



CW Fletcher & Sons Limited  
General Conditions of Purchase

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## 1. Definitions and Interpretation

1.1 In these terms and conditions ("Conditions") the words and expressions below will have the following meaning: -

**"Confidential Information"** any and all information acquired by the Supplier about the business of the Customer and/or given by the Customer to the Supplier and/or generated by the Supplier from such information which may include aspects of Customer Property;

**"Contract"** the agreement between the Customer and the Supplier for the sale and purchase of the Goods and/or Services incorporating these Conditions and the documents referred to in these Conditions;

**"Control"** as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly;

**"Customer"** C W Fletcher & Sons Limited a company registered in England and Wales with registered number 97913 and whose registered address is C W Fletcher & Sons Limited, Sterling Works, Mansfield Road, Wales Bar, Sheffield S26 5PQ, United Kingdom;

**"Customer IPR"** as defined in condition 10.2

**"Customer Property"** any designs, samples, drawings, technical data, Specifications, raw materials, part manufactured products, tools, gauges, packaging materials, data and/or any other materials provided by the Customer to the Supplier and/or any jigs, tooling, equipment and/or other materials in respect of which the Customer has made a contribution to costs of such items;

**"Deliverables"** the products of the Services in any media, including any documents, products and/or materials developed for the Customer as part of the Services;

**"Goods"** the goods which the Supplier is to supply to the Customer as agreed in the Contract and which may be described in the Order including any Deliverables;

**"Intellectual Property Rights"** patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of such rights and all rights of action for infringement of 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;

**"IPR Claim"** as defined in condition 11.1;

**"Liability"** all liabilities, awards, costs, demands, expenses, claims, damages, losses (including without limitation any direct, indirect or consequential losses, loss of profits, loss of reputation, judgments, proceedings and all penalties, interest and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) and any other losses and/or liabilities suffered or incurred;

**"Operational Documents"** any operational supply agreement between the parties and/or the Customer's operational documents referred to or set out in the Order;

**"Order"** the Customer's written instruction to supply the Goods and/or Services;

**"Records"** as defined in condition 12.1;

**"Release Requirements"** the release requirements (if any) specified or referred to in the Order;

**"Services"** the services which the Supplier is to supply to the Customer (if any) as agreed in the Contract and which may be described in the Order, including the provision of any Deliverables;

**"Specification"** the:

(a) relevant specification(s) referred to or set out in the Order; and

(b) where relevant, the Project Specific Terms, Conditions and Requirements set out in Annex A to these Conditions; and

(c) where relevant, the Quality Assurance Requirements set out in Annex B to these Conditions;

**"Supplier"** the person to whom the Order is addressed; and

**"Working Day"** any day during the Customer's usual opening hours which is not a Saturday, Sunday or bank or public holiday in England.

1.2 In these Conditions:

1.2.1 reference to 'writing' or similar expression shall include reference to any communication

- effected by facsimile, electronic mail and/or any comparable means but shall not include communication by SMS or similar text messaging facilities;
- 1.2.2 reference to a prohibition against doing any act or thing includes a reference to not permitting, suffering or condoning that act or thing to be done;
  - 1.2.3 use of words such as “including”, “include”, “in particular” or similar terms are to be construed in each case as if the term “without limitation” is implied into the sentence incorporating these words.
  - 1.2.4 Reference to a party includes that party’s successors and permitted assigns;
  - 1.2.5 Words indicating a person shall include bodies or persons whether corporate or incorporate and vice versa;
  - 1.2.6 Reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted or consolidated and all subordinate legislation made pursuant to it and including any other similar legislation in any other jurisdiction.
- 1.3 The phrase “and/or” means either of the alternatives and both of the alternatives as the case may be.
  - 1.4 Where a party incurs an obligation under these Conditions and such obligation is created by the use of words such as “shall”, “will”, “undertakes to”, “must”, “agrees to” or any other verb which implies that a party has so incurred such obligation, it is agreed that all obligation shall not be distinguishable from one another by reason only of the verb used when creating such obligation.
  - 1.5 Any reference to “procure” or “ensure” shall create a primary obligation and not a secondary obligation or guarantee.

## **2. Application**

- 2.1 These Conditions and any terms and conditions stated on any Order or contained in any document referred to in these Conditions are the only terms and conditions upon which the Customer shall purchase Goods and/or Services and shall apply to the exclusion of all other terms and conditions including any terms or conditions specified or referred to in any document or materials (including any quotation and/or acknowledgement form) issued by the Supplier, or which are implied by trade, custom, practice or course of dealing.
- 2.2 No terms or conditions submitted or referred to by the Supplier (whether before or after the date of the Order) in any documentation or orally shall change, modify, supplement, explain or form part of the Contract unless expressly agreed in writing by authorised representatives of the Customer.
- 2.3 No variation to the Contract shall be binding unless in writing signed by an authorised representative of each party.
- 2.4 Any error or omission in any offer, Order or other document, material or information issued by the Customer shall be subject to correction without any Liability on the part of the Customer.
- 2.5 The Supplier agrees to supply the Goods and/or Services to the Customer in accordance with these Conditions in consideration of Payment of the price by the Customer.
- 2.6 Subject to condition 2.10, each Order shall be an offer to the Customer to Purchase the Goods and/or Services subject to these Conditions and the documents referred to in these Conditions.
- 2.7 The Contract will become legally binding only when the Supplier has accepted the Order. The Supplier will be deemed to have accepted the Order at the earlier of when the Supplier has notified the Customer in writing of its acceptance of the Order, when the Supplier is deemed to have accepted the Order in accordance with condition 2.9 or when by its actions the Supplier does any act consistent with commencing performance of the Order.
- 2.8 The Customer may alter or withdraw any Order at any time for any reason prior to acceptance by the Supplier.
- 2.9 Unless the Supplier notifies the Customer that it is unable to fulfill the Order within 7 days of the date of the Order the Supplier shall be deemed to have accepted the Order.
- 2.10 Any forecasts provided by the Customer to the Supplier are indicative only, and do not constitute an offer by the Customer to purchase the forecasted Goods and/or Services and can be changed at any time without consultation with the Supplier. Notwithstanding any contrary provision in these Conditions, any Order marked for “visibility” shall not constitute an offer by the Customer to purchase Goods and/or Services and shall only constitute part of the Customer’s indicative non-binding forecast.

