

AMARINTH LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

The Buyer's attention is in particular drawn to the provisions of conditions 4.5 and 13.5.

I. Interpretation

I.1 In these Conditions the following words have the following meanings:

- **the Buyer:** the person(s), firm or company who purchases the Goods and/or Services from the Company;
- **Cancellation Fees:** the cancellation fees set out in Schedule 2;
- **the Company:** Amarith Ltd, a company registered in England and Wales with company number 04525158 and whose registered office is located at Bentwaters Parks, Rendlesham, Woodbridge, Suffolk IP12 2TW;
- **Conditions:** these terms and conditions as amended from time to time in accordance with condition 22.8;
- **Contract:** the contract between the Company and the Buyer for the sale and purchase of the Goods and/or Services, incorporating and in accordance with these Conditions;
- **delivery:** has the meaning given in condition 4.2;
- **Delivery Point:** the place where delivery of the Goods is to take place under condition 4;
- **Force Majeure Event:** has the meaning given in condition 15.1;
- **Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
- **Insolvency Event:** means in respect of either party any action, proceedings, procedure or step is taken for:
 - (a) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise); or
 - (b) the composition, compromise, assignment or arrangement with any creditor; or
 - (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of a party or any of its assets; or
 - (d) the other party (being an individual) is the subject of a bankruptcy petition or order; or
 - (e) any event occurs in relation to a party similar to those in (a) to (d) (inclusive) under the laws of any applicable jurisdiction;
- **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights owned or used by the Company, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- **Jobsite:** the location where any Services are to be supplied as set out in the Order or Service Specification;

- **Offshore Rates:** the offshore rates for the supply of the Services as set out in Schedule I;
- **Onshore Rates:** the onshore rates for the supply of the Services as set out in Schedule I;
- **Order:** the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's purchase order form, or the Buyer's written acceptance of the Company's quotation or overleaf, as the case may be;
- **Overtime Rate:** the overtime rates which apply to both offshore and onshore supply of Services, as set out in Schedule I;
- **overseas:** any location outside of the United Kingdom;
- **Personnel:** the personnel supplied by or on behalf of the Company for the supply of the Services;
- **Rates:** together the Offshore Rates and the Onshore Rates or individually as the context requires;
- **Services:** the services, supplied by the Company to the Buyer, as set out in the Service Specification;
- **Service Specification:** the description or specification for the Services provided in writing by the Company to the Buyer.

1.2 Construction.

In these Conditions, the following rules apply:

- 1.2.1 references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
- 1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires; and
- 1.2.4 a reference to writing or written includes faxes and emails; and
- 1.2.5 headings are for reference only and will not affect the construction of these Conditions.

1.3 In the event of a conflict between the terms set out in these Conditions, any Contract documentation provided to the Buyer or any industry standards which apply, the following order of precedence shall apply:

- 1.3.1 the terms set out in the Order;
- 1.3.2 the terms set out in these Conditions;
- 1.3.2 the terms set out in the Pumps Data Sheet;
- 1.3.3 the terms set out in the Service Specification and/or the Goods specification;
- 1.3.4 the Engineering Standards and Specification;
- 1.3.5 the International Codes and Standards for the industry in which the Company operates (e.g. ASTM's, API's, BS' etc.)

2. Application of terms and formation of the Contract

- 2.1 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 No Order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of Order is issued by the Company or (if earlier) the Company delivers the Goods or supplies the Services to the Buyer.
- 2.3 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 2.4 These Conditions apply to the exclusion of all other terms and conditions (including without limitation, any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing).

- 2.5 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 These Conditions apply to all the Company's sales of Goods and Services and any variation to these Conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a director of the Company. Nothing in this Condition will exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.8 The Buyer must ensure that the terms of its order and any applicable specification, including but not limited to the Service Specification are complete and accurate.
- 2.10 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Unless otherwise stated in the Company's quotation, any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. Description of Goods and/or Services

- 3.1 The description of the Goods and/or Services shall be as set out in the Company's quotation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations of the Goods and/or Services contained in the Company's catalogues or brochures from time to time are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They will not form part of this Contract or have any contractual force.
- 3.3 The Company reserves the right to amend the specification of the Goods and/or Services if required by applicable statutory or regulatory requirements.

