

Alexander Dennis Group Terms & Conditions of Purchase

1. Definitions

1.1 In these Terms and Conditions:

"Acknowledgement" means, in respect of an acknowledgement by the Supplier of a Purchase Order, its acknowledgement in writing (which shall include by way of email or other electronic communication) or orally, and whether formally or informally or implied;

"ADL" means ALEXANDER DENNIS LIMITED, incorporated in Scotland under the Companies Acts with Company Number (SC268016) and having its registered office at 16 Charlotte Square, Edinburgh EH2 4DF, including any subsidiaries and Affiliates. Any reference to the term "ADL" in these Terms and Conditions as used herein shall mean such subsidiaries and Affiliates of ADL;

"Affiliate(s)" of a company means any holding company from time to time of that company and any subsidiary of that company, or any subsidiary (direct or indirect) of any such holding company;

"Best Industry Practice" means:

- (a) in relation to the quality of Goods, that quality which is generally recognised within the bus and coach manufacturing industry as being the best quality of goods which are the same as or substantially similar to the Goods; and
- (b) in relation to the provision of Services, the standard for services which is generally recognised within the bus and coach manufacturing industry as being the best quality of services which are the same as or substantially similar to the Services or the relevant part of them;

"Confidential Information" means any and all commercial, financial, technical information of a confidential or proprietary nature relating to or used in the business of either party and any knowledge which may be imparted or developed through examination, collation, analysis or working of such information whether or not any such confidential information is recorded in any medium and whether or not such information is labelled or otherwise identified as confidential and whether such information was obtained or received by the other party prior to entering into this Contract;

"Consents" means all approvals, consents, licences, permissions and authorisations required from any government or similar body or any regulatory authority which are, from time to time, required in connection with the design, manufacture, construction, quality and proposed use of the Goods or the provision of the Services (as applicable);

"Contract" shall have the meaning set out in condition 2.1;

"Data Protection Legislation" means (i) unless and until the General Data Protection Regulation ("GDPR") is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to GDPR or the Data Protection Act 1998;

"Delivery Date" means the date specified in the Purchase Order when the Goods or Services are to be delivered or, if no date is specified, a date no later than 28 days after receipt by the Supplier of the Purchase Order;

"IPR" means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including but not limited to patents, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, documents, techniques, instruction manuals and lists and particulars of customers.

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), compulsory guidance or industry code of practice, rule of court or directives, delegated or subordinate legislation;

"Goods" means all (or any) of the goods to be supplied to ADL by the Supplier as set out in the Purchase Order (including software if so specified);

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"Personal Data" shall have the same meaning as the Data Protection Act 1998;

"Price" means the price for the Goods or Services stated on the Purchase Order;

"Purchase Order" means ADL's written instruction to buy Goods and/or Services, incorporating these Terms and Conditions;

"Services" means all or any of the services and/or performance of works or professional services that ADL agrees to buy from the Supplier, as set out in the Purchase Order;

"Supplier" means the supplier identified as such in the Purchase Order;

"Supplier Insolvency Event" means in respect of the Supplier:

- (a) other than for the purposes of a bona fide reconstruction or amalgamation, the Supplier passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or the Supplier being otherwise dissolved; or
- (b) the appointment of an administrator of, or the making of an administration order in relation to, the Supplier, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the Supplier's undertaking, assets, rights or revenue; or
- (c) the Supplier entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or
- (d) the Supplier being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the Supplier entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;

"Terms and Conditions" means these terms and conditions; and

"UK" means the United Kingdom.

1.2 References to any law or statute are to such law or statute as amended, consolidated or re-enacted from time to time.

2. Terms and Conditions

2.1 All Purchase Orders, these Terms and Conditions and any variation agreed in writing to these Terms and Conditions (including any specific terms and conditions agreed between the parties) shall form the entire contract between ADL and the Supplier in relation to the purchase of the Goods and/or Services specified in the relevant Purchase Order (the "**Contract**"). These Terms and Conditions are deemed to form part of and are incorporated in every Purchase Order. In the event of any inconsistency between any expressly agreed variation in writing (whether or not on a Purchase Order) and these Terms and Conditions, such expressly agreed variation shall prevail but only to the extent of such inconsistency.

2.2 No terms or conditions endorsed upon, delivered or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification, invoice or similar document, irrespective of their date of communication to ADL, shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.3 Acknowledgement of the Purchase Order constitutes acceptance of the Contract by the Supplier but without prejudice to the foregoing, the dispatch or delivery of the Goods or Services by the Supplier to ADL shall be deemed conclusive evidence of the Supplier's acceptance of these Terms and Conditions.

3. Price and Payment

3.1 Unless otherwise agreed and subject to condition 3.5, the Price is:

3.1.1 that stated in the Purchase Order;

3.1.2 exclusive of UK VAT or other local goods and services tax;