### **3. Delivery and Performance**

- 3.1 The Supplier shall fulfill each Contract strictly in accordance with these Conditions and the documents referred to in these Conditions.
- 3.2 Time for delivery of the Goods and for performance of the Services shall be of the essence.
- 3.3 If any Goods are delivered and/or any Services are performed by the Supplier in default of the terms of the Contract, or are not delivered on the contractual delivery date, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer shall be entitled (but not obliged) to exercise any one or more of the following remedies:
  - 3.3.1 Terminate the Contract; and/or
  - 3.3.2 reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense; and/or
  - 3.3.3 require the Supplier at its own cost and expense repair or replace the Goods and/or re-perform the Services and/or refund the price for the Goods and/or Services (and replace any Customer Property used in respect of the defective Goods and/or Services) in full (if paid); and/or
  - 3.3.4 Refuse to accept the provision of any further Goods and/or Services from the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by the Customer to the Supplier under the Contract; and/or
  - 3.3.5 Require the Supplier, without charge to the Customer, to carry out such additional work as is necessary to correct the Supplier's failure; and/or
  - 3.3.6 at the Supplier's cost obtain replacement Goods and/or Services from a third party; and/or
  - 3.3.7 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 3.4 The Goods shall be delivered to the delivery address on the delivery date (each as set out in the relevant Order).
- 3.5 Delivery of the Goods shall be completed in accordance with the Incoterms stated on the purchase order.
- 3.6 Each delivery of Goods and/or Services shall be properly and securely packed and delivered in accordance with the Release Requirements (if any).
- 3.7 Each delivery of Goods and/or Services shall be accompanied by the documentation required under the Release Requirements (if any) and accompanied by an advice note stating the full description, weight, measure, order number, batch number and expiry date.
- 3.8 If Goods are delivered before the delivery date specified in the Order, then the Customer shall be entitled in its sole discretion to refuse to take delivery or charge the Supplier for insurance and storage of Goods until the contractual date for delivery.
- 3.9 No third party carrier (other than the Customer's distribution agent) engaged to deliver the Goods shall at any time be an agent of the Customer and accordingly the Supplier shall be liable to the Customer for the acts and omissions of all the third party carriers engaged by the Supplier to deliver Goods to the Customer.
- 3.10 The Customer shall not be obliged to return to or account to the Supplier for any packaging materials for Goods. The Customer may at its option provide packaging materials to the Supplier. The Supplier shall treat any packaging materials provided by the Customer as Customer Property.
- 3.11 If the Customer agrees in writing to accept delivery of Goods by installments and to be invoiced for each installment despatched, each installment delivery shall nevertheless constitute part of one contract as recorded in the relevant Contract and shall not constitute separate contracts.
- 3.12 Signature on behalf of the Customer of a delivery note or other document presented for signature on delivery or collection of Goods is evidence only of the number of pallets or packages received and not that the correct quantity or number of Goods have been delivered or that they otherwise meet the requirements of the Contract.
- 3.13 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 3.14 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

### **4. Performance and Quality**

- 4.1 The Supplier shall provide the Goods and/or Services in all respects in accordance with:

