

## HGI-TCS01

### Terms and Conditions of Supply

Terms and conditions of Harrington Generators International Limited relating to the supply of goods and services

#### 1 Definitions

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**):

**Additional Charges** has the meaning given to it in **condition 6.5**;

**Additional Deliverables** means any goods, services or other work provided by HGI under the Contract in addition to the Deliverables;

**Customer** means the person, firm or company who purchases Goods and/or Services from HGI;

**Consumable Parts** means any parts or materials generally regarded as being consumable or expendable replacement items including but not limited to spark plugs, contact points, shear pins, fuel strainers, oil filter elements, air cleaner elements, brake shoes, clutch discs, fuses, motor brushes, gaskets, packings tubes, belts, petrol, diesel, oil, grease, battery electrolyte and radiator coolant;

**Contract** means any contract between HGI and the Customer created in accordance with **condition 2.2**;

**Deliverables** means any Goods and the Services (or either of them as the context requires) to be provided by HGI under the Contract;

**Delivery Point** means HGI's premises or such other location as the Customer requests and which has been confirmed by HGI in the Contract (whether in its Proposal, the Sales Order Acknowledgement or otherwise in writing);

**Deposit** means the deposit (if any) to be paid to HGI by the Customer under the Contract as set out in the Proposal or Sales Order Acknowledgement;

**Design Work** means any designs produced by HGI in relation to the Contract, including designs, project development and production drawings, models, prototypes and similar and related works;

**Expenses** means any out-of-pocket costs incurred by HGI in fulfilling the Contract, including (without limitation):

(a) postage, packaging, carriage, freight and handling charges;

- (b) insurance;
- (c) currency conversion and banking charges applicable to the payment method used;
- (d) value added tax or any other applicable sales tax; and
- (e) any customs, import or other duties charged in respect of the sale and importation of loads into the county in which the Customer is resident or the Delivery Point is located;

**Generators** means any generator sets together with any related or ancillary equipment to be supplied by HGI under the Contract;

**Goods** means any Generators, Parts or other goods to be supplied under the Contract as set out in the Proposal or the Sales Order Acknowledgement or which HGI otherwise provides or agrees to provide to the Customer;

**HGI** means Harrington Generators International Limited whose principal place of business is at Ravenstor Road, Wirksworth, Derbyshire DE4 4FY;

**HGI's List Price** has the meaning given to it in **condition 6.1.1**;

**In-put Material** means all documents, information and materials provided by the Customer relating to the Contract;

**Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**International Supply Contract** means a contract as is described in Section 26(3) of the Unfair Contract Terms Act 1977;

**Parts** means any spare or replacement parts for Generators or any related equipment to be supplied by HGI under the Contract;

**Performance Dates** means has the meaning given to it in **condition 3.2**;

**Price** means the aggregate of the charges to be paid by the Customer for the Deliverables under the Contract calculated in accordance with **condition 6**;

**Proposal** means any proposal, quotation or similar document issued by HGI in connection with the provision of the Deliverables;

**Reconditioned Goods** means any Goods or parts of Goods which are supplied by HGI but which are not new Goods and which may have been repaired or re-conditioned;

**Rights** means has the meaning given to it in **condition 10.1**;

**Sales Order Acknowledgement** means the order form issued by HGI setting out the particulars of the Deliverables to be provided by HGI under the Contract;

**Services** means any services to be provided under the Contract as set out in the Proposal or the Sales Order Acknowledgement or which HGI otherwise provides or agrees to provide to the Customer;

**Specification** means in relation to any Goods, any specification:

- (a) which is set out in or referred to in the Contract;
- (b) which is, in relation to any Generator, HGI's standard published specification from time to time; or
- (c) which is otherwise agreed in writing between the parties from time to time;

**Time and Materials Basis** has the meaning given in **condition 6.1.2**;

**Warranty Period** in relation to Generators, the relevant warranty period specified in the Warranty Statement and in relation to all other Goods the warranty period specified in **condition 9.1.1**; and

**Warranty Statement** means HGI's standard warranty statement applicable to Generators supplied by HGI under a Contract current at the date of the Contract which forms part of and shall be deemed to be incorporated into these conditions.