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- 3.1.3 inclusive of any other taxes payable and any customs or import/export duties;
 - 3.1.4 inclusive of cost of delivery to the delivery address specified in the Purchase Order and of standard packaging suitable for the means of delivery;
 - 3.1.5 fixed; and
 - 3.1.6 in the currency agreed between ADL and the Supplier, and if no currency has been agreed, in GB Pounds Sterling.
- 3.2 A valid VAT invoice in respect of the Price shall be produced to ADL by the Supplier and shall be a condition precedent to payment. The invoice may only be submitted and dated after completed delivery of the relevant Goods or completed performance of the relevant Services. The invoice shall not be valid unless it is addressed to ADL and it contains the Purchase Order number, the ADL Part Number (if any, as set out in the Purchase Order), the quantity and unit of measure, the Supplier's relevant VAT number, the net amount due, and the Supplier's full banking details (including account number, sort code, and, where applicable, SWIFT code). In the event that ADL reasonably considers that any invoice submitted by the Supplier is defective or relates to Goods supplied or Services performed otherwise than in accordance with the Supplier's obligations under the Contract, ADL shall be entitled to withhold payment of the disputed amount without prejudice to any other rights or remedies it may have.
- 3.3 Subject to the rights of ADL to withhold payment under the terms of the Contract and subject to receipt of an invoice which complies with condition 3.2, ADL shall pay the Price no later than:
- 3.3.1 where Goods are delivered to ADL in the UK or directly to an export build site outside the UK, 90 days from the end of the month of receipt of the Goods;
 - 3.3.2 where Goods are supplied to ADL in the UK for consolidation into a container for shipping to an export build site outside the UK, 120 days from the end of the month of the receipt of the Goods by ADL in the UK;
 - 3.3.3 in respect of Services, 90 days from the end of the month of completion of the performance of the Services; and
 - 3.3.4 where Goods and Services are provided under the same Contract, the later of the periods applicable to the Goods and Services under conditions 3.3.1 to 3.3.3 above.
- 3.4 The Supplier shall not be entitled to increase the Price.
- 3.5 In the case of manifest error or genuine mistake by ADL in respect of the determination of the Price, the parties agree that the Price will be recalculated by ADL in accordance with condition 3.1 and notified by ADL to the Supplier.
- 3.6 Where prototype parts ("**Prototype Parts**") are supplied under, or as part of, the Contract, the Prototype Parts will be detailed in the relevant Purchase Order and supplied free of charge. For the avoidance of doubt, the Supplier acknowledges that (other than provisions relating to Price and payment by ADL, to the extent inconsistent with supply free of charge) these Terms and Conditions apply to the supply of the Prototype Parts.

4. Warranties

- 4.1 The Supplier warrants to ADL and it is a condition of the Contract, that the Goods and Services shall:
- 4.1.1 comply with any specification and any drawings, descriptions or samples supplied prior to, or as part of, the Purchase Order and any requirements made by ADL, conform to any standards and specifications specified in the Purchase Order and be capable of any standard of performance specified in the Purchase Order;
 - 4.1.2 comply with Best Industry Practice, be free from any defects in design, material and workmanship and be safe and fit for their purpose (including any purpose specified by ADL);
 - 4.1.3 in the case of Services, be supplied with due speed, care, skill and diligence;
 - 4.1.4 (together with all supporting literature provided with the Goods and/or Services supplied) comply in all respects (including, where applicable, their design, manufacture, construction,

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quality and proposed use) with all Laws, Consents and industry standards applicable to the nature of the Goods and Services supplied; and

- 4.1.5 unless agreed in writing by ADL, have any necessary export or import licences and comply with all relevant government regulations.
- 4.2 The Supplier warrants to ADL and it is a condition of the Contract that:
- 4.2.1 it shall at all times employ sufficient suitably qualified and trained staff to ensure it is able to provide the Goods and/or Services as required by the Contract;
- 4.2.2 it shall obtain and maintain in force for the duration of this Contract all licences, permissions, authorisations, consents and permits needed to manufacture, assemble and deliver the Goods and Services in accordance with the terms of this Contract;
- 4.2.3 in providing the Goods or Services it will not infringe the IPR of any third party;
- 4.2.4 it has no other commitments or obligations that will conflict with or interfere with its performance of the Services and/or supply of Goods; and
- 4.2.5 it shall not sub-contract the supply of Goods and/or performance of the Services hereunder to any third party without the prior written consent of ADL such consent not to be unreasonably withheld. For the avoidance of doubt, this condition shall not prevent the Supplier from incorporating third party components from forming part of its Goods supplied in accordance with the Contract.
- 4.3 ADL's rights under these conditions are in addition to the statutory conditions implied in favour of ADL by the Sale of Goods Act 1979.
- 4.4 Without prejudice to conditions 4.1, 4.2 and 4.3 and any other rights of ADL under the Contract, the Supplier warrants that the Goods and Services shall continue to comply with conditions 4.1.1 and 4.1.2 until (i) 36 months from the date of completed delivery of the Goods and Services; or (ii) 36 months after the Goods have been entered into service on a vehicle by ADL's customer (whichever is the later) and if they do not so comply the Supplier shall:
- 4.4.1 in the event that the ownership of the vehicle to which the Goods and Services are fitted has not transferred to ADL's Customer, at its cost (including freight and any cost of dismantling and reassembly), within 24 hours of notice from ADL, remedy the defect in the Goods or replace the Goods to the satisfaction of ADL; and
- 4.4.2 in the event that the ownership of the vehicle to which the Goods and Services are fitted has transferred to ADL's Customer, issue a credit note to ADL which will cover the current spares purchase price of the Goods, freight (including to overseas ADL customers) and any cost of dismantling and reassembly, within 6 months of notice from ADL.
- 4.5 Without prejudice to condition 4.1, the Supplier shall (at no cost to ADL) ensure that, where applicable, all relevant system or component approval(s) and EC whole vehicle type approval(s) have been obtained in respect of the Goods and/or Services prior to delivery of the Goods and/or Services.
- 4.6 Where the Goods are repaired or replaced or Services re-performed in accordance with condition 4.4, the Supplier warrants those repaired or replaced Goods for a further period of 2 years from the date of repair or replacement, or the balance of the initial warranty period, whichever is longer.
- 4.7 If the Supplier is required to remedy any defect in, or to replace or re-perform (as applicable) any Goods and/or Services ("**Remedial Action**") pursuant to a breach of condition 4.3 and the Supplier is dealing directly with ADL's customer in relation to performing the Remedial Action, the Supplier must keep ADL regularly informed in writing as to the progress (including as to cost) of the Remedial Action.
- 5. Changes in Specification or Design**
- 5.1 The Supplier undertakes not to make any changes in specification, design or quality of the Goods or to make goods obsolete without giving to ADL a minimum of 12 months notice in writing of the change or such lesser period as ADL may agree to in writing in that particular instance.