- 4.1.1 the Specification (if any);
  - 4.1.2 the drawing (if applicable);
  - 4.1.3 the Contract;
  - 4.1.4 the quality metrics in the Operational Documents (if any);
  - 4.1.5 the reasonable directions and/or instructions of the Customer;
  - 4.1.6 the Release Requirements (if any);
  - 4.1.7 a high level of skill and care and in a timely and prompt manner;
  - 4.1.8 all applicable legislation from time to time in force, and the Supplier shall notify the Customer as soon as it becomes aware of any changes in that legislation; and
  - 4.1.9 best practice prevailing in the Supplier's industry from time to time.
  - 4.1.10 Shelf life items shall have at least 80% of the specified life when supplied to the Customer.
- 4.2 Without limiting the Supplier's Liability and without prejudice to any rights or remedies of the Customer, the Supplier shall notify the Customer in writing, if at any time:
- 4.2.1 the Supplier becomes aware of any non-conformity of the Goods and/or Services with the Contract;
  - 4.2.2 there is a change of Control of the Supplier;
  - 4.2.3 in respect of the Goods, there is a change in the suppliers to the Supplier.
- 4.3 The provisions of the condition 4.2 shall survive termination of the Contract
- 4.4 The Supplier shall ensure that any non-conforming Goods and/or Services are quarantined and the Supplier shall not deliver such Goods and/or Services to the Customer unless the Customer agrees in writing, via concession, that the Supplier can deliver the non-conforming Goods and/or Services after being notified in writing by the Supplier of each of the non-conformities. Any agreement via concession by the Customer to the supply of non-conforming Goods and/or Services shall not in any way limit the Supplier's Liability and shall be without prejudice to any rights or remedies of the Customer under the Contract.
- 4.5 The Supplier shall maintain each accreditation, licence, permission, authorization, consent and permit (Accreditations) which it requires to supply the Goods and/or Services in accordance with the Release Requirements and, without limiting the Supplier's Liability and without prejudice to any rights or remedies of the Customer, the Supplier shall notify the Customer immediately if it loses any such Accreditations and/or if any matter occurs, or the Supplier anticipates may occur, which may cause the Supplier to lose any such Accreditations.
- 4.6 The Supplier shall perform the Contract at the manufacturing location covered by the Accreditations which it requires to supply the Goods and/or Services in accordance with the Release Requirements. The Supplier shall not perform the Contract at any other location without the Customer's prior written consent.
- 4.7 The Supplier shall not subcontract any work from the Customer without the Customer's prior written approval and will complete a Work Transfer sheet upon approval by the Customer.
- 4.8 Specific quality assurance requirements of the Customer (if any) in terms of the provision of pre-delivery testing certificates or compliance with specific quality standards in the production or supply of the Goods and/or Services are set out in the Release Requirements and/or otherwise set out or referred to in the Order. The Supplier warrants that it shall meet each of these requirements prior to delivery of the Goods and/or performance of the Services.
- 4.9 The Customer reserves the right to carry out such testing and inspections of Goods and/or Services at any time before delivery or performance as the Customer considers necessary to ensure that Goods and/or Services tendered for delivery/to be performed are supplied in conformity with the Contract. The costs of such testing in relation to non-conforming Goods and/or Services shall be charged to and paid by the Supplier. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 4.10 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Contract, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 4.11 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4.12 To ensure product safety of the Goods and/or Services supplied, the Supplier shall verify their method of manufacture. Verification, inspection and auditing of parts during the manufacturing

process will be carried out by the Supplier to ensure all employees are following the correct processes and procedures.

- 4.13 The Supplier warrants that the Goods and/or Services will from delivery and for the period set out or referred to in the Specification, or if no period is set out for 12 months from delivery:
- 4.13.1 conform to the Specification and any samples and prototypes approved by the Customer;
  - 4.13.2 perform and function in all respects in accordance with the Specification;
  - 4.13.3 conform to the Release Requirements;
  - 4.13.4 be of satisfactory quality, free from all defects in materials and workmanship and fit and suitable for the purposes for which they are normally used or the proposed use as advised by the Customer expressly or by implication to the Supplier;
  - 4.13.5 comply with all applicable statutory and regulatory requirements;
  - 4.13.6 be free from design and other inherent defects; and
  - 4.13.7 meet all of the requirements of the Contract.

## **5. Customer Property**

- 5.1 The Supplier acknowledges that all Customer Property and all rights in any Customer Property are and shall remain the exclusive property of the Customer and the Supplier shall execute any documents and do anything necessary to vest such rights in the Customer without making any charge unless the Customer directs otherwise.
- 5.2 The Supplier shall use Customer Property only in the manufacture of Goods and/or performance of the Services for the Customer in accordance with the Contract and shall not use the Customer Property to manufacture any Goods and/or perform any Services for itself or for any third parties.
- 5.3 The Supplier shall keep all Customer Property safe at its own risk, maintain them in good condition until returned to the Customer and shall not damage or make any modifications to nor part with possession of any Customer Property (unless required to do so in proper performance of the Contract). If any Customer Property is lost, damaged or wasted the Supplier shall promptly as the Customer directs (and at the Supplier's own cost and expense) repair or replace the Customer Property and/or pay to the Customer the repair costs and/or replacement value of the Customer Property notified to the Supplier by the Customer.
- 5.4 The Supplier shall deliver up the Customer Property to the Customer immediately on demand.
- 5.5 The Supplier shall keep an auditable register of all Customer Property and make this available to the Customer on request.

## **6. Acceptance and rejection**

- 6.1 The Customer shall not be treated as having accepted any Goods and/or Services until it has had a reasonable time to inspect the Goods and/or Service following delivery or performance or after any latent defect has become apparent and has confirmed such acceptance to the Supplier in writing.
- 6.2 Neither any inspection or testing by the Customer or its representatives whether before or after physical delivery or performance of Goods and/or Services nor the signing of any delivery note or other document acknowledging physical receipt of any Goods and/or Services shall constitute evidence of acceptance or approval of Goods and/or Services.
- 6.3 The Customer may reject any Goods and/or Services that are defective or damaged or otherwise not supplied in accordance with the Contract by giving notice to the Supplier.
- 6.4 Where the Customer discovers more than one defective unit in any given batch of Goods and/or Services delivered at the same time, the Customer shall be entitled to reject the entire batch.
- 6.5 Consignment or part deliveries may be rejected unless the Customer has agreed in writing to accept such deliveries.