4. Delivery of Goods

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business (the "**Delivery Point**").
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival or being made available at the Delivery Location ("**delivery**").
- 4.3 If the Buyer requires the Company's assistance in loading the Goods on the Buyer's or its hauliers lorries this must be arranged with the Company in advance of delivery. Any loading of the Buyer's or its hauliers lorries will be at the sole risk of the Buyer. The Company will only be required to follow any reasonable instructions for loading provided to it by the driver of the lorry at the time of loading and the Company will not be liable in any way for the loading of the lorry including but not limited to any unsafe or incorrectly loaded packages of Goods.
- 4.3 The Buyer will take delivery of the Goods within 10 days of the Company giving it notice that the Goods are ready for delivery.
- 4.4 Any dates specified by the Company for delivery of the Goods are intended to be an estimate only and the time of delivery is not of the essence. If no dates are so specified, delivery will be within a reasonable time of the Contract being formed.
- 4.5 Subject to the other provisions of these Conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.6 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);

- (b) the Goods will be deemed to have been delivered at 9:00 am on the first Business Day following the day on which the Company notified the Buyer that the Goods were ready; and
 - (c) the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.7 If 30 Business Days after the Company notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 4.8 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.
- 4.9 The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event.

5. Non-delivery of Goods

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 days of the date when the Goods are delivered in accordance with condition 4.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods. If the Company fails to deliver the Goods, its liability shall be limited to the reasonable costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 5.4 The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or, the Buyer's failure to provide the Company with any relevant instruction related to the supply of the Goods.

6. Quality

- 6.1 Where the Company is not the manufacturer of the Goods or any parts comprising of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company of those Goods or parts. For the avoidance of any doubt, all such Goods and/or parts of the Goods will only be warranted or guaranteed to the extent of the warranty or guarantee given by the manufacturer and which is still valid.
- 6.2 The Company warrants that (subject to the other provisions of these Conditions) for a period of 12 months from installation of the Goods or 18 months from the date of delivery, whichever is the earlier, the Goods will:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - (b) be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company;
 - (c) conform with their description;
 - (d) be free from material defects in design, material and workmanship.
- 6.3 The Company shall not be liable for a breach of any of the warranties unless:

- (a) the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

6.4 The Company shall not be liable for a breach of any of the warranties set out in condition 6.2 above if:

- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company; or
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
- (f) the Goods or any parts comprising of the Goods are not manufactured by the Company (though the Company will use its reasonable endeavours to pass on to the Buyer the benefit of any manufacturer's warranty or guarantee which is given).

6.5 Subject to clause 6.4 if any of the Goods do not conform with any of the warranties set out in this condition 6, the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

6.6 If the Company complies with condition 6.5 above, it shall have no further liability for a breach of any of the warranties set out in this condition 6 in respect of such Goods.

6.7 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on the terms of this condition 6 for the unexpired portion of the warranty period specified in condition 6.2 above.

7. Risk/title

7.1 The Goods are at the risk of the Buyer from the time of delivery.

7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company;

- (e) hold the proceeds of the insurance referred to in condition 7.3(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account;
- (f) give the Company such information relating to the Goods as the Company may require from time to time.

7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

7.5 The Buyer's right to possession of the Goods and its right to resell the Goods or use them in the ordinary course of its business shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- (c) the Buyer encumbers or in any way charges any of the Goods.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

8. Supply of Services

8.1 The Company shall provide the Services to the Buyer in accordance with the Service Specification in all material respects.

8.2 The Company shall use its reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Buyer in any such event.

8.4 The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.

8.5 The Company shall be entitled to charge the Buyer for any expenses reasonably incurred by the Personnel including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials, as set out in this condition 8.

8.6 All Personnel supplied to the Buyer for the provision of the Services either overseas or offshore, where the Personnel have to travel for more than 8 hours from the Personnel's home address to the Jobsite, will be entitled to:-

- (a) an 8 hour period of "acclimatisation" for overseas work once they arrive at the location of the Jobsite before being required to start work; and
- (b) a 10 hour period of "acclimatisation" for offshore work once they arrive at the location of the Jobsite before being required to start work.

The 8 and 10 hour periods referred to in this condition are chargeable to the Buyer as part of the price of the Services at the applicable Rate.

8.7 The Buyer is responsible for providing:

- (a) clear written instructions detailing the scope of the work required as part of the provision of the Services;
- (b) suitable labour to assist the Personnel;
- (c) suitable tools and/or identifying any tools that the Company needs to supply in order to supply the Services;
- (d) a safe working environment at the Jobsite;
- (e) suitable security for the Personnel whilst staying in the region and at the Jobsite;
- (f) food, accommodation, assistance with obtaining visa's and site passes for the supplied Personnel unless otherwise agreed; and
- (g) the safe extraction of the Personnel from the region in the case of unrest or disaster.