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- 5.2 In the event that any such changes cannot reasonably be incorporated in ADL's design or products or are unacceptable to ADL, ADL reserves the right to cancel the Contract at no cost to ADL.
- 5.3 If ADL wishes to make a change, alteration, addition or deletion from the scope of any Services and/or the Specification for any Goods or Services set out in a Purchase Order, ADL shall submit a written notice to the Supplier outlining such changes (a "**Change Notice**").
- 5.4 The Supplier shall review the Change Notice and provide ADL, as soon as possible and in any event within ten (10) business days, with a written response that sets out the scope of the change, any additional charges or costs to implement the Change Notice and the time required for the Supplier to complete the change set out in the Change Notice (the "**Supplier's Response**").
- 5.5 ADL may confirm the Change Notice by returning an executed copy of the Supplier's Response to the Supplier. Any such executed Supplier's Response shall be deemed incorporated into the Contract and constitute a formal amendment to the Contract.

6. Pre-Delivery Inspection Rights

- 6.1 Prior to delivery, the Supplier shall inspect and test the Goods for compliance with the Purchase Order. ADL reserves the right to have an authorised representative attend the inspection and tests. If the Goods or any part thereof fail inspection and/or testing, the Supplier shall advise ADL accordingly.
- 6.2 ADL shall be entitled to request the Supplier supply certified copies of records of such inspection and tests free of charge and the Supplier shall promptly and fully comply with such request.
- 6.3 ADL reserves the right at reasonable times and on reasonable notice to inspect the premises of the Supplier and any permitted subcontractor in order to satisfy itself as to the working practices of the Supplier in relation to the manufacture of the Goods.
- 6.4 If the Goods or any part thereof fail inspection and/or testing, ADL (without prejudice to any of its other rights) reserves the right to charge the Supplier any cost in respect of travel and accommodation incurred by ADL for subsequent re-inspection and/or re-testing (if any).
- 6.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

7. Delivery of Goods and/or Performance of Services

- 7.1 Delivery of the Goods and/or Services shall be made (at the Supplier's risk and expense) to the address specified in the Purchase Order and on the date specified in the Purchase Order during normal business hours, unless otherwise agreed in writing by the parties prior to the delivery of the Goods and/or Services. ADL shall be under no obligation to accept delivery of the Goods before the date(s) specified in the Purchase Order but reserves the right to do so.
- 7.2 The Supplier acknowledges and agrees that time is of the essence in the performance of the Services and the delivery of the Goods and Services in accordance with this Contract and, without prejudice to any other rights which it may have, ADL reserves the right to cancel, without notice, the whole or any part of the Purchase Order if this condition is not complied with by the Supplier.
- 7.3 All deliveries of Goods must comply with the following conditions:
 - 7.3.1 the Goods must be accompanied by an accurate and readily available packing note detailing: the supplier, quantity of Goods, ADL part numbers, description of the Goods, Purchase Order number, contract number (where applicable) and any other relevant information;
 - 7.3.2 other than free issue materials or samples, all Goods delivered to ADL must have an agreed price on the Purchase Order prior to delivery;
 - 7.3.3 the Goods must be clearly marked or labelled with the ADL part number as stated in the relevant Purchase Order;
 - 7.3.4 the Goods must be packed for the mode of delivery and type of goods involved at no cost to ADL;

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- 7.3.5 all Goods destined for use in the UK must be delivered on separate pallets from any Goods that are destined for overseas markets where ADL builds and/or supplies vehicles including without limitation China, New Zealand and North America ("**Export Markets**"); and
- 7.3.6 conform to any applicable export and/or import regulations.
- 7.4 Where the Supplier fails to comply with condition 7.3.5 and delivers pallets to ADL containing Goods for domestic delivery mixed with Goods for Export Markets, ADL may either reject the delivery or charge the Supplier a handling fee of £100 for each pallet that needs to be separated for domestic and Export Markets. Any Goods intended for domestic use that are shipped to Export Markets because they were delivered on a mixed pallet of domestic and export Goods, shall be replaced by the Supplier at the Supplier's cost.
- 7.5 The Supplier shall be held responsible for any damage incurred due to bad or insecure/inadequate packing.
- 7.6 ADL will issue a Delivery Discrepancy Report ("**DDR**") for any deliveries where the Goods are damaged, the full order of Goods has not been delivered, or where the delivery does not meet the requirements of this condition 7. The Supplier shall action the DDR on an urgent basis.
- 7.7 Where ADL has placed a Purchase Order that includes Goods that require an initial sample inspection report (an "**ISIR**"), such Goods must be delivered with the ISIR. If such Goods are delivered without the ISIR, ADL reserves the right to refuse to accept the delivery.
- 7.8 Where a Supplier uses a delivery upload file, the Supplier must ensure that the delivery upload file is accurate, a printed copy is sent with the Goods and available to be signed by the "Goods In" department on delivery. The Supplier shall send a copy of the delivery upload file to ADL at least one hour prior to the delivery of the Goods in order to enable ADL process the delivery upload file. ADL may reject any deliveries made without the appropriate delivery update file and paperwork.
- 7.9 Where ADL cancels the whole or part of a Purchase Order in accordance with condition 7.2 pursuant to late delivery of the Goods and/or Services:
- 7.9.1 all sums payable by ADL in relation to the whole or part of the Purchase Order which is cancelled shall cease to become payable;
- 7.9.2 all sums paid by ADL in relation to the whole or part of the Purchase Order which is cancelled shall be repaid by the Supplier;
- 7.9.3 the Supplier shall indemnify ADL and keep ADL indemnified in respect of any additional costs, loss or expenses incurred by ADL which are in any way attributable to the Supplier's failure to deliver the Goods and/or Services on the Delivery Date; and
- 7.9.4 ADL shall be entitled to refuse to accept any subsequent delivery of the Goods and/or Services pursuant to the Contract which the Supplier attempts to make.