## 2 **Application of conditions**

- 2.1 These Conditions shall apply to and be incorporated into the Contract and shall prevail over any inconsistent terms or conditions attached to, or referred to in, a purchase order, acceptance of a Proposal, or any other document issued by the Customer, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Customer's signed acceptance of the Proposal or the issue by the Customer of its purchase order constitutes an offer by the Customer to purchase the Deliverables specified in it on these Conditions. No offer placed by the Customer shall be accepted by HGI other than by HGI issuing a Sales Order Acknowledgement or (if earlier) by HGI starting to provide the Deliverables on the terms set out in its Proposal when a contract for the supply and purchase of those Deliverables on these Conditions will be established (the **Contract**). The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in its purchase order, acceptance of a Proposal or any other document shall not govern the Contract.
- 2.3 All Proposals are submitted by HGI on the basis that no Contract shall come into existence except in accordance with **condition 2.2**. All Proposals are valid for a period of 30 days from their date, provided that they have not been previously withdrawn by HGI. The terms set out in a Proposal shall be incorporated into and shall form part of the terms of the Contract unless HGI expressly provides otherwise (whether in the Sales Order Acknowledgement or otherwise). If there is any conflict or ambiguity between any terms set out in a Proposal and the terms of a Sales Order Acknowledgement, the terms set out in the Sales Order Acknowledgement shall apply.

- 2.4 All dimensions, prices, assembly instructions and other data included in catalogues, circulars, advertisements, Design Work and price lists constitute approximate guides only and shall not form part of the Contract save to the extent that they are by reference expressly included in the Contract.
- 2.5 Any typographical and clerical errors or omissions in any Proposal, Design Work or other document or information issued by HGI are subject to correction without any liability on the part of HGI.
- 2.6 Any advice or recommendation given by HGI or its employees, contractors or agents about the storage, application or use of the Goods which is not confirmed in writing by an authorised officer of HGI is followed or acted upon entirely and any applicable Specification at the Customer's risk.

### 3 HGI's obligations

- 3.1 HGI shall use reasonable endeavours to provide the Deliverables to the Customer in all material respects in accordance with the Contract and in accordance with any applicable Specification.
- 3.2 Subject to **condition 7.2**, HGI shall use all reasonable endeavours to meet any performance dates (in the case of Services) and any delivery dates (in the case of Goods) specified in the Contract (hereafter referred to as **Performance Dates**).

### 4 Customer's obligations

- 4.1 The Customer shall in order to assist in the provision of the Deliverables:
- 4.1.1 co-operate with HGI in all matters relating to the performance of the Services;
- 4.1.2 provide, in a timely manner, such In-put Material and other information (including but not limited to information relating to delivery and/or installation of the Deliverables) as HGI may reasonably request and ensure that it is accurate in all material respects;
- 4.1.3 where HGI agrees to produce any Design Work in connection with the Contract, either approve such Design Work or inform HGI of any reasons why it unable to approve such Design Work (in each case in writing) within a reasonable period of HGI providing the Design Work to the Customer (having regard to any timescales or performance dates under the Contract);
- 4.1.4 where the provision of the Deliverables by the relevant Performance Date is dependant on the actions of the Customer or a third party, ensure that such actions have been completed by the Performance Date to facilitate the provision of the Deliverables by HGI;
- 4.1.5 provide, for HGI, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises as reasonably requested by HGI for the purposes of providing the Deliverables; and
- 4.1.6 inform HGI of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises.

- 4.2 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by HGI, the Customer shall make those licences and consents available to HGI prior to the relevant shipment.
- 4.3 If HGI's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, HGI shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 4.4 The Customer shall be liable to pay to HGI, on demand, all reasonable costs, expenses, charges or losses sustained or incurred by HGI (including any direct or indirect losses) arising from the Customer's fraud, negligence, failure (or failure by its agents, sub-contractors or employees) to perform or any delay in the performance of any of its obligations under the Contract.