8.8 The Company reserves the right, without the Buyer's agreement, to refuse to send Personnel where the Company considers that there may be a risk to the Personnel in its sole discretion. In such circumstances the Company reserves the right to suspend the Contract for such period as it deems necessary or to terminate the Contract immediately on notice without liability.

8.9 The Personnel shall be allowed, at any time, to withdraw from the Jobsite for any reason. The decision to do so is at the sole discretion of the Personnel and in any such instance the Company is not liable for any resulting costs arising from the Personnel withdrawing in these instances and/or for the Company not being able to supply the required Services as a result of this.

8.10 The Company reserves the right to substitute any of its supplied Personnel at any time for any reason.

8.11 Tools or replacement parts are not included in the price for the Services and if required will be charged for separately.

8.12 The Company and/or its Personnel will notify the Buyer as soon as reasonably practicable in the event that they are unable to attend the Jobsite during the provision of the Services for any reason.

8.13 Where any Personnel are required to travel abroad to the Jobsite, the Buyer shall be responsible for the costs of any necessary insurances, inoculations and immigration requirements.

Working Day

8.14 The standard maximum working day for any Personnel providing the Services is 8 hours for onshore work, and 10 hours for offshore work. Additional time will be rounded up to the next whole hour and charged at the Overtime Rates set out in condition 9.4 and Schedule 1.

8.15 Any Services being supplied over local weekends and public holidays will be charged at 150% of the applicable Rate.

8.16 The Buyer will be charged at 150% of the applicable Rate where Services to be supplied over local weekends and public holidays are unable to be supplied due to there being insufficient local labour to assist the Personnel in its supply of the Services.

8.17 The Personnel who are providing the Services may decline to work in excess of 10 hours per day. Where any Personnel so decline, the Company will not be deemed to be in breach of the Contract or liable to the Buyer in any way.

8.18 If, for reasons beyond the Company's control, its Personnel are unable to work, the normal daily applicable Rate will still apply and will be charged to the Buyer until the Contract is terminated.

Travel, preparation and waiting charges of supplied Personnel

- 8.19 Onshore Rates will be applied and charged to the Buyer as part of the charges for the provision of Services for:
- (a) Local travelling;
 - (b) Obtaining accommodation;
 - (c) Registration with local authorities;
 - (d) Preparation of, and waiting for, site passes and visas;
 - (e) Any unforeseen travel delays, for example, but not limited to, any delayed trains or flights;
 - (f) Any absence of any Personnel from the Jobsite where they have fallen sick during their supply of the Services.
- 8.20 Daily travel between the hotel and the Jobsite where the Services are being supplied which, for the avoidance of any doubt, is deemed to be working time, however the Buyer will not be charged at the Overtime Rates for time spent travelling.
- 8.21 All travel, accommodation and subsistence costs are chargeable to the Buyer and will be invoiced by the Company to the Buyer at cost plus a 15% administration charge. In the event that it is agreed that the Buyer will book any Personnel's travel fares, this must be with a reputable airline which is pre-approved by the Company. Subsistence costs will apply during travelling and whilst the Personnel are on the Buyer's Jobsite.
- 8.22 Air travel will be economy class. Train journeys will be first class.
- 8.23 All charges for the supply of Services commence upon departure from the Personnel's home - usually in the UK - and terminate upon their return to it.
- 8.24 Maximum duration of mobilization of the Company's Personnel will not exceed 14 calendar days, after which rotation of service Personnel is required, with two days overlap. All charges for the rotation will be invoiced at the appropriate Rates, as set out in Schedule I.

Site accommodation, subsistence and communications for Personnel

- 8.25 Personnel should be provided with private room accommodation meeting acceptable standards in safety and cleanliness, and with suitable bathing facilities.
- 8.26 Personnel shall be fed by the Buyer, at its sole cost, whilst they are working at the Jobsite.
- 8.27 Suitable communication facilities (telephone, facsimile and/or email) should be made available to Personnel at no charge. If no communications facilities are available, the Company will provide the necessary equipment e.g. ATEX satellite devices which will be payable by the Buyer. The Company will invoice the Buyer for such supply at cost plus a 15% administration fee.