8. Goods for Export Markets

- 8.1 All Goods destined for Export Markets must be accompanied by an advice note setting out:
- 8.1.1 the unit weight for each item or part (which is the weight without any packaging);
- 8.1.2 the gross weight for the complete Order (which is the total unit weight for all Goods plus the total packaging weight); and
- 8.1.3 the total value of the Goods for customs (which shall be calculated on the basis of 70% of the Purchase Order value of the Goods).
- 8.2 Where the Goods are delivered in or on wooden pallets or crates, the wooden pallets or crates must be stamped with the International Plant Protection Convention mark ("**IPPC Mark**"). Failure to do so will result in the Goods being refused entry into China and the Supplier shall be liable for all additional costs and charges imposed by Chinese custom authorities in relation to fumigation carried out by Chinese customs.

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- 8.3 All deliveries of Goods to Export Markets must be limited to the exact number of parts/items set out in the Purchase Order. The Supplier is not permitted to supply additional parts or items due to MOQ or UOM/Box Quantity without the express written consent of ADL as an over-supply of parts or items may result in additional importation taxes becoming due and payable.
- 8.4 Any loose parts that are related to assemblies or larger kit must be supplied together and kept under the assembly or larger kit part number. Any loose parts that are not properly identified shall be subject to importation tax and the Supplier shall be liable for paying such taxes.

9. ADL's Remedies

- 9.1 ADL shall have the right to inspect the Goods or Services upon delivery in accordance with this condition 9. Notwithstanding ADL's right to inspect the Goods or Services upon delivery, if ADL fails to exercise such right to inspect the Goods or Services upon delivery such failure will not prejudice its rights under this condition 9.
- 9.2 If any part of the Services fails to comply with condition 4.1 or in any way differs from the Contract, other than as a result of default or negligence on the part of ADL, ADL shall notify the Supplier accordingly and the Supplier shall at its own expense reschedule and perform the work correctly within such reasonable time as may be specified by ADL.
- 9.3 ADL shall have the right exercisable during the performance of any of the Services to suspend any payment obligation in respect of any Services if the performance does not conform in quality with any stipulations in the Contract or if the performance is delayed.
- 9.4 ADL shall have the right to suspend any payment obligation in respect of any Goods if they do not conform in quality with any stipulations in the Contract.
- 9.5 Where Goods are damaged ADL shall notify the Supplier. ADL may reject the damaged Goods and the following provisions shall apply:
- 9.5.1 at the Supplier's earliest opportunity the Supplier shall collect the damaged Goods from ADL at the Supplier's expense. If the Supplier has not collected the damaged Goods within 30 days of notification by ADL in accordance with condition 9.5, ADL shall have the right to store the damaged Goods at the Supplier's expense or to destroy the damaged Goods at the Supplier's expense;
 - 9.5.2 during the period between delivery of the Goods and collection by the Supplier, ADL shall not be liable for any loss or further damage caused to the damaged Goods;
 - 9.5.3 all sums payable by ADL in relation to the damaged Goods shall cease to become payable;
 - 9.5.4 all sums paid by ADL in relation to the damaged Goods shall be repaid by the Supplier immediately;
 - 9.5.5 the Supplier shall indemnify ADL and keep ADL indemnified in respect of any costs, losses or expenses incurred by ADL which are in any way attributable to the Goods being damaged; and
 - 9.5.6 if ADL so requests, the Supplier shall immediately replace damaged Goods at the Supplier's expense (in which case such part of the Price attributable to the damaged Goods will only become payable by ADL following delivery and acceptance by ADL of the replacement Goods).
- 9.6 Where there are shortages in delivery quantity in the Purchase Order (including, for the avoidance of doubt, where Goods are lost in transit) ADL shall notify the Supplier and the following provisions shall apply:
- 9.6.1 all sums payable by ADL in relation to the missing Goods shall cease to become payable;
 - 9.6.2 all sums paid by ADL in relation to the missing Goods shall be repaid by the Supplier immediately;
 - 9.6.3 the Supplier shall indemnify ADL and keep ADL indemnified in respect of any costs, losses or expenses incurred by ADL which are in any way attributable to the Goods being missing; and

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- 9.6.4 if ADL so requests, the Supplier shall immediately deliver the missing Goods at the Supplier's expense (in which case such part of the Price attributable to the missing Goods will only become payable by ADL following delivery and acceptance by ADL of the missing Goods).
- 9.7 Where the Goods are destined for an export market, any shortages in delivery quantity will only be identified on receipt of the Goods by ADL's customer in the export market and where ADL is notified by its customer of a delivery shortage, the provisions of condition 9.6 shall apply but in addition, the Supplier shall be liable for the costs of shipping the missing Goods to the export market destination.
- 9.8 Without prejudice to its rights under conditions 9.5, 9.6 and 9.7, if some or all of the Goods are damaged or some or all of the Goods are missing, ADL shall be entitled to cancel, with immediate effect, the whole or any unexecuted part of the Purchase Order and the rights referred to in condition 9.5, condition 9.6 (as applicable) and condition 9.7 (as applicable) shall apply.
- 9.9 Where there is an excess of Goods in relation to the Purchase Order ADL may reject the excess Goods by notice in writing to the Supplier and the following provisions shall apply:
- 9.9.1 at the Supplier's earliest opportunity the Supplier shall collect the excess Goods from ADL at the Supplier's expense. If the Supplier has not collected the excess Goods within 30 days of notification by ADL in accordance with condition 9.5, ADL shall have the right to store the excess Goods at the Supplier's expense or to destroy the excess Goods at the Supplier's expense;
- 9.9.2 during the period between delivery of the Goods and collection by the Supplier, ADL shall not be liable for any loss or damage caused to the excess Goods; and
- 9.9.3 no sum shall be due to the Supplier for the excess Goods and in the event that sums are paid to the Supplier for the excess Goods, the Supplier shall repay such sums to ADL immediately.
- 9.10 ADL may accept excess Goods delivered under the Purchase Order by notifying the Supplier of such acceptance and the following provisions shall apply:
- 9.10.1 ADL reserves the right to charge an administration fee of £250 (exclusive of any VAT) ("**Administration Fee**") to reflect the increased administration time and costs incurred by ADL in processing the excess Goods into stock and production plans;
- 9.10.2 if ADL charges the Administration Fee, it will issue an invoice to the Supplier in respect of the Administration Fee;
- 9.10.3 without prejudice to ADL's general right of set off in condition 23, the Administration Fee shall be set off against the amount payable by ADL under any invoice from the Supplier which includes the excess Goods; and
- 9.10.4 subject to the other provisions of this condition 9.10, the price of the excess Goods shall be payable by ADL in accordance with condition 3.