## **7. Property/Risk**

- 7.1 The risk in each shipment of Goods shall not pass to the Customer until the Customer has accepted the Goods comprised in such shipment.
- 7.2 The property (both legal and equitable) in each shipment of Goods shall pass to the Customer on delivery, or if earlier on payment of any part of the price of the Goods and/or Services.
- 7.3 The risk in any Customer Property shall pass to the Supplier on delivery to the Supplier by the Customer or on production of the Customer Property by the Supplier or when ordered by the

Supplier where it is to be delivered to the Supplier by a third party.

- 7.4 The property (both legal and equitable) in the Customer Property provided by the Customer shall remain with the Customer. Where Customer Property is produced by the Supplier or purchased from a third party by the Supplier the property (both legal and equitable) shall pass to the Customer when the Customer Property has been produced by the Supplier and/or when ordered by the Supplier where it is to be delivered by a third party.

## **8. Price and Payment**

- 8.1 The price to be paid by the Customer to the Supplier for Goods and/or Services shall be as set out in the Order.
- 8.2 Unless otherwise agreed by the Customer in writing the price is inclusive of all costs and expenses ancillary and/or in connection with the provision of the Goods and/or Services including the cost of all packaging, packing, security tagging, labeling, carriage, insurance and delivery, third party costs and expenses and all other costs and/or expenses incurred by the Supplier in relation to Good and/or performance of the Services and any duties or levies, but are exclusive of VAT or sales tax.
- 8.3 Unless otherwise agreed by the Customer in writing, invoices shall only be rendered by the Supplier after completion of delivery of the Goods and/or performance of Services under the Contract in full and to the satisfaction of the Customer.
- 8.4 The Supplier is required to issue a proper tax invoice in accordance with applicable legislation before the Customer shall be required to make payment for Goods and/or Services. Invoices shall be in the form which the Customer specifies from time to time and state the Order number.
- 8.5 Unless otherwise agreed in writing by the Customer, the Customer shall pay each valid invoice rendered in accordance with these Conditions within 60 days of the end of the month in which the correctly rendered invoice is received.
- 8.6 The Supplier and the Customer shall work jointly to implement a process for continuous improvement of efficiencies in manufacturing the Goods and performance of the Services. The Supplier shall ensure that the Customer receives the benefit of any reduced costs and expenses relevant to Goods and/or Services and the price shall be reduced by the amount of the reduction in costs and expenses.
- 8.7 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

## **9. Confidentiality**

- 9.1 The Supplier shall not directly and/or indirectly use and/or disclose Confidential Information except in the proper performance of the Contract.
- 9.2 The obligations of confidentiality and non-use set out above shall continue indefinitely and shall survive termination of the Contract for any reason except they shall not apply to information:
- 9.2.1 which the Supplier proves was already in its possession and at its free disposal prior to disclosure by the Customer;
  - 9.2.2 which the Supplier proves was developed by it without reference to any Confidential Information;
  - 9.2.3 which is after the date of the Contract disclosed to the Supplier without any obligations of confidentiality by a third party who is not in breach of any duty of confidentiality in doing so;
  - 9.2.4 which is or becomes generally available to the public through no default and/or omission on the Supplier's part; or
  - 9.2.5 to the extent it is required to be disclosed by law and/or the rules of any recognised stock exchange and/or regulatory authority on condition that the Supplier gives the Customer as much advance notice of such disclosure as possible.
- 9.3 The exceptions in condition 9.2 above shall not apply to any combination of features merely because individual features (but not the combination itself) fall within any one or more of such exceptions.
- 9.4 The Supplier acknowledges that damages may not be an adequate remedy for breach of this condition 9 and accordingly agrees that the Customer shall be entitled to seek and obtain any injunctive and/or other equitable relief in relation to any breach of this condition 9.

## **10. Intellectual Property**

- 10.1 All Intellectual Property Rights in any Customer Property shall at all times be and remain the

- property of the Customer or its licensor.
- 10.2 In the absence of prior written agreement by the Customer to the contrary, all Intellectual Property Rights (other than any Intellectual Property Rights in Goods if those Goods have not been supplied to a bespoke specification of the Customer) created by the Supplier or any employee, agent, supplier or subcontractor of the Supplier in the course of performing the Contract, or for the purpose of performing the Contract, shall vest in the Customer upon creation ("**Customer IPR**").
- 10.3 The Supplier hereby assigns to the Customer all of the Customer IPR which does not automatically vest in the Customer.
- 10.4 To the extent that any of the Customer IPR is not wholly and/or validly assigned, the Supplier shall hold them upon a bare trust for the full and exclusive benefit of the Customer.
- 10.5 The Supplier warrants that the use and/or exploitation of the Goods and/or Services by or on behalf of the Customer will not infringe the Intellectual Property Rights of any third party.
- 10.6 The Supplier shall at the request of the Customer:-
- 10.6.1 execute all further documents and/or deeds and do all such things as the Customer may require to enable the Customer to secure the delivery of information and the benefit of the Customer IPR and/or any rights licensed under condition 10.9; and
  - 10.6.2 take such action as the Customer may reasonably require to assist the Customer in bringing or defending any proceeding relating to the Customer IPR and/or any rights licensed under condition 10.9.
- 10.7 The Supplier shall at the Customer's request deliver up to the Customer all documents, material and/or other media which may be in the possession, power or control of the Supplier and which comprises or contains any part of the Customer IPR or any physical embodiment of the Customer IPR and share with the Customer all know-how that is not in material form.
- 10.8 The Supplier shall procure waivers of any moral rights in any physical embodiment of the Customer IPR to which any individual is now or may be at any time entitled under Chapter VI of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 10.9 Where, in connection with the provision of Goods and/or Services by the Supplier, the Supplier uses any Intellectual Property Rights which do not fall within condition 10.1, condition 10.2 or condition 10.3 the Supplier shall grant to the Customer, or shall procure that the Customer is granted (without charge to the Customer), a perpetual, worldwide, non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property Rights, which licence shall include the right for any person providing Goods and/or Services to the Customer to use, adapt, maintain and support such Intellectual Property Rights for the benefit of the Customer.