## 5 **Change control**

- 5.1 If either Party wishes to change the Deliverables (including but not limited to a change in any applicable Specification), it shall submit details of the requested change to the other in writing and if either Party requests any such change, HGI shall, within a reasonable time, provide a written estimate to the Customer of:
- 5.1.1 the likely time required to implement the change;
- 5.1.2 any variations to the Price arising from the change;
- 5.1.3 the likely effect of the change on the Proposal or Sales Order Acknowledgement; and
- 5.1.4 any other impact of the change on the terms of the Contract.
- 5.2 HGI may, from time to time and without notice, change the Deliverables in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the Price, or the nature, scope or Specification of the Deliverables. If HGI requests a change to the scope of the Deliverables for any other reason, the Customer shall not unreasonably withhold or delay consent to it.
- 5.3 If the Customer wishes HGI to proceed with the change, HGI has no obligation to do so unless and until the Parties have agreed in writing on the necessary variations to the Price and any other relevant terms of the Contract to take account of the change.
- 5.4 HGI may charge for its time spent in assessing a request for change from the Customer.

## 6 **Payment**

- 6.1 The price for the Deliverables (the **Price**) shall, subject to adjustment in accordance with these Conditions, be as specified in the Contract or, if no price is specified:
- 6.1.1 the price for the Goods shall be HGI's list price current at the date of the Contract (**HGI's List Price**); and

- 6.1.2 the price for the Services shall be calculated on a time and materials basis at the standard rates of HGI current at the date of the Contract (**Time and Materials Basis**).
- 6.2 If the Contract so specifies the Price shall be secured by an irrevocable letter of credit satisfactory to HGI, established by the Customer in favour of HGI and confirmed by a United Kingdom bank acceptable to the Company ("**Letter of Credit**"). The Letter of Credit shall be for the Price payable for the Goods (together with any tax or duty payable) to HGI and shall be valid for a period of not less than six months. HGI shall be entitled to immediate cash payment on presentation to such United Kingdom bank of the requisite supporting documents.
- 6.3 Any Deposit shall be paid to HGI in the manner and at the time specified in the Contract or, if not specified within 7 days of the Contract coming into effect pursuant to **condition 2.2**. Deposits are not refundable except at the sole discretion of HGI.
- 6.4 The total Price shall be payable to HGI (without deduction or set-off) in the manner and at the time or times set out in the Contract (or if not specified when the Deliverables have been supplied).
- 6.5 HGI shall be entitled to charge the Customer additional charges (the **Additional Charges**) in respect of:
- 6.5.1 any time spent assessing a request for change pursuant to **condition 5.4**;
- 6.5.2 the provision of any Additional Deliverables; or
- 6.5.3 any costs or expenses suffered or incurred by HGI resulting from any delay in or suspension of the Services which has been caused by the Customer's instructions or lack of instructions or any other cause for which the Customer is responsible.
- 6.6 Additional Charges shall be as agreed in writing between the Parties or, if no amount is agreed, shall be calculated using HGI's List Price (in the case of Goods) or on a Time and Materials Basis (in the case of Services).
- 6.7 Unless otherwise agreed in the Proposal or the Sales Order Acknowledgement, the Price and any Additional Charges exclude:
- 6.7.1 any Expenses;
- 6.7.2 any costs in terms of hotel, subsistence, travelling and any other similar ancillary expenses incurred in relation to any Services; and
- 6.7.3 any costs associated with the provision of scaffolding or other access equipment, the provision of an electrical supply and the making of final electrical connections for any installation of the Goods or the provision of any Services
- which shall be invoiced by HGI (and HGI reserves the right to require any such costs to be paid by the Customer in advance).
- 6.8 The Price and any Additional Charges shall be exclusive of VAT which HGI shall add to its invoices at the appropriate rate.