9. Delay

- 9.1 Should the supply of Goods and/or Services be delayed for any reason, at any time during the term of the Contract, for a period of not less than 3 months then notwithstanding any other term of the Contract the Company reserves the right to seek an interim payment from the Buyer for its costs incurred up to the point of the delay.

10. Price

- 10.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's quotation.
- 10.2 The price for the Goods shall be exclusive of any value added tax, or any other local tax or duties that may be imposed on the basis of local law and any local tax income and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

- 10.3 The charges for Services shall be on a time and materials basis and shall be calculated in accordance with the Company's Rates (as amended each year), as set out in the attached Schedule I at such Rates which apply at the date the Services will be supplied.
- 10.4 The Company shall be entitled to charge an Overtime Rate for the supply of the Services which are provided outside of the normal working day as detailed in conditions 8.14 to 8.18 (inclusive) and Schedule I. In addition the Company shall be entitled to charge for the expenses reasonably incurred by the Personnel as set out in this Agreement.

11 Payment

- 11.1 In respect of Goods, the Company shall invoice the Buyer on or at any time after completion of delivery.
- 11.2 In respect of Services, the Company may require the Buyer to pay a proportion of the anticipated Contract price prior to the despatch of the Company's Personnel to the Jobsite. Where this is required it will be set out in the Order.
- 11.3 Invoices for Services will:
- (a) include a breakdown of the costs incurred into categories.
 - (b) not include any original separate invoices. Copies of original invoices and time sheets can be furnished to substantiate the costs incurred on request.
- 11.4 In respect of the Services, in certain countries the local customs require expenditure to be made that cannot be substantiated. These costs will also be invoiced to the Buyer in respect of the Services and payable accordingly.
- 11.5 The Rates for the Services do not include any local income tax, or any other local tax or duties that might be imposed on the basis of local law. Where applicable, the Buyer agrees to reimburse the Company for any local taxes imposed by any local authorities outside of the United Kingdom. A 15% administration fee of the total of these costs will also apply and be payable by the Buyer.
- 11.6 Unless otherwise agreed by the Company, payment of the price for the Goods is due prior to the date of despatch of the Goods to the Buyer.
- 11.7 Time for payment shall be of the essence.
- 11.8 No payment shall be deemed to have been received until the Company has received cleared funds to a bank account nominated in writing by the Company.
- 11.9 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 11.10 The Buyer shall make all payments due under the Contract in pounds sterling and without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 11.11 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Buyer shall pay the interest together with the overdue amount.
- 11.12 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**") and, where there Services are carried out overseas any local taxes and duties incurred by the Company. Where any taxable supply for VAT or other local tax purposes is made under the Contract by the Company to the Buyer, the Buyer shall, on receipt of a valid VAT and/or local tax/duty invoice from the Company, pay to the Company such additional amounts in respect of VAT and/or local taxes/duties as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of the Goods or Services.
- 11.13 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.
- 11.14 Where a Contract for the supply of Goods or Services is cancelled prior to the date of delivery of the Goods or Services, the Buyer shall be liable to pay to the Company the Cancellation Fees.

12. Buyer's Obligations

12.1 The Buyer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Company in all matters relating to the Services;
- (c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Jobsite and other facilities as reasonably required by the Company to provide the Services;
- (d) provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Jobsite, for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property of the Company ("**Company Materials**") at the Buyer's premises or Jobsite in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

12.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):

- (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure to delay to perform any of its obligations as set out in this condition 12.2(b); and
- (c) the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

13. Limitation of liability

13.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these Conditions; and
- (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

13.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.4 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

13.5 Subject to condition 13.4:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the

- performance or contemplated performance of this Contract shall be limited to the total Contract price; and
- (b) the Company shall not be liable to the Buyer under any circumstances, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

14. Assignment

- 14.1 Subject to clause 14.2, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the consent of the other party, such consent not to be unreasonably withheld or delayed.
- 14.2 The Company may subcontract or delegate in any manner any or all of its obligations in respect of its supply of Services under the Contract to any third party.

15. Force majeure

- 15.1 The Company reserves the right to defer the date of delivery of the Goods and/or Services or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer or cease the supply of the Services (without liability to the Company) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials ("**Force Majeure Event**") provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer or Company shall be entitled to give notice in writing to the other party to terminate the Contract.