## 11. Indemnities

- 11.1 The Supplier agrees to indemnify and keep indemnified the Customer against any and all Liability suffered and/or incurred by the Customer and arising from or in connection with:
- (a) any breach of the Contract by the Supplier;
  - (b) any liability under the Consumer Protection Act 1987;
  - (c) any tortious act and/or omission by the Supplier, its employees, agents or subcontractors;
  - (d) any infringement or alleged infringement of any Intellectual Property Rights of any third party as a result of or in connection with the Customer's receipt, use and/or exploitation of the Goods and/or Services, the Customer IPR and/or any other Intellectual Property Rights provided by the Supplier ("**IPR Claim**");
  - (e) any breach of statutory duty by the Supplier, its employees, agents or subcontractors; and/or
  - (f) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods and/or Services, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- 11.2 If at any time an IPR Claim is made the Supplier shall at the Customer's option: -
- 11.2.1 procure the right for the Customer to continue using the Goods and/or Services; or
  - 11.2.2 replace or modify the Goods and/or Services, with non-infringing substitutes, provided that any substitute shall not materially prejudice the Customer's use of the Goods and/or Services and that such substitution will be carried out so as to avoid or reduce insofar as possible any interruption to the Customer, the Supplier shall reimburse the Customer any



costs or expenses incurred by the Customer in implementing or using any replaced or modified Goods and/or Services.

11.3 This condition 11 shall survive termination of the Contract.

## **12. Records and Audit Rights**

- 12.1 The Supplier shall at all times operate a system of accounting and maintain complete and accurate records of all actions taken in connection with, and all supporting documentation in relation to, the performance of its obligations under the Contract (“Records”)
- 12.2 The Supplier shall retain the Records (both during and after the Contract) and shall not destroy the Records (whether during or after the Contract) without the Customer’s prior consent in writing. The Supplier shall ensure the safe custody of all Records and shall prevent unauthorised access to or use of them both during and after the Contract.
- 12.3 The Supplier shall permit the Customer to take copies of Records on the Customer’s request whether during or after the Contract and these should be available within 48 hours of the original request.
- 12.4 The Supplier shall ensure that all Records and all information provided to the Customer in relation to any Contract are accurate, complete and not misleading.
- 12.5 The Supplier shall provide to the Customer and the Customer’s representatives, and shall procure that the Customer and the Customer’s representatives are provided with, access to the Supplier’s premises and/or any other premises where the Goods and/or Services are manufactured and/or performed and/or where the Records are located to conduct an audit to ensure the Supplier’s compliance with the Contract (including an audit of the Records, and/or the facilities, processes and/or procedures used for the manufacture of the Goods and/or performance of the Services). Any such audit will be carried out with 48 hours’ prior notice or in the case of suspected fraud or if the Customer (or its end-customer) is required to conduct an audit then the Customer, the Customer’s representative, the end-customer and/or any regulatory authority shall be entitled to carry out the audit without giving prior notice. The Supplier shall procure that the rights of access set out under this condition shall also apply to any relevant suppliers to the Supplier whereby each supplier to the Supplier shall each be deemed to be the “Supplier”.
- 12.6 The Supplier shall provide, and procure the provision, at no cost to the Customer of all reasonable assistance and facilities (including, where appropriate, access to office accommodation, telephone and/or fax facilities) to the Customer and the Customer’s representatives as required by the Customer to exercise its rights under condition 12.5 above.

## **13. Health, Safety and Environmental**

- 13.1 The Supplier shall comply in all respects with all applicable legislation and regulations (as they may be amended or come into force from time to time) and any requirements of any relevant authorities relating to hazardous substances, articles including any parts, subparts, components and chemical constituents contained therein, and chemicals affecting the Goods including, without limitation, all registration requirements, labeling requirements, safety assessments, communication requirements of information up and down the supply chain, responding promptly to requests for data and information from suppliers and customers, all requirements in relation to “articles” or “substances of very high concern” (“SVHC”) as identified on the “Candidate List” as published by European Chemicals Agency (“ECHA”) in accordance with Article 59.1 of REACH (as defined below), retaining all relevant documentation and supplying any documentation regarding handling or use whether pursuant to the European Regulation (EC) no. 1907/2006 of 18th December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (“REACH”) as amended and all other applicable laws and regulations. The parties undertake and agree to inform each other of any information or restrictions on use which may or are likely to impact on the use, sale or disposal of any substance contained in the Goods supplied.
- 13.2 Without limiting the obligations in condition 13.1, the Supplier shall notify the Customer, in writing, of all SVHCs on the Candidate List contained in Goods supplied to the Customer pursuant to the terms of the Contract upon the initial delivery of the Goods and whenever the Candidate List is amended. Such written notification shall include the following information:
- a) The names(s) of all SVHCs contained in the Goods,
  - b) The European Chemical Substance Information System (EINECS) and Chemical Abstract System (CAS) Number,
  - c) For each SVHC, the concentration (in percent) of the SVHC contained in the Goods, and if the concentration of the SVHC is greater than 0.1% w/w, then include information on the

safe use and handling of the Goods as required under Article 33 of REACH.