- 6.9 The Customer shall pay each invoice submitted to it by HGI, in full and in cleared funds, without counterclaim, deduction or set off at the time or times specified in the Contract or, if not specified, within 30 days of the date of HGI's invoice. Time for payment shall be of the essence of the Contract.
- 6.10 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay HGI on the due date, HGI may (at HGI's sole discretion):
- 6.10.1 charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made; or
- 6.10.2 immediately suspend all provision of the Deliverables until payment of either the total Price or the outstanding amount (at the sole discretion of HGI) has been made in full.
- 6.11 All sums payable to HGI under the Contract shall become due immediately on its termination, despite any other provision. This **condition 6.11** is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.12 HGI may, without prejudice to any other rights it may have, set off any liability of the Customer to HGI against any liability of HGI to the Customer.

## 7 **Delivery**

- 7.1 Delivery of the Goods shall take place at the Delivery Point. Acceptance of any change to the Delivery Point requested by the Customer shall be at HGI's sole discretion and the Customer shall reimburse HGI any additional Expenses incurred by HGI as a result of such change. HGI shall arrange for suitable transport to the Delivery Point.
- 7.2 All Performance Dates are approximate only and, unless otherwise expressly stated in writing, time is not of the essence for delivery of the Goods.
- 7.3 Except where otherwise provided in these Conditions, HGI shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by HGI's negligence).
- 7.4 The delivery of the Goods shall be deemed as occurring when either two business days have elapsed following the day the Customer has been informed that the Goods are awaiting collection or, in cases where the Deliverables include delivery of the Goods to the Customer, on the day of delivery to the Customer.
- 7.5 If the Customer is unable to collect or take delivery of the Goods in accordance with the provisions of **condition 7.4** above, then HGI shall be entitled to arrange storage and/or transportation for the Goods on the Customer's behalf at the Customer's expense. All charges for such storage, transport and any insurance shall be payable by the Customer forthwith on request.
- 7.6 HGI may effect delivery of the Goods in one or more instalments.

- 7.7 The Customer shall, within 24 hours of the arrival of each delivery of the Goods at the Delivery Point, give written notice of rejection to HGI on account of any defect by reason of which the Customer alleges that the Products delivered do not comply with the Contract and which was apparent on reasonable inspection. If the Goods or any packaging materials containing the Goods have suffered any visible damage in transit, on receipt of the Goods, the Customer shall not sign any documents or otherwise indicate that it accepts the Goods and shall notify HGI immediately following any attempt to deliver the Goods in question.
- 7.8 If the Customer fails to give notice as specified in **condition 7.7** then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Contract and, accordingly, the Customer shall be deemed to have accepted the delivery of the Goods in question and HGI shall have no liability to the Customer with respect to that delivery (except in relation to liability for any latent defects).
- 7.9 If the Customer alleges that any Goods are defective and purports to reject such Goods by giving notice under **condition 7.7**, it shall, if so requested by HGI, return the relevant Goods (unaltered and unrepaired) to HGI for inspection as soon as possible and at its own risk and expense.
- 7.10 If the Customer rejects any delivery of the Goods which do not comply with the Contract, HGI shall (at its option), within a reasonable period of HGI accepting that the Goods do not comply with the Contract:
- (a) repair or modify the Goods or supply replacement Goods which comply with the Contract in which event HGI shall be deemed not to be in breach of this agreement or have any liability to the Customer for the rejected Goods; or
  - (b) notify the Customer that it is unable to repair or modify or supply replacement Goods within a reasonable period, in which case HGI shall grant to the Customer a credit equal to the value of the Goods which HGI agrees do not comply with the Contract (**Credit**).
- 7.11 HGI's reasonable decision as to whether the Goods comply with the Contract (and any applicable Specification) shall be final.