10. Title and Risk

- 10.1 The title and risk in the Goods and/or Services shall remain with the Supplier until they are actually delivered to the location specified by ADL in the Purchase Order, transferred to ADL's possession and signed for by an authorized representative of ADL, at which time title and risk in the Goods and/or Services shall transfer to ADL.
- 10.2 All material supplied by ADL to the Supplier, including without limitation any kits or parts ("**ADL Materials**"), will remain the absolute property of ADL. The Supplier is not granted nor entitled to any lien, charge or other security interest or any other encumbrances over any ADL Materials or the fully completed Goods.
- 10.3 From delivery of all ADL Materials to the Supplier until delivery to and acceptance of the finished Goods by ADL, the risk of loss or damage to such ADL Materials and the partially or fully completed Goods shall be borne by the Supplier.

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- 10.4 The Supplier will indemnify ADL and keep ADL indemnified in respect of all of the costs of replacing or repairing any ADL Materials, or partially or fully-completed Goods which become lost or damaged as a result of negligence on the part of the Supplier or while they are at the Supplier's risk.
- 10.5 The Supplier will ensure that all ADL Materials will be properly and securely retained and identified as the property of ADL. The Supplier will not part with possession of any ADL Materials or make them available to any person.

11. Indemnity

- 11.1 Without prejudice to any other provision of this Contract, the Supplier shall indemnify and keep indemnified ADL, its employees, agents and contractors (each an "**Indemnified Party**") against all current and future direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) (hereafter "**Liabilities**") awarded against or incurred or paid by any Indemnified Party as a result of or in connection with:
- 11.1.1 defective workmanship, quality or materials and/or breach of the Contract by the Supplier;
 - 11.1.2 an infringement or alleged infringement of any IPR caused by the use, manufacture or supply of the Goods and/or Services;
 - 11.1.3 any claim made against ADL in respect of any Liabilities sustained by ADL's employees or agents or by any customer or third party to the extent that such Liabilities were caused by, relate to or arise from the Goods and/or Services, or are a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier;
 - 11.1.4 any negligent or wrongful act or omission of the Supplier or any of its employees, agents or contractors in the course of or related to the performance of, or failure to perform, any obligations of the Supplier under this Contract;
 - 11.1.5 any decision of ADL (at ADL's sole discretion) to source goods and/or services similar to the Goods and/or Services from an alternative supplier as a consequence of any breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier; and
 - 11.1.6 any fraud, dishonesty, misrepresentation or wilful default of the Supplier.
- 11.2 ADL reserves the right to include within any indemnity claim under condition 11.1 an amount or amounts in respect of anticipated future losses of ADL in respect of matters described in conditions 11.1.1 to 11.1.6 above, such amount(s) to be calculated by ADL acting reasonably and based on ADL's experience of past third party claims in respect of the particular Goods and/or Services provided under the Contract.

12. Intellectual Property Rights

- 12.1 The Parties agree that the Goods and any deliverables provided through the Services ("**Deliverables**") and any and all IPR in relation thereto shall belong to and be the absolute property of ADL and the Supplier hereby assigns to ADL its whole right, title, interest and guarantee in and to all Goods and Deliverables as legal and beneficial owner, free from all encumbrances to the effect that such Goods and Deliverables and any IPR in such Goods and Deliverables vest in ADL on their creation.
- 12.2 Insofar as any such Goods, Deliverables and IPR arise or are created in the future, the Supplier hereby assigns all such Goods, Deliverables and IPR to ADL on the foregoing terms by way of present assignment of future rights.
- 12.3 In the event that ADL grants the Supplier permission to use sub-contractors for the provision of Services or the creation of Goods, the Supplier shall ensure that all such sub-contractors enter into written contracts with the Supplier that include specific intellectual property provisions such that any and all IPR created by the sub-contractors under the contract will vest on creation in Supplier thereby enabling the Supplier to assign all such IPR to ADL so as to give effect to condition 12.1.

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- 12.4 The Supplier hereby undertakes at the request and expense of ADL to forthwith do all acts and execute all documents, forms and authorisations anywhere in the world, and shall procure and ensure (where relevant) that its directors, employees, advisers and any permitted sub-contractors do the same, in each case which may be necessary or reasonably desirable to confirm the title of ADL or its nominee to the IPR whether in connection with any registration of title or otherwise and in the event that the Supplier fails to do so, ADL is hereby irrevocably authorised and empowered to exercise and perform such acts and take such proceedings in the Supplier's name and on its behalf as the attorney for the Supplier.
- 12.5 If for any reason the Supplier is not legally able to assign certain IPR in the Goods and/or Deliverables to ADL, it shall notify ADL immediately and procure that ADL shall receive from the Supplier and/or third party (as appropriate), a perpetual, irrevocable, royalty-free, transferable, worldwide, non-exclusive licence to use, modify and develop such non-assignable IPR for any purpose.
- 12.6 Notwithstanding the terms of conditions 12.1, 12.2 and 12.3, all IPR of a party that was in existence prior to the commencement of the Contract and which has not been created, obtained or developed in connection with the Contract ("**Background IPR**"), shall remain the property of that party.
- 12.7 In the event that the Supplier requires access to or use of ADL's Background IPR for the provision of the Goods and Services, ADL hereby grants to the Supplier a limited, non-transferable, non-exclusive licence to use such Background IPR solely for the purpose of performing the Services and/or creating the Goods and Deliverables under this Contract. For the avoidance of doubt, ADL's Background IPR shall constitute "Confidential Information" of ADL and the provisions of condition 17 shall apply to such materials.
- 12.8 The Supplier hereby and shall procure that any permitted sub-contractor hereby irrevocably and unconditionally waives all rights under Chapter IV of the Copyright, Designs and Patents Act 1988 (as amended) and any other moral rights which the Supplier (or any permitted sub-contractor) may have in any Goods and Deliverables (but excluding any Background IPR of the Supplier) in whatever part of the world such rights may be enforceable.
- 12.9 Any trademarks, trade names, service marks or other symbols whether of the Supplier or ADL, used or affixed to the Goods shall be used or affixed in accordance with ADL's written instructions.
- 12.10 If, at any time, a third party alleges that its IPR has been infringed by any Goods, Services and/or Deliverables or in ADL's reasonable opinion such allegation is likely to be made, the Supplier, if ADL shall first have consented (which consent may be given or withheld at ADL's sole discretion), shall (at the Supplier's expense) either:
- 12.10.1 procure for ADL the right to continue to use the Goods, Deliverables and/or Services without infringing any third party IPR in any or all ways and for any or all purposes for which it dealt with or was dealing or intended to deal with the Goods, Deliverables and/or Services prior to the allegation or its likelihood arising; or
 - 12.10.2 replace the Goods, Deliverables and/or Services with Goods, Deliverables and/or Services which do not infringe any third party IPR, so long as such replacement goods shall be entirely compatible with and of no lesser functionality than the allegedly infringing Goods, Deliverables and/or Services and shall comply in all material respects with the Specifications for such Goods, Deliverables and/or Services.