13.3 The Supplier shall comply in all respects with all applicable legislation and regulations relating to electrical or electronic equipment and in particular take-back obligations and whether this is pursuant to The Waste Electrical and Electronic Equipment Directive (2002/96/EC) and Regulations 2006 (SI No. 2006/3289) ("WEEE") and amending legislation or other applicable laws or regulations and, in relation to any such equipment provided or sold by the Supplier, the Supplier agrees to take back such equipment and the Supplier will not charge the Customer any additional amount to undertake these responsibilities.

13.4 With respect to all Goods supplied to the Customer under the Contract, the Supplier represents and warrants to its knowledge after reasonable investigation and due diligence, that:

- a) Goods, including all chemical constituents contained therein, are pre-registered and/or registered under REACH if required, are not restricted from use under Annex XVII of REACH, and if subject to Authorisation under Annex XIV of REACH, are authorised for use by the Customer; and
- b) None of the Goods containing any lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), polybrominated diphenyl ethers (PBDE) or any other hazardous substances fall under the code of EU Directive 2011/65/EU (RoHS Directive) as amended from time to time.

13.5 The Supplier shall comply in all respects with all applicable health and safety and environmental laws and regulations.

13.6 The Supplier agrees to comply in all respects with all applicable legislation and regulations of the US Securities and Exchange Commission (SEC) ruling, also known as the Dodd-Frank Act. The Legislation requires publicly traded (i.e. SEC-registered) companies to report annually to the SEC on their worldwide use of "Conflict Minerals" in products manufactured and the country of origin for any "Conflict Minerals".

13.7 The Supplier shall indemnify the Customer against all Liabilities whatsoever caused by or arising out of or in connection with any breach by the Supplier of this condition 13 and the legislation and/or regulations referred to in this condition 13.

#### **14. Termination**

14.1 Without limiting any of its other rights or remedies, the Customer may immediately terminate the Contract by written notice if the Supplier:

- 14.1.1 breaches condition 4.5 and/or 4.6;
- 14.1.2 breaches condition 13 and/or condition 16;
- 14.1.3 breaches the terms of the Contract (and, if remediable, the breach has not been remedied within 30 days of receiving notice requiring it to be remedied);
- 14.1.4 persistently breaches any one or more terms of the Contract;
- 14.1.5 suspends, or ceases or threatens to cease to carry on all or a substantial part of its business;
- 14.1.6 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 14.1.7 is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances; and/or
- 14.1.8 suffers or undergoes any change of Control.

14.2 In addition, the Customer may, terminate the Contract in whole or in part for its convenience at any time by giving a written notice to the Supplier thirty (30) days prior to the termination being effective in which case the Supplier shall comply with the obligations set out in Clause 14.3. The Customer undertakes to pay a fair and reasonable price for all work done and materials purchased up to the time of termination. Such payments made, taken together with any sums paid or due or becoming due to the Supplier under the Contract shall not exceed the total price of the Goods and/or Services to be supplied under the Contract and in the case of partial termination shall not exceed the portion of the Contract applicable to the part of the Contract so terminated.

Upon termination of the Contract for whatever reason, the Supplier will deliver up to the Customer or at the Customer's option destroy any and all Deliverables, Confidential Information, all Customer Property, the physical embodiment of any Customer IPR and/or any other materials provided by the Customer, which are in the Supplier's possession, power or control.

## **15. Non-Compete**

15.1 The Supplier shall not in the course of completing the Contract take any action to directly or indirectly compete with the Customer. The Supplier shall make no contract with the Customer's Customer save where such contract is expressly approved by the Customer and under no circumstances is the Supplier to take any action which may be deemed as soliciting of work currently contracted to the Customer.

## **16. Bribery, Anti-Corruption and Modern Slavery**

16.1 The Supplier shall:

16.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010;

16.1.2 comply with the Customer's ethics, anti-bribery and anti-corruption policies as notified to the Supplier from time to time; and

16.1.3 comply with all applicable laws, codes and sanctions relating to modern slavery including but not limited to the Modern Slavery Act 2015.

16.2 The Supplier shall ensure that any person associated with the Supplier who is performing the Services does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this condition 16 ("**Relevant Terms**"). The Supplier shall in any circumstance be responsible for the observance and performance by such persons of the Relevant Terms, and shall in any circumstances be directly liable to the Customer for any breach by such persons of any of the Relevant Terms howsoever arising.

16.3 Breach of this condition 16 shall be a material breach of the Contract entitling the Customer to terminate the Contract without incurring any Liability for such termination.

16.4 For the purpose of this condition 16 whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 and include but is not limited to any subcontractor of the Supplier.

## **17. Counterfeit Goods**

17.1 The Supplier shall have in place a 'Counterfeit and Fraudulent Material policy' which will demonstrate how the Supplier controls counterfeit parts/material or suspect counterfeit parts / material.

17.2 The Supplier warrant and certifies that Goods delivered pursuant to the Contract, unless otherwise specified in the Order shall (i) be new, (ii) be and only contain materials obtained from the Original Equipment Manufacturer ("OEM") or an authorised OEM reseller or distributor, (iii) not be or contain any counterfeit goods, and (iv) contain only authentic, unaltered OEM labels and other markings. The Supplier shall provide to the Customer the OEM's certificate of conformance for any Goods acquired from an authorised OEM reseller or distributor. Goods shall not be acquired from independent distributors or brokers unless specifically authorised in writing by the Customer.