## 8 Title and risk

- 8.1 The Goods are at the risk of the Customer from the time of delivery or deemed delivery.
- 8.2 Ownership of the Goods shall not pass to the Customer until HGI has received in full (in cash or cleared funds) all sums due to it in respect of:
- 8.2.1 the Goods; and
  - 8.2.2 all other sums which are or which become due to HGI from the Customer on any account.
- 8.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- 8.3.1 hold the Goods on a fiduciary basis as HGI's bailee;

- 8.3.2 store the Goods separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as HGI's property;
- 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 8.3.4 maintain the Goods in satisfactory condition.
- 8.4 The Customer may resell the Goods before ownership has passed to it on condition that any sale shall be effected in the ordinary course of the Customer's business at full market value and that any such sale shall be a sale of HGI's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 8.5 HGI shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from HGI.
- 8.6 Until the ownership of the Goods has passed to the Customer, HGI may at any time require the Customer to deliver up the Goods. If the Customer fails to deliver up the Goods within a reasonable period, HGI may repossess and dismantle, use, sell or otherwise deal with the Goods and may for that purpose, or for the purposes of determining whether the Goods are held by the Customer, or to inspect them, enter onto any premises where the Goods are or may be stored.
- 8.7 The Customer shall not pledge or in any way charge by way of security for any indebtedness any Goods which remain the property of HGI.
- 8.8 Any items, parts or components which are sent to HGI for repair under the Contract are at the risk of the Customer at all times, and the Customer shall keep those items, parts or components insured against loss or damage and third party risks throughout the transportation of those items, parts or components to and from HGI, and the entire period during which those repairs are being carried out by HGI.

## 9 Quality

- 9.1 HGI warrants:
  - 9.1.1 that Goods other than Generators and Consumable Parts will correspond with the particulars set out in the Proposal or Sales Order Acknowledgement at the time of delivery and will be free from defects in materials and workmanship for a period of 90 days from delivery; and
  - 9.1.2 in relation to Generators, in the terms set out in the Warranty Statement.
- 9.2 The warranties at **condition 9.1** do not extend to Reconditioned Goods or any Goods not manufactured by HGI (including Consumable Parts). Where HGI is not the manufacturer of the Goods or any Consumable Parts, HGI shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to HGI. Any warranty given in relation to Reconditioned Goods shall be on the terms set out in the Proposal or the Sales Order Acknowledgement.
- 9.3 If the Customer gives written notice of a defect to HGI during the Warranty Period, HGI must be provided with photographic evidence of such defect if requested by HGI, and must be given a reasonable opportunity after receiving the notice (and any photographic evidence) to examine the Goods and the Customer (if asked to do by HGI) shall return such Goods to HGI at the Customer's cost for the examination to take place there.

- 9.4 HGI shall not be liable for a breach of a warranty given under **condition 9.1** if:
- 9.4.1 the Customer makes any further use of such Goods after giving such notice;
  - 9.4.2 the defect arises from the In-put Material supplied by the Customer;
  - 9.4.3 the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions or, failure to follow HGI's or the manufacturer's written instructions;
  - 9.4.4 the defect arises because the Customer failed to follow HGI's or the manufacturer's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 9.4.5 the Customer alters or repairs the Goods without the written consent of HGI; or
  - 9.4.6 the Price for the relevant Goods has not been paid by the due for payment.
- 9.5 Subject to **condition 9.4**, if HGI agrees that any Goods do not conform with a warranty given under **condition 9.1** HGI shall at its option (and expense) repair or replace such Goods (or the defective part) or refund the Price (and where the Customer has paid for the defective Goods to be returned to HGI, HGI shall reimburse the Customer's reasonable costs of doing so). If HGI elects to replace any defective Goods under this **condition 9**, the defective Goods shall become the property of HGI.
- 9.6 If HGI complies with **condition 9.5** it shall have no further liability for a breach of the warranty given under **condition 9.1**.
- 9.7 Unless otherwise agreed in writing HGI does not undertake to bear the cost of any work involved in removing or reinstating a repaired or new part.
- 9.8 HGI warrants that the Services will be provided with reasonable skill and care and in accordance with generally recognised commercial practices and standards.
- 9.9 If, within 30 days following the completion of any Services, such Services are found to be in breach of the warranty given under **condition 9.8**, HGI will re-perform the Services. If HGI complies with this **condition 9.9** it shall have no further liability to the Customer for the breach of the warranty contained in **condition 9.8** in respect of such Services.