13. Software

- 13.1 Unless otherwise agreed, where the Goods or Services include the supply of software then the remaining provisions of this condition 13 apply.
- 13.2 If the software is bespoke or has been specially commissioned by and/or developed for ADL, then the Supplier hereby assigns all IPR (and waives all moral rights) in such software and related documentation to ADL and the Supplier shall on request without further payment sign or execute further documentation to formalise or perfect the assignation.
- 13.3 Pending any necessary formalisation of the assignation under condition 13.2 or where condition 13.2 does not apply, the Supplier hereby grants to ADL and the ADL Affiliates a non-exclusive, irrevocable, royalty-free, perpetual, worldwide licence to use the software for all reasonable purposes.

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- 13.4 The Supplier shall supply to ADL all necessary manuals, one copy of the software in machine-readable object code, all new releases and up-dates of the software during the term of the Contract, and in the case of bespoke software under condition 13.2, it shall supply the source code.
- 13.5 Without prejudice to condition 4, the Supplier warrants to ADL that all hardware and software shall be capable of full use for their intended purpose and of maintenance and amendment by a software engineer external to the Supplier and reasonably qualified in the relevant sector without external costs to ADL and without recourse to any additional codes or materials other than those supplied as part of the Goods or Services.

14. Documentation and Information

- 14.1 The Supplier will supply to ADL (where appropriate) in the English language not later than the date of delivery or installation of the Goods;
- 14.1.1 any operator's manual, instruction manuals, list of recommended spares and other supporting literature in relation to the Goods;
- 14.1.2 sufficient information about the use for which the Goods have been designed and tested; and
- 14.1.3 detailed information about any conditions or procedures required to ensure that when stored or put to use the Goods will be safe and without risk to health. In particular the Supplier shall supply to ADL a health and safety data sheet relating to the Goods.
- 14.2 If the Goods are perishable or have a life expectancy of a fixed duration or if there are any circumstances known to the Supplier which could adversely affect the life span of the Goods, the Supplier shall forthwith advise ADL in writing of all such necessary and appropriate information relating thereto which information shall upon receipt by ADL, but not before, form part of the description of the Goods.

15. Guarantee

- 15.1 The Supplier shall for a minimum of 20 years from the Delivery Date maintain any tooling relating to the Goods in good order, and (at the reasonable cost of ADL) for the same period provide all necessary support including any spare parts for the Goods and such engineering data relating to the Goods as may be required by ADL, unless agreed by ADL in writing that this service is not required.

16. Insurance

- 16.1 The Supplier undertakes and warrants that it shall at all times during the Contract and for a period of 36 months after termination or expiry thereof, maintain in force insurance with reputable insurance companies providing cover which is adequate and prudent, having regard to the business environment in which the Supplier is operating and its business obligations including, without prejudice to the foregoing generality, the following insurances:
- 16.1.1 public liability insurance;
- 16.1.2 professional indemnity insurance;
- 16.1.3 employer's liability insurance;
- 16.1.4 product liability insurance; and
- 16.1.5 general business cover for not less than the full value of the Goods and any other goods, tools, materials, equipment or other property provided by, through or on behalf of ADL for use by the Supplier whilst these are in the Supplier's possession or whilst the risk lies with the Supplier including goods in transit in accordance with condition 6.
- 16.2 The Supplier shall ensure that ADL, or any other person having an insurable interest in the Goods, has its interest noted on each insurance policy (or the policy includes a generic interest clause) and is entitled to claim directly from the insurer. At the request of ADL, the Supplier shall provide ADL with copies of the insurance policies or other evidence of the insurance cover.
- 16.3 The Supplier shall ensure that any permitted sub-contractors also maintain adequate insurance having regard to the obligations under this Contract which they are contracted to fulfil from time to time.

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- 16.4 The Supplier shall not take any steps so as to render any insurance policy void, voidable or otherwise unenforceable.
- 16.5 The Supplier shall notify ADL if any policy is (or will be) cancelled or will not be renewed or if its terms are (or will be) subject to any material change.