17.3 The Supplier shall maintain a method of item traceability that ensures tracking of the supply chain back to the manufacturer of all parts included in assemblies and subassemblies being delivered to the Customer under the Contract. This traceability method shall clearly identify the name and location of all of the supply chain intermediaries from the manufacturer's batch identification for the item(s) such as date codes, lot codes, serialization, or other batch identifications. When requested by the Customer, the Supplier shall provide OEM documentation that authenticates traceability of the affected items to the applicable OEM.

17.4 Parts suspected to be counterfeit shall be quarantined by the Supplier and reported to the Customer at the earliest opportunity and under no circumstance shall be delivered to the Customer.

17.5 In the event Goods delivered under the Contract constitute counterfeit goods, the Supplier shall at its expense promptly replace such Goods with genuine Goods conforming to the requirements of the Contract. Notwithstanding any other provision of the Contract, the Supplier shall be liable for all Liabilities suffered or incurred by the Customer relating to the removal or replacement of counterfeit goods, including without limitation the Customer's or the Customer's customer's costs of removing such counterfeit goods after counterfeit goods have been exchanged.

## **18. Export Control Laws**

- 18.1 The Supplier acknowledges that any information provided to or received by it in accordance with or in relation to the Contract or an Order may be subject to export control laws and regulations including, without limitation, the United States Department of State International Traffic in Arms Regulations ("ITAR") and the United States Department of Commerce Export Administration Regulations ("EAR"). The Supplier agrees that it will strictly comply with all applicable requirements under such laws and regulations. The Supplier warrants and undertakes that it will not use or permit the use of, export or transfer (by any means, electronic means or otherwise), any information, Goods or Deliverables which are subject to export control laws and regulations without complying in all respects with the applicable export control laws and regulations including, without limitation, all codes of conduct, relevant export licence(s), guidelines, notices and instructions in relation to any use, export or transfer of information, Goods or Deliverables.
- 18.2 The Supplier agrees to afford the Customer and any competent governmental department or other governmental administrative body access to Supplier's premises, for the purpose of auditing Supplier's compliance with the requirements of condition 18.1 above and to provide all necessary facilities and assistance for such audit to take place.
- 18.3 Where the Goods and/or Deliverables to be provided by the Supplier pursuant to any Order include the provision of Services to be performed for or on behalf of the Customer and which will, or may, involve Supplier's employees having or having the potential to gain access to information which is subject to export control laws and regulations, the Supplier will comply with i) all applicable export control laws and regulations including, without limitation, all codes of conduct, relevant export license(s), agreements, guidelines, notices and instructions in relation to any use, export or transfer of information and ii) all requests and requirements of the Customer for the same purpose.
- 18.4 In the event the Supplier breaches any of the provisions of this clause 18, the Supplier shall indemnify the Customer with respect to all losses, damages, claims, compensation, awards, expenses (including without limitation legal fees), fines and judgments incurred by the Customer as a result or as a consequence of such breach.
- 18.5 When an ITAR controlled article is sold or otherwise transferred to the Customer or any authorised sub-contractor the Supplier agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document;
- 18.5.1 "These commodities are authorized for export by the U.S. Government to the United Kingdom for delivery back to the United States. They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State."
- 18.6 The Supplier must ensure that any ITAR controlled data that is transferred via electronic means must be encrypted, password protected or otherwise secured.

## **19. Force Majeure**

- 19.1 Any delay or failure of either Party to perform its obligations hereunder will be excused if, and to the extent that it is caused by an event or occurrence not reasonably foreseeable and beyond the reasonable control of the affected Party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) will be given by the affected Party to the other Party as soon as possible but in any event not later than 5 days.
- 19.2 During the period of such delay or failure to perform by the Supplier and after prompt notice from the Supplier to the Customer of the occurrence of such an event, the Customer, at its option, may purchase Goods and/or Services from other sources and reduce its requirement to the Supplier by such quantities, without liability to the Supplier, or have the Supplier provide the Goods and/or Services from other sources in quantities and at times requested by the Customer and at the price set forth in the Order.
- 19.3 If requested by the Customer, the Supplier will, within 10 days of such request, provide adequate assurances that the delay will not exceed 30 days. If the delay lasts more than 30 days, the

Customer may immediately cancel an Order without Liability.

- 19.4 The Supplier will in any event, make all reasonable endeavors to mitigate the effects of any delay. For the avoidance of doubt, strikes, lock outs or other industrial action or disputes specific to the Supplier and/or its subcontractors or agents shall not be considered a force majeure event.
- 19.5 The Supplier will have established a 'business recovery plan' that will be available to the Customer upon request.

## 20. General

- 20.1 These conditions together with the Order and the documents referred to in these Conditions contain the whole agreement between the parties and supersede any prior written or oral agreement between them and are not affected by any other promise, representation, warranty, usage, custom or course of dealing. Nothing in the Contract shall exclude liability for any fraudulent statement or act made prior to the date of the Contract.
- 20.2 If there is any conflict between the provisions in the documents referred to in these Conditions then the provisions shall prevail and take priority in the following order;
- 20.2.1 the provisions contained in the Order;
  - 20.2.2 the provisions contained in the Specification;
  - 20.2.3 the provisions contained in the Release Requirements;
  - 20.2.4 the provisions contained in any Operational Documents; and
  - 20.2.5 the provisions contained in these Conditions.
- 20.3 A person who is not party to the Contract shall not have the right to enforce any terms of the Contract. This shall not apply to any customer of the Customer, to whom the Customer consents to being able to enforce the Contract as though they were the Customer. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 20.4 No waiver by either party of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 20.5 The invalidity, illegality or unenforceability of any of the provisions of the Contract shall not affect the validity, legality or enforceability of the remaining provisions of the Contract.
- 20.6 The Supplier shall not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or its interest in the Contract (or any part) or sub-contract any of its obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own. The Customer may assign any or all of its rights and/or obligations under the Contract to any third party without the Supplier's consent.
- 20.7 The Supplier acknowledges and agrees that the Customer shall be freely entitled at any time to assign the benefit of any warranties or guarantees provided with the Goods and/or Services to the Customer's own customers.
- 20.8 If the Supplier sub-contracts the whole or any part of its obligations under the Contract having obtained the Customer's written consent, the Supplier shall ensure that it imposes obligations on the sub-contractor in the sub-contract at least equivalent to the Supplier's obligations under the Contract and shall procure that the Customer has the right to directly benefit and enforce such sub-contract.
- 20.9 The Supplier shall, at the request of the Customer, do all things and execute further documents necessary to give full effect to the Contract.
- 20.10 The Supplier shall maintain such insurance policies in connection with the performance of the Contract as may be appropriate or as the Customer may require from time to time.
- 20.11 Termination of the Contract shall not affect any rights of the parties accrued up to the date of termination.
- 20.12 No condition shall survive expiry or termination of the Contract unless expressly and/or impliedly intended to survive such expiry or termination.
- 20.13 The rights, powers and remedies provided in the Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 20.14 Any notice or other document required to be given under the Contract or any communication between the parties with respect to any of the provisions of the Contract shall be in writing in English and be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice.
- 20.15 Any notice or other communication shall be deemed to be given to and received by the

addressee:

- 20.15.1 at the time the same is left at the address of or handed to a representative of the party to be served if on a Working Day, and if not on the next Working Day;
  - 20.15.2 by prepaid first class post on the third Working Day following the date of posting: and/or
  - 20.15.3 in the case of a facsimile transmission or other means of telecommunication or email on the next Working Day following successful transmission.
- 20.16 In proving the receipt of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication and/or email was properly addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.
- 20.17 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.18 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.
- 20.19 Nothing in condition 20.18 shall prevent the Customer from taking any action in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**A. Project Specific Terms, Conditions and Requirements**

- a. The minimum Customer and/or 3<sup>rd</sup> party approvals for Suppliers are as follows:

End customer	Type of supply	Minimum approval required	Remarks
R.R.	Production Components including all sub-tiers- all classifications	AS/EN/JISQ9100:**** Rolls Royce Approval (Sabre)	
R.R.	Special processing	AC7004 AS/EN/JISQ9100:**** Rolls Royce Approval (Sabre) Nadcap	See MLC127 for definition of special processes NADCAP Processes
R.R.	Machining at R.R. approved organisations for Classified parts	AS/EN/JISQ9100:**** Rolls Royce Approval (Sabre)	Subject to the controls of RRES90000 Control of source and Method
R.R.	Machining at R.R. approved organisations for un-classified parts	AS/EN/JISQ9100:**** Rolls Royce Approval (Sabre)	
R.R.	Machining at non-R.R. approved organisations.	AS/EN/JISQ9100:****	Only for un-classified parts using C.W.F. free issue material. No sub-contracting allowed. Subject to 100% inspection on receipt with NDT operations at a later stage in manufacture as required.
R.R.	Standard Catalogue components	ISO 9001:	Only Qualified supplier that appearing a qualified product list when specified in a related technical specification
R.R.	Any other not listed above		Seek advice from CWF Quality Assurance Manager.
R.R.	Metallic Raw material RR aerospace grade material (e.g. MSRR RRMS EMS etc.)	AS/EN/JISQ9100:**** Rolls Royce Approval (Sabre)	
R.R.	Metallic Raw material RR aerospace grade material (e.g. AMS)	AS9100:****	
Sellafield	Any	ISO 9001:****	Customer Controlling Specification
Non Rolls Royce	Any	ISO 9001:**** AS9100:****	As specified on the Purchase Order
	Any other not listed above		Seek advice from Quality Assurance Manager.
All	Lab testing	UKAS NADCAP ISO/IEC 17025 Captive labs:- AS/EN/JISQ9100:****	

Where :\*\*\*\* latest issue of the relevant approval applies

## B. Quality Assurance Requirements

- A. To be manufactured, tested, inspected and certified in accordance with the requirements of Rolls Royce: SABRe (For products with Rolls-Royce as the end user).

- B. To be manufactured, tested, inspected and certified by the Supplier's own approved inspection organization and certificates detailing chemical composition and mechanical properties release to the approvals stipulated on the relevant purchase order ( Non Rolls Royce )
- C. Subject to inspection at CW Fletcher & Sons Limited before release of your work into the Customer .
- D. Critical & Sensitive Parts subject to Rolls Royce RRES 90000 manufacturing controls.
- E. First Article Inspection shall be control to the requirements of AS9102.