## 10 Intellectual property

- 10.1 As between the Customer and HGI, all Intellectual Property Rights in the Goods and the Design Work (the **Rights**) shall be owned by HGI. HGI grants a perpetual and irrevocable non-exclusive licence of the Rights to the Customer on a worldwide basis to enable the Customer to use the Goods and the Design Work for the purposes set out in the Proposal or Sales Order Acknowledgement but for no other purpose whatsoever.
- 10.2 The Customer shall not grant any sub-licence or assign the benefit or burden of the licence granted at **condition 10.1** in whole or in part without the prior written consent of HGI.
- 10.3 The Customer acknowledges and agrees that notwithstanding the licence granted at **condition 10.1**, HGI shall not assign to the Customer any Intellectual Property Rights under the Contract.

10.4 As between HGI and the Customer, all Intellectual Property Rights in the In-put Materials shall be owned by the Customer. The Customer licenses all such rights to HGI free of charge and on a non-exclusive basis to such extent and, for such period of time, as may be necessary to enable HGI to provide the Deliverables.

10.5 The Customer shall indemnify HGI against all damages, losses and expenses arising as a result of any action or claim by a third party that any In-put Material (or any part of it) infringes any Intellectual Property Rights of that third party.

## 11 Confidentiality

11.1 During the term of the Contract and for a period of 12 months after termination or expiration of the Contract the following obligations shall apply to the party disclosing (the **Disclosing Party**) any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and any other confidential information concerning the party's business (**Confidential Information**) to the other party (the **Receiving Party**).

11.2 Subject to **condition 11.3**, the Receiving Party:

11.2.1 may not use any Confidential Information for any purpose other than in connection with the Contract;

11.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party; and

11.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information.

11.3 The obligations of confidence referred to in **condition 11.2** shall not apply to any Confidential Information that:

11.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party in connection with the Contract;

11.3.2 is or become publicly available on a non-confidential basis through no fault of the Receiving Party;

11.3.3 is required to be disclosed by any applicable law or regulation; or

11.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other party to the Contract in respect of it and who imposes no obligations of confidence upon the Receiving Party.

11.4 The obligations of the parties under all provisions of this condition shall survive the expiry of the termination of this agreement for whatever reason.

## 12 Liability

12.1 This **condition 12** sets out the entire financial liability of HGI to the Customer in respect of

12.1.1 any breach of the Contract;

- 12.1.2 any use made by the Customer of the Deliverables or any part of them; and
- 12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 12.2 Except for the warranties expressly set out or referred to in the Contract or these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 In relation to any Contract which is not an International Supply Contract (in which event this **condition 12.3** shall not apply), nothing in these Conditions limits or excludes the liability of HGI for:
  - 12.3.1 death or personal injury resulting from HGI's negligence;
  - 12.3.2 any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by HGI; or
  - 12.3.3 any matter which it would be illegal for HGI to exclude or to attempt to exclude or limit its liability.
- 12.4 Subject to **condition 12.3** (if applicable):
  - 12.4.1 HGI's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and
  - 12.4.2 HGI shall not under or in connection with the Contract be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any other special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

### 13 **Data protection**

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of HGI in connection with the Contract.

### 14 **Termination**

- 14.1 Subject to **condition 14.2** the Contract shall terminate automatically once the Deliverables have been provided in accordance with the Contract and all due payments have been made by the Customer under the Contract.
- 14.2 Without prejudice to any other rights or remedies which either party may have, a party (the **Terminating Party**) may terminate the Contract without liability to the other party (the **Defaulting Party**) immediately on giving notice to the Defaulting Party if the Defaulting Party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of the Defaulting Party being notified in writing of the breach.