16. Intellectual Property Rights

- 16.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by the Company.
- 16.2 The Buyer acknowledges that in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to licence such rights to the Buyer.
- 16.3 All Company Materials are the exclusive property of the Company.

17. Confidentiality

- 17.1 A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this condition as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 17.2 The provisions of this condition 17 shall survive for a period of five years from termination of the Contract.

18. Termination

- 18.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to agree within 30 days after receipt of notice in writing of the material breach a remedy with the other party for how it proposes to remedy the breach. For the avoidance of any doubt, the agreed solution for how the breach is to be remedied shall be actioned as soon as reasonably practicable after it has been agreed between the parties in accordance with this condition;
 - (b) the other party suffers an Insolvency Event;
 - (c) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 18.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment or decides, in its sole discretion to withdraw the Personnel from the Jobsite for any reason.
- 18.3 Without limiting its other rights or remedies, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Company if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to an Insolvency Event, or the Company reasonably believes that the Buyer is about to become subject to any of them.
- 18.4 On termination of the Contract for any reason:
- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied by the Company for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
 - (b) the Buyer shall return all of the Company Materials and any deliverables which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
 - (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - (d) conditions which expressly or by implication have effect after termination shall continue in full force and effect.

19. Communications

- 19.1 All communications between the parties about the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by fax transmission or sent by email:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company or if being sent by fax or email, to such fax number or email address as is notified to the Buyer by the Company from time to time; or
 - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to

the Company by the Buyer or if being sent by fax or email, to such fax number or email address as is notified to the Company by the Buyer from time to time.

19.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- (b) if delivered by hand, on the day of delivery;
- (c) if sent by fax transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day;
- (d) if sent by email at the time of the sender receiving a "receipt" from the recipient.

19.3 Communications addressed to the Company shall be marked for the attention of Oliver Brigginsshaw.

20. Non-Solicitation

20.1 The Buyer undertakes that it will not:

- (a) for 12 months after the date of completion of the supply of the Services, offer to employ or engage or otherwise endeavour to entice away from the Company or any member of the Company's group any Restricted Person;
- (b) for a period of 12 months from the date of completion of the supply of the Services, employ or engage or otherwise facilitate the employment or engagement of any Restricted Person, whether or not such person would be in breach of contract as a result of such employment or engagement.

For the purposes of this condition 20 a "Restricted Person" is anyone employed or engaged by the Company or a member of the Company's group and with whom the Buyer dealt with in the last 12 months as a result of purchasing Goods and/or Services from the Company.

21. ARBITRATION

21.1 ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THE CONTRACT, INCLUDING ANY QUESTION REGARDING ITS BREACH, EXISTENCE, VALIDITY OR TERMINATION OR THE LEGAL RELATIONSHIPS ESTABLISHED BY THE CONTRACT, SHALL BE FINALLY RESOLVED BY ARBITRATION. IT IS AGREED THAT:

- (A) THE TRIBUNAL SHALL CONSIST OF ONE ARBITRATOR (WHO IS TO BE A RECOGNISED SPECIALIST IN MECHANICAL ENGINEERING AND A MEMBER OF THE INSTITUTE OF MECHANICAL ENGINEERS);
- (B) IN DEFAULT OF THE PARTIES' AGREEMENT AS TO THE ARBITRATOR(S), THE APPOINTING AUTHORITY SHALL BE THE CHARTERED INSTITUTE OF ARBITRATORS IN LONDON;
- (C) THE SEAT OF THE ARBITRATION SHALL BE LONDON;
- (D) THE LAW GOVERNING THIS ARBITRATION AGREEMENT SHALL BE ENGLISH; AND
- (E) THE LANGUAGE OF THE ARBITRATION SHALL BE ENGLISH.

22. General

22.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

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- 22.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 22.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 22.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 22.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 22.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 22.7 No part of the Contract constitutes any form of employment between the Personnel and the Buyer.
- 22.8 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Company.

SCHEDULE I

site attendance rates

Rates

Please request document MPI200-100 - Site attendance rates - Amarith standard, for an up to date listing of our site attendance rates.

Schedule 2

Cancellation Fees

The graph set out below is the basis for determining “Cancellation Fees” as a percentage of the Contract delivery time. The date of cancellation will be taken from the receipt of a written instruction from the Buyer.

Driver manufacturers’ charges are separate unless otherwise stated.

The minimum cancellation charge of 10% applies after the Order or the Buyer's written confirmation to proceed has been received through the Company's internal Contract hand-over process.