17. Confidentiality

- 17.1 Each party undertakes to keep the Confidential Information of the other party confidential by employing commercially reasonable precautions, and at least those precautions which it employs to protect its own confidential information.
- 17.2 The Supplier undertakes to: (a) only to use ADL's Confidential Information for the purpose of providing the Goods and/or Services; (b) only to disclose such Confidential Information to those of its employees and/or permitted sub-contractors who need to know it for the purposes of providing the Goods and/or Services and provided always that such employees and/or permitted sub-contractors are made aware of the confidential nature of the information and have entered into written confidentiality agreements with the Supplier; and (c) not to disclose any such Confidential Information to any third party without the prior written consent of ADL.
- 17.3 The Supplier hereby acknowledges and agrees that the Specification includes confidential and proprietary information of ADL and that it is an essential term of this Contract that the Supplier shall store the Specification (including all design documentation and technical information) in a secure manner at its premises and that access to the Specification shall be restricted to employees of the Supplier that need to access the Specification for the purposes of this Contract and provided that such employees have entered into appropriate written confidentiality undertakings prior to accessing the Specification.
- 17.4 The obligations of confidentiality in this condition 17 shall cease to apply to the extent that any such Confidential Information: (a) is in or falls into the public domain otherwise than by or through a breach of confidentiality by the other party or if applicable, its directors, employees, advisers, permitted sub-contractors and consultants; or (b) is required to be disclosed under any applicable law or by order of a court or governmental body of competent jurisdiction.
- 17.5 As specified by ADL, upon completion of the Services pursuant to a Purchase Order or upon termination of this Contract for any reason, the Supplier shall, at ADL's request: (a) promptly return all of ADL's Confidential Information; and/or (b) destroy any of ADL's Confidential Information and any copies of same. The Supplier shall promptly on request by ADL certify in writing the return and/or destruction of ADL's Confidential Information and any copies of same.
- 17.6 This condition 17 shall survive termination of this Contract howsoever arising.

18. Data Protection

- 18.1 Both parties shall comply with all obligations which arise from the Data Protection Legislation in connection with the Contract.
- 18.2 Notwithstanding clause 18.1, the Supplier shall ensure that there are adequate technical and contractual measures in place to avoid any unauthorised access to, or accidental loss/destruction of Personal Data which may be supplied by ADL.
- 18.3 The provisions of this clause shall apply for the duration of the contract, and indefinitely after its expiry or termination.

19. Health and Safety

- 19.1 The Supplier undertakes and warrants that all action required to minimise and eliminate any risk to health and safety resulting from the use of the Goods for the purpose for which they are designed (save in the event of an inadequate design provided by ADL), and the provision of the Services, has been carried out and that any information which is relevant, in any way whatsoever, to risks to health and safety will be brought to the attention of ADL in writing upon acceptance of the Purchase Order. ADL has the right to demand and receive proof that the above undertakings have been carried out.

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20. Human Rights and Modern Slavery

- 20.1 Both parties shall comply with all applicable child labour and human rights laws, including all conventions or guidelines in relation to the prevention of child labour adopted by the International Labour Organisation (or a similar or replacement body), including the Minimum Age Convention, and the European Convention on Human Rights (or similar conventions for the protection of human rights adopted anywhere in the world) and the Modern Slavery Act 2015.
- 20.2 The Supplier shall take all reasonable measures to ensure the absence of any offences provided by the Modern Slavery Act 2015 with its supply chain.

21. Termination

- 21.1 Without prejudice to its other rights and remedies, ADL may cancel or terminate a Purchase Order in whole or in part, including any other Purchase Order ADL has with the Supplier:
- 21.1.1 immediately on giving notice to the Supplier, if there is a material breach of the Contract (which shall include any breach of condition 4) and (if the breach is remediable save as to time of performance) it is not remedied within 14 days of ADL notifying the Supplier of the breach); or
 - 21.1.2 immediately on giving notice to the Supplier, if a Supplier Insolvency Event occurs; or
 - 21.1.3 immediately on giving notice to the Supplier, if there is a breach of condition 7.1(delivery); or
 - 21.1.4 at any time prior to the completed delivery of the Goods or performance of the Services in accordance with the Contract, on 1 month's notice.
- 21.2 The Supplier will notify ADL forthwith on the occurrence of a Supplier Insolvency Event.
- 21.3 Cancelling or terminating the Purchase Order shall not affect those Terms and Conditions which are capable of subsisting.
- 21.4 On termination or expiry of the Contract in accordance with the terms of the Contract:
- 21.4.1 ADL shall pay to the Supplier any and all amounts due and owing to the Supplier pursuant to this Contract except to the extent of any and all amounts due and owing by the Supplier to ADL under this Contract;
 - 21.4.2 the Supplier shall immediately destroy or, at the request of ADL, return to ADL all information and materials belonging to ADL then in its possession, custody or control, including all Confidential Information of ADL;
 - 21.4.3 the Supplier shall immediately return to ADL all ADL Materials provided by ADL to the Supplier that are owned by ADL and have not been used in the production process and all partially and fully completed Goods in the Supplier's possession or control at ADL's cost; and
 - 21.4.4 the licence (if any) of any Background IPR from ADL to the Supplier shall terminate immediately.

22. Independent Contractor

- 22.1 In performing its obligations under this Purchase Order, the Supplier shall operate as, and have the standing of, an independent contractor engaged by ADL to supply the Goods and/or Services.
- 22.2 Nothing in the Contract shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties, make either party the legal representative of the other or give either party the right or authority to assume, create or incur any liability or obligation of any kind, express or implied, against, in the name of or on behalf of, the other party.

23. Set off

- 23.1 ADL may at any time, without notice to Supplier, set off any liability of the Supplier to ADL against any liability of ADL to the Supplier whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract. If the liabilities to be set off are expressed in

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different currencies, ADL may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by ADL of its rights under this condition shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

- 23.2 The right of set-off in condition 23.1 applies at all times while amounts recoverable from or payable by, the Supplier to ADL and is not affected by any cancellation of a Purchase Order or termination of the Contract or other agreement.