- 14.3 On termination of the Contract for any reason:
- 14.3.1 the Customer shall immediately pay to HGI all of HGI's outstanding unpaid invoices and interest and, in respect of any Deliverables or Additional Deliverables provided but for which no invoice has been submitted, HGI may submit an invoice, which shall be payable immediately on receipt; and
- 14.3.2 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## 15 **Breach/insolvency of the Customer**

- 15.1 This Condition applies if:
- 15.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 15.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 15.1.3 the Customer ceases, or threatens to cease to carry on business; or
- 15.1.4 the Customer is in breach of any of its obligations pursuant to these conditions; or
- 15.1.5 the Customer exceeds the credit limit under its account (if any) with HGI or has failed to pay any amount to HGI when due under the Contract or any other contract or arrangement; or
- 15.1.6 any credit insurance required by HGI in relation to its dealings with the Customer is cancelled, suspended or otherwise withdrawn; or
- 15.1.7 HGI reasonably apprehends that any of the events mentioned above (or any similar or analogous event in any jurisdiction in which the Customer is incorporated or located), is about to occur in relation to the Customer and notifies the Customer accordingly.
- 15.2 If this condition applies then, without prejudice to any other right or remedy available to HGI, HGI shall immediately be entitled to cancel the Contract or (at HGI's discretion) suspend any further deliveries under the Contract without any liability to the Customer, and if the Deliverables have been delivered but not paid for then the price for such Deliverables shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and HGI shall be entitled to repossess the same.

## 16 **Notice**

- 16.1 Any notice or other communication to be given under this agreement shall be in writing and in the English language and may be delivered by hand or sent by pre-paid post (by airmail post if to an address outside the country of posting) or fax to the relevant party at that party's registered office or last-known trading address or, subject to **condition 16.3**, by email to the email address specified in the Contract or such email address as one party may notify to the other party.

- 16.2 Any notice or document shall be deemed served:
- 16.2.1 if delivered by hand, at the time of delivery unless delivered after 5.00pm in which case they shall be given on the next day (other than Saturday or Sunday) on which the banks are ordinarily open for business in the City of London (Working Day);
  - 16.2.2 if posted, two Working Days after posting (five Working Days if sent by airmail post);
  - 16.2.3 if sent by fax, at the time of transmission printed on the transmission confirmation sheet provided that an error free transmission report has been received by the sender and if the time of transmission is after 5.00pm on a Working Day or at any time on a day that is not a Working Day the notices shall be deemed to have been received at 9.00am on the next Working Day; and
  - 16.2.4 if sent by email, at the time of transmission (and to prove service it is sufficient to prove that the notice was transmitted by email, to the email address of the relevant party).
- 16.3 Notices in relation to the taking or progressing of legal proceedings may not be delivered by email.

## 17 **General**

- 17.1 HGI shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of HGI or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.
- 17.2 No variation of the Contract (including a variation resulting from the application of **condition 5**) or these conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by both HGI and the Customer.
- 17.3 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 17.4 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 17.5 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force and if any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 17.6 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

- 17.7 The Customer shall not, without the prior written consent of HGI, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.8 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 17.9 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act of 1999 to enforce any term of the Contract, but this does not affect any other right or remedy of a third party.

## 18 **Law and jurisdiction**

- 18.1 The Contract shall be governed by and construed in all respects in accordance with the laws of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with the Contract, the Contract shall prevail.
- 18.2 Subject to **condition 18.3** the parties submit to the exclusive jurisdiction of the courts of England and Wales and agree that, in respect of proceedings in England and Wales and in any of jurisdiction, process may be served on either of them in the manner specified for notices in **condition 16**.
- 18.3 Nothing in this **condition 18** shall limit the right of HGI to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings by HGI in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 18.4 It is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Customer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the intended place of delivery. Where necessary, the Customer shall inform HGI at a reasonable time before delivery of any documents which it is necessary for the Customer to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction.
- 18.5 The Contract and these conditions are written in the English language. If the Contract or these conditions are translated into any other language, the English language text shall prevail and any notice given under or in connection with the Contract shall be in the English language.

16<sup>th</sup> December 2010