy or any other cause beyond the Company's control or that of its servants or agents, and if the delay or failure has continued for a period of three months then either party may terminate the Contract without prejudice to any rights which may have accrued prior to such termination.

12.3 The Company shall have no liability to the Customer for any loss, damage, cost, expense or other claims for compensation arising from any information, documents, materials or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, arising from their late arrival or non-arrival or any other fault of the Customer.

12.4 The Customer acknowledges that:

12.4.1 the Hired Plant was selected by the Customer; and

12.4.2 each item of Hired Plant is satisfactory to the Customer and for any intended use of each item of Hired Plant by the Customer.

12.5 The Customer shall be solely responsible for and hold the Company fully indemnified against all claims demands liabilities losses damages proceedings costs and expenses which may be brought against or incurred by the Company as a result of:

12.5.1 the use or operation (or attempted operation) of the Hired Plant (other than death or personal injury resulting from the negligence of the Company its employees or agents);

12.5.2 any breach or default on the part of the Customer of its obligations under the Contract;

12.5.3 loss of or damage to the Hired Plant at any time whilst it is in the possession of or under the control of the Customer;

12.5.4 loss of or damage to the Company Plant at any time whilst it is located at the Site or at any time whilst it is in the possession of or under the control of the Customer (other than resulting from the negligence of the Company its employees or agents) including without limitation pursuant to Clause 4.4 and Clause 13.6;

12.5.5 preventing or attempting to prevent the arrest, confiscation, seizure, taking in execution, impounding, forfeiture or detention of any item of Plant or in securing or attempting to secure the release of any item of Hired Plant.

12.6 The Company does not hire the Hired Plant subject to any condition or warranty express or implied by law in connection with the fitness for any purpose of the Hired Plant and any conditions and warranties are hereby expressly excluded so far as permitted by law and (save for the Company's liability for death or personal injury caused by the Company its employees or agents) the Company will not be responsible for any liability claim loss damage or expense of any kind or nature caused directly or indirectly by the Hired Plant or its use.

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- 12.7 The Customer shall be fully responsible for and hold the Company fully indemnified against all claims demands liabilities losses damages proceedings costs and expenses so incurred by the Company as a result of any breach or default on the part of the Customer and the discharge of its obligations under this Contract.
- 13 CANCELLATION AND TERMINATION**
- 13.1 The Customer shall not without the prior written consent of the Company be entitled to cancel the Contract and if the Customer purports to do so it shall indemnify the Company for all losses, costs and expenses incurred by the Company in relation to the Contract.
- 13.2 If the Customer shall:
- 13.2.1 fail to pay any rent or other sum payable under this Contract (or under any other agreement between the Company, any subsidiary of the Company, any holding company of the Company, or any subsidiary and the Customer) within fourteen (14) days of its becoming due (whether demanded or not); or
- 13.2.2 commit a breach of any of the terms and conditions (whether expressed or implied) of the Contract; or
- 13.2.3 do or allow to be done any act or thing which in the opinion of the Company may jeopardise the Company's rights in the Company Plant or the Hired Plant or any part thereof.
- Then in each and every such case the Customer shall be deemed to have repudiated this Contract and the Company may at any time thereafter by notice in writing to the Customer for all purposes forthwith terminate the Contract.
- 13.3 If any of the following events shall occur namely:
- 13.3.1 if any distress, execution or other legal process shall be levied on or against the Hired Plant thereof or against any premises where the same may be or against any of the Customer's goods or other property or the Customer shall permit any judgement against it to remain unsatisfied for seven (7) days;
- 13.3.2 if the Customer shall then turn to any liquidation and shall call any meeting of the creditors or shall have a receiver or receiver manager or any of its undertaking assets appointed shall suffer the appointment of the presentation of a petition for the appointment of an administrator under the provisions of Part 2 of the Insolvency Act 1986, or shall be deemed by virtue of Section 123 of the Insolvency Act 1986 to be unable to pay its debts; or
- 13.3.3 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 Clauses 13.3.1 and 13.3.2;
- then in each and every such case the Contract shall without notice terminate and no payments subsequently accepted by the Company without knowledge of such termination shall in any way prejudice or affect the operation of this Clause.
- 13.4 The Customer shall upon any termination under this Clause 13 pay to the Company:
- 13.4.1 all arrears of sums due to the Company under the Contract and all other sums accrued due and unpaid at the date of termination;
- 13.4.2 the cost of all repairs to the Hired Plant required as at the date of termination (other than those for which the Company has assumed responsibility under Clause 9 above); and
- 13.4.3 any other sums which are or become due to the Company or to which the Company is entitled by way of damages.
- 13.5 The termination of the Contract shall not affect any rights of the Company or liabilities of the Customer subsisting at the date of termination.
- 13.6 On termination of the Contract howsoever or whenever occasioned or on expiry of the Hire Period, the Customer shall no longer be in possession of the Hired Plant with the Company's consent and shall (unless otherwise agreed with the Company) forthwith return the Hired Plant (including any handbook and operating instructions) and the Company Plant to the Company in accordance with Clause 6.3.
- 13.7 Without prejudice to the foregoing or to the Company's claim for any arrears of charges or damages for any breach by the Customer of the Contract or any other rights hereunder, the Company or its authorised representatives may at any time after such termination or expiry of the Contract without notice retake possession of the Hired Plant and/or the Company Plant and for such purposes enter upon the Site or any premises belonging to or in the occupation or control of the Customer and the Customer shall be responsible for all costs charges and expenses so incurred in retaking possession of the Hired Plant and/or the Company Plant as aforesaid. The Customer shall also bear the reasonable costs incurred by the Company at any time in ascertaining the whereabouts of the Hired Plant and/or the Company Plant.
- 14 CONFIDENTIALITY & INTELLECTUAL PROPERTY**
- 14.1 Both the Company and the Customer shall keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations or other communications between them relating to the Contract.
- 14.2 All copyright, design right, know-how and all other intellectual property rights created by or used by the Company in relation to the Contract (including, without limitation, all intellectual property rights in the Hired Plant and the Company Plant) shall remain vested and belong absolutely to the Company. The Customer shall have a licence to use the same only for the purpose of using the Hired Plant. Any drawings, designs and/or proposals submitted by the Company for approval shall remain the property of the Company and shall be treated by the Customer as strictly confidential and shall not be divulged to third parties without the Company's prior written consent.
- 14.3 The Customer warrants that any design instruction or specification given to the Company by or on its behalf shall not infringe any intellectual property rights of any third party.



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**15 ANTI-BRIBERY AND CORRUPTION**

- 15.1 In obtaining this Contract, the Customer warrants that the Customer Group has not done, and in performing its obligations under the Contract, the Customer shall procure that Customer Group shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations.
- 15.2. The Customer warrants and undertakes that the Customer Group shall comply with, and shall procure that any Customer Personnel involved in performing the Contract shall comply with, the ABAC Policy.
- 15.3. The Customer shall immediately notify the Company in writing on becoming aware of, or suspecting, any failure to comply with any provision of this Clause 15.
- 15.4. Any failure by the Customer to comply with any provision of this Clause 15 shall entitle the Company to terminate the Contract immediately at no cost, liability or penalty to the Company and without prejudice to any other rights or remedies that may have accrued to the Customer's benefit under or in connection with the Contract.

**16. GENERAL CONDITIONS**

- 16.1 Any notice required or permitted to be given by either party to the other under these terms shall be given in writing and addressed to the other party at its registered office, principal place of business or at such other address that may be notified to the other party from time to time.
- 16.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver and any subsequent breach of the same or any other provision.
- 16.3 The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group.
- 16.4 The Company shall be entitled to subcontract the whole or any part of its obligations under the Contract to any third party which it may in its absolute discretion determine but any subcontract shall not relieve the Company of its obligations hereunder.
- 16.5 If any provision of these terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and the remainder of the provisions in question shall not be affected.
- 16.6 A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Contract.
- 16.7 The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.