24. Assignment and Sub-Contracting

- 24.1 The Supplier shall not be entitled to assign or otherwise transfer its rights or obligations under the Contract without ADL's prior written consent.
- 24.2 ADL may assign the Contract assign or otherwise dispose of its rights and obligations under the Contract or any part thereof to any person, firm or company.
- 24.3 Where ADL consents to the Supplier using any sub-contractors, such consent shall be subject to: (i) the Supplier being responsible for the compliance by such sub-contractors with the obligations of the Supplier; and (ii) the Supplier entering into a written contract with the sub-contractors containing the following obligations on the sub-contractor: the obligations pursuant to conditions 4 (warranties), 12 (intellectual property rights), 16 (insurance) and 17 (confidentiality).

25. Severance

- 25.1 If any term or provision of these Terms and Conditions is held to be wholly or partly invalid, illegal, void, voidable, unreasonable or unenforceable for any reason by any court, tribunal or administrative body of competent jurisdiction such provision shall be deemed severable and the remaining provisions hereof shall continue in full force and effect. In the event of any such deletion, the parties shall negotiate in good faith with a view to replacing the provisions so deleted with legal and enforceable provisions that have similar economic and commercial effect to the provisions so deleted.

26. Waiver

- 26.1 Failure by ADL to exercise or enforce any right conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

27. Notices

- 27.1 Unless otherwise agreed, notices to ADL shall be addressed to the address as given on each Purchase Order or other official document and to the Supplier at its address as given on invoices, the Purchase Order or other official document.

28. Force Majeure

- 28.1 Provided that it has complied with the provisions of clause 28.2, a party shall not be in breach of this Contract in respect of, or liable for, any failure or delay in performance of its obligations under this Contract arising from or attributable to acts of god, governmental actions, war, riots, civil commotion, general strike, fire, flood, epidemic, hurricane and earthquakes, which make fulfilment of a delivery date impossible ("**Force Majeure Event**").
- 28.2 A party that is subject to a Force Majeure Event shall not be in breach of this Contract provided that it: (a) promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; (ii) could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and (iii) has used all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 28.3 If the Force Majeure Event continues for a continuous period of more than two months, either party may terminate this Contract by giving 14 days' notice in writing to the other party. On the expiry of this notice

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period, this Contract shall terminate. This termination shall not affect the rights of the parties in respect of any breach of this Contract occurring before termination.

29. Anti-Bribery Compliance

29.1 The Supplier shall:

- 29.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to The Bribery Act 2010 ("**Relevant Requirements**");
- 29.1.2 comply with ADL's Ethics, Anti-bribery and Anti-corruption Policies (as may be provided to the Supplier by ADL from time to time) ("**Relevant Policies**");
- 29.1.3 have and shall maintain in place throughout the term of this Contract its own policies and procedures to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;
- 29.1.4 promptly report to ADL any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
- 29.1.5 immediately notify ADL (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract);
- 29.1.6 within two months of the date of this Contract, and annually thereafter, certify to ADL in writing signed by an officer of the Supplier, compliance with this condition 29 by the Supplier and all persons referred to under condition 29.2. The Supplier shall provide such supporting evidence of compliance as ADL may reasonably request.

29.2 The Supplier shall ensure that all of its suppliers, agents and subcontractors who perform services or provide goods in connection with this Contract do so only on the basis of a written contract which imposes on and secures from such persons terms equivalent to those imposed on the Supplier in this condition 29 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to ADL for any breach by such persons of any of the Relevant Terms.

29.3 Breach of this condition 29 shall be deemed a material breach of this Contract.

30. Business Recovery Plan

30.1 The Supplier acknowledges that business continuity is of paramount concern of ADL in entering into the Contract. Accordingly while it is agreed that neither party shall be liable for any breach of its obligations under the Contract resulting from an event of force majeure as set out in condition 28.1, the obligations in this condition 30 reflect what has been agreed between the Supplier and ADL by way of contingency planning.

30.2 Insofar as not previously provided by the Supplier to ADL, the Supplier shall, within 14 days of the date of the first Purchase Order, provide a copy of its current business continuity plan to ADL ("**Business Continuity Plan**"), including (without limitation) details of its business continuity and recovery plan and estimated timescales for resumption of business and shall ensure that at all times ADL is provided with a copy of any updates or changes to the Business Continuity Plan.

30.3 If ADL (acting reasonably) has any recommendations in respect of, or requires any amendments to, the Business Continuity Plan, it shall notify the Supplier to that effect.

30.4 The Supplier shall implement the Business Continuity Plan (including any recommendations or amendments required by ADL).

31. Amendment

31.1 This Contract may be amended only in writing by authorised representatives of the Parties.

32. Survival

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32.1 If any of the conditions, sub-conditions or other provisions of the Contract are found by an arbiter, court or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from the Contract but the remaining provisions of the Contract shall continue in full force and effect insofar as they are not affected by any such deletion. In the event of any such deletion, the Parties shall negotiate in good faith with a view to replacing the provisions so deleted with legal and enforceable provisions that have similar economic and commercial effect to the provisions so deleted.

33. Rights of Third Parties

33.1 The Contract does not create, and shall not be construed as creating, any right which is enforceable by any person who is not a Party, except a permitted successor or assignee of the Parties under condition 24 above shall be entitled to enforce the rights or benefits of the Contract and ADL shall be entitled to enforce the rights or benefits of the Contract against said permitted successor or assignee of the Supplier.

34. Non-Solicitation

34.1 For the duration of the Contract and for twelve (12) months thereafter, neither Party may solicit, directly or indirectly, any employee of the other Party who was involved in the provision of nor receipt of the Services, except as otherwise agreed in writing between the Parties. This condition 32 shall not however restrict a Party from hiring employees of the other Party who apply unsolicited in response to a general advertising or recruitment campaign that is conducted in good faith.

35. Publicity

35.1 Except as required by law or in accordance with the provisions of the Contract, no announcement or disclosure or circular concerning or in connection with the subject matter of the Contract shall be made or issued by either Party without the prior consent of the other Party (such consent not to be unreasonably withheld or delayed).

36. Governing Law & Jurisdiction

36.1 These Terms and Conditions shall be governed by and construed in accordance with the Law of Scotland and the parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts.