



## Terms and conditions of sale: Goods and Services ("Terms")

### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in these Terms:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** has the meaning set out in clause 2.1 (for Equipment Supplies and Installation Services), in clause 2.2 (Supplemental Goods) or in clause 2.3 (Equipment Services).

**Contract:** the terms and conditions on which Goods and/or Services are supplied by the Supplier to the Customer being these Terms and, in the case of Equipment Supplies, Installation Services and Supplemental Goods, the relevant Order Confirmation, and in the case of Equipment Services, the Services Agreement.

**Customer:** the person or legal entity who purchases Services or Goods from the Supplier, as detailed in the Order Confirmation or Services Agreement as the case may be.

**Delivery:** has the meaning given in clause 5.5 with deemed Delivery being as set out in clause 5.8.

**Delivery Date:** the date specified for the delivery of Goods or Services in an Order Confirmation or Services Agreement or, if no date is specified, the date that delivery takes place or is deemed to take place in accordance with clause 5.

**Delivery Location:** has the meaning given in clause 5.2

**Equipment:** the equipment to be supplied by the Supplier as detailed in an Order Confirmation.

**Equipment Services:** means any servicing and maintenance services to be provided by the Supplier to the Customer as set out in a Services Agreement or Order Confirmation including the provision of any Supplemental Goods as detailed in that Services Agreement or Order Confirmation.

**Equipment Supplies:** the supplying of Equipment by the Supplier to the Customer on the terms of the Contract.

**Force Majeure Event:** has the meaning given to it in clause 21.

**Good Industry Practice:** standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstance.

**Goods:** Equipment and/or any Supplemental Goods.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed between the Customer and the Supplier and incorporated into an Order Confirmation.

**Installation Services:** the services to be provided by the Supplier in relation to the installation and commissioning of Equipment as detailed in an Order Confirmation.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order of Goods and/or Services on the terms of the Contract.

**Order Confirmation:** a written description from the Supplier of Equipment

Supplies, Installation Services, Supplemental Goods or Equipment Services, and any applicable costs, special conditions and timescales as agreed between the Supplier and Customer.

**Price:** the charges made by the Supplier for Goods and/or Services as detailed in an Order Confirmation for Equipment Supplies, Installation Services and Supplemental Goods or in a Services Agreement for Equipment Services (or as otherwise indicated by the Supplier), payable in accordance with clause 12.

**Quotation:** a non-legally binding description of any Goods and/or Services to be provided and their cost.

**Services:** the Installation Services or Equipment Services, or any part of them.

**Services Agreement:** a detailed description or specification of Equipment Services provided in writing by the Supplier to the Customer setting out the period during which Equipment Services will be provided and the Price (or estimated Price) of such Equipment Services.

**Services Specification:** where Equipment Services are provided under an Order Confirmation, the specification for such Equipment Services as detailed in the Order Confirmation or otherwise agreed between the Supplier and the Customer.

**Spare Parts** means Supplemental Goods which are spare parts for Equipment.

**Supplemental Goods** means Spare Parts, tools, consumables and other goods (excluding Equipment) supplied by the Supplier as may be detailed in a Quotation and/or as confirmed in an Order Confirmation.

**Supplier:** TREIF (UK) LIMITED a company incorporated and registered in England and Wales with company number 00590394 whose registered office is at Genesis House Poole Hall Industrial Estate, Poole Hall Road, Ellesmere Port, Cheshire CH66 1ST.

**Supplier Materials:** has the meaning set out in 3.1 (h).

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 Clause headings shall not affect the interpretation of these Terms.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.

1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement and shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

1.8 A reference to **writing** or **written** includes fax and email.

1.9 Any obligation in these Terms on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.10 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.11 Any words following the terms **including, include, in particular, for**

**example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. FORMATION OF CONTRACT AND BASIS OF SUPPLY

2.1 **Equipment Supplies and Installation Services:** A Quotation for Equipment Supplies and Installation Services does not form a legally binding offer to enter into a contract but is a scope of supply which is subject to further changes. The Order Confirmation in relation to such Equipment Supplies and Installation Services constitutes an offer by the Supplier to the Customer to purchase the Equipment Supplies and Installation Services in accordance with these Terms and that Order Confirmation. The Supplier's offer is accepted by the Customer providing a signed copy of the Order Confirmation to the Supplier with a purchase order, and the "**Commencement Date**" is the date the Order Confirmation is signed and given to the Supplier.

2.2 **Supplemental Goods:** A Quotation for Supplemental Goods does not form a legally binding offer to enter into a contract but is a scope of supply which is subject to further changes. The Order Confirmation in relation to such Supplemental Goods constitutes an offer by the Supplier to the Customer to purchase such Supplemental Goods in accordance with these Terms. The Supplier's offer is accepted by the Customer providing a signed copy of the Order Confirmation to the Supplier or otherwise confirming its acceptance in writing and providing a purchase order. The "**Commencement Date**" is the date the Order Confirmation is signed or such other written confirmation is given to the Supplier.

2.3 **Equipment Services:** The Supplier shall provide certain Equipment Services and associated Supplemental Goods to the Customer, for the Equipment and duration which are specified in the relevant Services Agreement or Order Confirmation, and the "**Commencement Date**" is the date specified in the Services Agreement or Order Confirmation as the case may be. The Services Agreement or Order Confirmation constitute an offer by the Supplier to provide the Equipment Services in accordance with these Terms. The Supplier's offer is accepted by the Customer providing a signed copy of the Services Agreement or the Order Confirmation (as the case may be) or in the case of an Order Confirmation otherwise confirming its acceptance in writing and if requested by the Supplier providing a purchase order.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of Goods or Services contained on the Supplier's website are issued or published for the sole purpose of giving an approximate idea of the Services and Goods. They shall not form part of the Contract or have any contractual force.

2.6 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing including but not limited to the Customer's purchase order.

2.7 Any Quotation shall not constitute an offer, and is only valid for a period of six weeks from the date of issue for Supplemental Goods and Equipment Services, and for the period of time set out in a Quotation for Equipment Supplies and Installation Services. Quotations are not binding and are subject to change until finalised in an Order Confirmation or Services Agreement.

2.8 These Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.9 Time in respect of delivering Goods and/or providing Services is not of the essence.

## 3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

- (a) ensure that the terms of the Order Confirmation, Services Agreement or Services Specification and (if submitted by the Customer) and/or the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods and Services;
- (c) provide the Supplier, its employees, agents, consultants and

subcontractors, in a timely manner and at no charge, access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require and ensure that such information is complete and accurate in all material respects;

(e) be responsible (at its own cost) for preparing and maintaining the Delivery Location for the supply of Goods or Services, including identifying, monitoring, removing and disposing of any hazardous materials from the Delivery Location in accordance with applicable laws, before and during the supply of Goods or Services and informing the Supplier of all the Customer's obligations and actions under this clause 3.1(e);

(f) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Delivery Location;

(g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(h) keep and maintain all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

(i) comply with any additional obligations as set out in the Order Confirmation or Services Agreement.

3.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**") then:

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services or supply of Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 3.2; and

(c) the Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from a Customer Default or any fraud or negligence by, or failure to perform or delay in the performance of any of its obligations under this agreement of the Customer, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

## 4. CHANGES TO SPECIFICATIONS AND SERVICES AGREEMENTS

The Supplier reserves the right to by notice to the Customer amend a Goods Specification, Services Specification and/or Services Agreement if required by any applicable statutory or regulatory requirements or due to Force Majeure, materials or personnel being unavailable, or the Goods Specification, Services Specification or Services Agreement in its reasonable opinion breaches or potentially breaches the Intellectual Property Rights of any third party.

## 5. DELIVERY

5.1 The Supplier shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery

- note which shows the date of the Order Confirmation, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 5.2 Unless otherwise agreed in writing, delivery of Goods and/or Services to the Customer shall take place at the address stated on the Order Confirmation or Services Agreement (as relevant) (the "**Delivery Location**").
- 5.3 The time and date estimated for the Delivery Date or completion of Services is not of the essence although the Supplier will make reasonable efforts to make delivery or complete the Services within the time quoted. The Supplier shall not be held responsible or liable for any losses or damage caused to the Customer by late delivery or completion.
- 5.4 Delays in the delivery of an Order shall not entitle a Customer to:
- (a) refuse to take delivery of the Order;
- (b) claim damages; or
- (c) terminate the Contract, subject to clause 16.
- 5.5 Delivery of Goods (whether in full or by instalments) shall be completed on the completion of the delivery of those Goods to the Delivery Location ("**Delivery**"). The Supplier may unload Equipment or provide the Customer with reasonable directions and instructions as to unloading and the Customer agrees to follow such instructions.
- 5.6 The Customer undertakes to:
- (a) provide sufficient access to the Delivery Location to enable the Delivery to be made; and
- (b) provide details of any security access at the Delivery Location to the Supplier prior to the Delivery Date.
- 5.7 The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under these Terms.
- 5.8 If the Customer fails to accept Delivery on the specified Delivery Date, or if after the Delivery Date, within five Business Days of the Supplier notifying the Customer that the Goods are ready for Delivery, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligation under these Terms or due to a Force Majeure Event:
- (a) Delivery of the Order shall be deemed to have taken place at 9:00am on the Delivery Date or, if after the Delivery Date, the fifth Business Day following the day on which the Supplier notified the Customer that the Order was ready for Delivery; and
- (b) the Supplier shall store the Order until Delivery actually takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.9 If 30 Business Days after the Supplier notified the Customer that an Order for Goods is ready for Delivery the Customer has not accepted Delivery of such Goods, the Supplier will not refund the Customer any deposit or instalment payments paid towards such Goods and may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer any excess over the price of the Goods or charge the Customer for any difference between the sale price the Supplier achieves from a third party for the Goods.
- 5.10 The Supplier may deliver an Order by instalments. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6. QUALITY OF GOODS**
- 6.1 The Supplier warrants that in relation to Equipment and Spare Parts, for the period set out in the Order Confirmation (**Warranty Period**), those Goods shall:
- (a) conform in all material respects with their description in the Order Confirmation;
- (b) be in compliance with all applicable laws;
- (c) be free from material defects in design, material and workmanship and be in accordance with Good Industry Practice; and
- (d) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.2 Subject to clause 6.3, the Supplier shall, at its option, repair or replace defective Equipment or Spare Parts or refund the price of the defective Equipment or Spare Parts in full if:
- (a) the Customer gives notice in writing to the Supplier during the relevant Warranty Period within a reasonable time of discovery that some or all of the warranted Goods do not comply with the warranties set out in clause 6.1;
- (b) the Supplier is given a reasonable opportunity of examining such warranted Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such warranted Goods to the Supplier's place of business at the Customer's cost.
- 6.3 The Supplier shall not be liable for the warranted Goods' failure to comply with the warranties in clauses 6.1 if:
- (a) the Customer makes any further use of such Goods after notice has been served in accordance with clause 6.2(a);
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) Good Industry Practice, or the locking device or safety system for the Goods has been interfered with or not installed in line with Good Industry Practice;
- (c) the defect arises as a result of the Supplier following any Goods Specification or drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, misuse, neglect, or abnormal working conditions;
- (f) the Customer does not comply with clause 6.2;
- (g) the warranted Goods are incorporated by the Customer or any third party into another component, machine or piece of equipment; or
- (h) in the case of the warranty in clause 6.1(a) only, the Goods differ from the Order Confirmation as a result of changes made in accordance with the Customer's instructions or to ensure they comply with applicable statutory or regulatory standards.
- 6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of any warranted Goods' failure to comply with the warranty in clause 6.1 and the terms implied by sections 13 to

15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract

6.5 The provisions of this clause 6 shall apply to any repaired or replacement Goods supplied by the Supplier but the Warranty Period in question shall expire upon the date the Warranty Period for the original Goods would have expired.

6.6 Each claim in relation to a breach of the warranties set out in clause 6.1 will be subject to the Supplier undertaking an in-house investigation. In the event of a rejection of any warranty claim, a copy of the written report of the results of the investigation will be made available to the Customer on request. If the Customer wishes to contest/appeal against the warranty decision it should do so in writing to the Supplier's service manager. The service manager will review the warranty findings and give a decision upon whether he/she agrees or disagrees with the rejection of the warranty claim. Should the Customer wish to appeal the outcome of the in-house investigation, it may do so in accordance with clause 23 (Dispute Resolution).

6.7 Whilst the Supplier shall seek to obtain for the Customer from third party suppliers of any part or parts of the Goods the benefit of any warranty or guarantee for that part given by the third party supplier to the Supplier, the Supplier shall not be liable for any loss or damage arising directly or indirectly from the failure of such part.

6.8 The warranties in clause 6.1 only apply to Goods which are supplied new by the Supplier and not to Goods which are reconditioned, overhauled, repaired, hired, serviced, tested or inspected by the Supplier.

## 7. TESTING

7.1 Once Equipment has been ordered as set out in clause 2.1 and shipped to the UK from the Supplier's holding company, the Supplier will inspect the Equipment to ensure it meets the Goods Specification ("Pre Delivery Inspection").

7.2 The Customer can attend the Pre Delivery Inspection to ensure the Equipment is as described in the Goods Specification prior to arranging for the Equipment to be delivered to the Delivery Location.

## 8. TITLE AND RISK

8.1 The risk in any Goods sold or supplied by the Customer to the Supplier shall pass to the Customer upon completion of Delivery.

8.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for such Goods and all other sums on any account whatsoever owed by the Customer to the Supplier. Once sums have been received by the Supplier, the title in the delivered Goods shall pass to the Customer.

8.3 Risk and title in any Goods provided by the Customer to the Supplier to undertake any Equipment Services including but not limited to reconditioning, overhaul, repair, service, testing or inspection shall at all times remain vested in the Customer (subject to the lien set out in clause 9).

8.4 If the Supplier removes any part of the Goods delivered to it by the Customer in accordance with clause 8.3 in order to replace it, the Supplier shall be entitled, unless otherwise instructed by the Customer in writing, to dispose of such removed part and to retain for its own benefit the proceeds of any sale or other disposal of the same.

8.5 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) ensure the Goods remain readily identifiable as the Supplier's property and if so requested by the Supplier, place on the Goods (and maintain) a plate in such form and of such size and prominence as the Supplier requires indicating that the Goods are the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the

Supplier from the time the Goods are delivered to the Installation Location. The Customer shall obtain an endorsement of the Supplier's interest in the Goods on its insurance policy. On request the Customer shall allow the Supplier to inspect such Goods and the insurance policy; and

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 17.1(a) to clause 17.1(d). **Error! Reference source not found..**

8.6 Subject to clause 8.7, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods.

8.7 If before title to the Goods passes to the Customer, the Supplier has the right to terminate the Contract as set out in clause 17, then, without limiting any other right or remedy the Supplier may have:

(a) the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession which have not been irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 9. LIEN AND RIGHT OF RE-SALE

9.1 The Supplier will have, in addition to any other right or remedy available to it, a lien and power of sale over any Goods delivered to it by the Customer for reconditioning, overhaul, repair, service, testing or inspection for all monies (whether presently payable or not) payable by, and all debts and liabilities (whether or not the period for payment or discharge of the same shall have actually arrived) of the Customer to the Supplier under any contract and such lien shall cover such Goods whether or not the Supplier shall at the time of exercise of the lien have begun or completed reconditioning, overhaul, repair, service, testing or inspection of such Goods.

9.2 Without prejudice to any other rights of the Supplier whether under the Contract or otherwise, if any sum due from the Customer has not been paid within three weeks after becoming due, the Supplier may, upon providing seven days' notice of its intention to do so, if such sums are not paid by the end of such notice period, dispose of (whether by auction or private treaty or in any other manner) any or all of the Goods in the Supplier's possession on which the Supplier has a lien. The net proceeds of such sale of Goods shall be applied towards payment or satisfaction of the debts or liabilities owed by the Customer to the Supplier. Any surplus monies shall be paid to the Customer.

9.3 The Supplier shall be entitled to refuse to deliver up any Goods of the Customer it holds at any time unless the Price and all charges accrued due under the Contract and all other sums (if any) then owed by the Customer to the Supplier under any contract or on any account whatsoever have been paid.

## 10. SUPPLY OF SERVICES

10.1 The Supplier shall provide the Services to the Customer in accordance with the Service Agreement (or where there is no Service Agreement in place for Equipment Services, and in the case of Installation Services, in accordance with the relevant Order Confirmation) in all material respects.

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

10.3 The Supplier warrants, subject to the limitations set out in clause 15, to the Customer that the Services will be provided using reasonable care and skill.

## 11. TRAINING

11.1 Where agreed and as detailed in an Order Confirmation, the Supplier

shall provide training to the Customer in relation to Equipment. The Customer acknowledges that it must exercise its own skill and judgement when using the information provided in relation to all Goods and acknowledges that the Supplier has no liability for any damage or loss howsoever caused (including damage and loss caused by (but not limited to) any errors, loss of data, inaccuracies or omissions in any information, advice, instructions, content or scripts provided to the Customer) by its use or reliance on the training.

- 11.2 The Customer is responsible for ensuring that it and its staff follow and comply with training and that it has suitably trained and competent operatives. The Customer is responsible for ongoing training of its staff beyond any agreed to be provided by the Supplier.

## 12. PRICE AND PAYMENT

- 12.1 The Price for Equipment Supplies, Installation Services and Supplemental Goods is set out in the Order Confirmation. The price for Equipment Services is set out in the Services Agreement.

- 12.2 The Customer shall pay the total Price to the Supplier (without deduction or set-off) as set out in the Order Form or Services Agreement.

- 12.3 The Supplier will invoice the Customer as set out in the Order Confirmation or Services Agreement (which may include a deposit, advance payments or staged payments) or:

- (a) upon Delivery of Goods (and the Supplier reserves the right to submit interim invoices in relation to partial Deliveries); or
- (b) upon the completion of or at set stages throughout the delivery of Services.

- 12.4 All Goods sold or Services provided must be paid for in cleared funds and in full 30 days from the date of the invoice. Each invoice shall quote the relevant order number.

- 12.5 The Supplier reserves the right to give notice to the Customer that it will increase the Price to cover any of the following circumstances:

- (a) the cost of any additional special testing, or investigation, required by the Customer, or by any relevant regulatory body or manufacturer;
- (b) the cost of any additional Goods and/or Services requested or agreed to be purchased by the Customer which were not detailed in the Order Confirmation or Quotation;
- (c) any increase in labour costs and/or material prices outside the control of the Supplier;
- (d) any additional costs where the Price or any element of it was indicated in the Order Confirmation or Services Agreement as being an estimate;
- (e) any additional costs incurred by the Supplier where the supply of Goods and/or Services is suspended in accordance with the Customer's instructions;
- (f) where the Customer requests a change in the Delivery Date, Goods or Services;
- (g) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate instructions or information; and/or
- (h) the costs of any special packing of the Goods required above the Supplier's standard packing, carriage, insurance, airport, dock or handling fees and other charges stated to be separate to the Price.

- 12.6 Any Price quoted or detailed by the Supplier excludes VAT and any other taxes, duties and impositions, which the Supplier shall add to its invoices at the appropriate date, and any ancillary expenses reasonably incurred by the Supplier in connection with the Services, including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

- 12.7 The Price is exclusive of the costs of packaging, insurance and

carriage of the Goods which shall be invoiced to the Customer in addition to the Price quoted.

- 12.8 Where the Price quoted includes payments to third parties and the third party has not by the date the Supplier invoices the Customer provided an invoice to the Supplier, the Supplier reserves the right to raise an invoice to include an estimate of such third party payments. This third party payment is subject to adjustment. Should an adjustment be required, the Supplier may amend and re-issue the invoice or issue a further invoice or credit note at the discretion of the Supplier.

- 12.9 All Goods sold and/or Services provided must be paid for in cleared funds, in United Kingdom sterling and in full by the end of the calendar month following the date of the invoice, unless agreed otherwise in writing by a director of the Supplier. Each invoice shall quote the relevant Order number.

- 12.10 All amounts due under the Contract from the Customer to the Supplier shall be paid in immediately available cleared funds, and in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier reserves the right to set off any sums due from the Customer to the Supplier against any sums due from the Supplier to the Customer.

- 12.11 The Customer shall pay each invoice submitted to it by the Supplier, in full and cleared funds to a bank account nominated in writing by the Supplier, on the basis set out in the relevant Order Confirmation or Services Agreement.

- 12.12 Time for payment shall be of the essence of the Contract. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date:

- (a) the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount;
- (b) the Supplier may take steps to recover such unpaid sums; and
- (c) the Supplier may suspend all Services until payment has been made in full.

- 12.13 All sums payable to the Supplier under these Terms shall become due immediately upon its termination, despite any other provision. This clause 12.13 is without prejudice to any right to claim for interest under law, or any such right under these Terms.

- 12.14 All amounts due under these Terms shall be paid without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 12.15 The Supplier reserves the right to apply monies received from the Customer to any outstanding invoices.

## 13. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its Goods and services which the receiving party may obtain, costs, charges and the Price, discounts, specifications, and processes. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 13 shall survive termination of the Contract.

## 14. DATA PROTECTION

Personal data is handled in accordance with the Supplier's privacy policy which can be found at <https://www.treif.de/en/general-information/privacy-policy/>.

## 15. LIMITATION OF LIABILITY

- 15.1 References to liability in this clause 15 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 15.2 Without prejudice to clause 15.5, the Supplier's total liability to the Customer shall not exceed the Price received from the Customer under the relevant Contract.
- 15.3 Subject to clause 15.5, the Supplier's liability to the Customer excludes any indirect losses or damages, loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, or indirect, special or consequential loss.
- 15.4 Advice and information, in whatever form it may be given, is provided in good faith by the Supplier only, and without liability, and the Customer shall have no claim against the Supplier for any loss, damage, costs or expenses arising out of the Customer or any other party relying upon such advice or information.
- 15.5 Nothing in the Contract shall exclude or limit the liability of the either Party for:
- death or personal injury caused by negligence;
  - fraud or fraudulent misrepresentation; or
  - any matter for which liability cannot by law be excluded or limited.
- 15.6 This clause shall survive termination or expiry of the Contract.
- 16. CANCELLATION AND RETURNS**
- 16.1 In the event of cancellation of an Order by the Customer before Delivery of the relevant Goods or provision of the relevant Services, the Supplier shall not refund the Customer any deposit or staged payments paid for Equipment or pro rata payments of the Price in relation to Services ("**Non-refundable Sums**") and the Customer shall in accordance with clause 12 pay to the Supplier all costs reasonably incurred by the Supplier in relation to such Order to the extent that such costs exceed the Non-refundable Sums.
- 16.2 The Supplier may in its discretion accept the return of Supplemental Goods provided that the returned Supplemental Goods are not custom made, are unused and in a re-saleable condition and that the Customer pays for the carriage of such Supplemental Goods back to the Supplier. If the Supplier accepts a return, it will provide a refund to the Customer of the Price of such Supplemental Goods less a 10% re-stocking fee.
- 17. TERMINATION**
- 17.1 Without limiting or affecting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- the Customer fails to pay any undisputed amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
  - the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within seven days after being notified in writing to do so;
  - the Customer repeatedly or persistently breaches the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Contract; or
  - the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business, having a monitor appointed with regards to a restructuring moratorium under Part A1 of the Insolvency Act 1986, having a restructuring plan implemented under section 901(c)(1) of the Companies Act 2006, provided that such right to terminate follows the exceptions permitting termination of the Contract as stipulated in section 233B(5) and (6) schedule 4ZZA of the Insolvency Act 1986.
- 17.2 Without limiting its other rights or remedies, if any of the provisions of clause 17.1 apply the Supplier may:
- suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier;
  - repossess and resell any Goods in accordance with the Contract; and/or
  - declare (whereupon there shall forthwith become) that the Price of the Goods and or Services are immediately due and payable under any contract between the Parties.
- 18. OBLIGATIONS ON TERMINATION**
- 18.1 On termination of the Contract for any reason the Customer shall:
- immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services or Goods supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - return all of the Supplier Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's or any third party's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
  - on request, certify in writing to the Supplier that it has complied with the requirements of this clause 18.
- 19. CONSEQUENCES OF TERMINATION**
- 19.1 On termination of the Contract clauses 8, 9, 12, 13, 15, 18, 19, 20, 22, 23, 24.8 and 24.9 shall survive and continue in full force and effect.
- 19.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 20. INTELLECTUAL PROPERTY RIGHTS**
- 20.1 All Intellectual Property Rights in the Goods and in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 20.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, worldwide, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 20.3 The Customer shall indemnify the Supplier against all liabilities, losses, damages, penalties, costs and expenses (including but not limited to any direct, indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any work done in accordance with the Customer's specification (on which the Order Confirmation was provided) which involves any infringement of any party's Intellectual Property Rights.
- 21. FORCE MAJEURE**
- 21.1 Force Majeure Event means any circumstance beyond the Supplier's reasonable control including but not limited to:
- act of God, explosion, flood, tempest, earthquake or fire;
  - epidemic or pandemic;
  - war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - import or export regulations or embargoes;
  - strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a relevant

- third party);
- (g) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (h) power failure or breakdown in machinery; or
- (i) interruption of failure of utility service.
- 21.2 Provided that the Supplier has complied with clause 21.3, if the Supplier is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, the Supplier shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 21.3 The Supplier shall as soon as reasonably practicable after the start of the Force Majeure Event:
- (a) notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 21.4 If the Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 12 weeks in the case of Equipment Supplies and Installation Services or three weeks in the case of Supplemental Goods or Equipment Services, the Customer may terminate the Contract by giving one month's written notice to the Supplier.
- 22. NOTICES**
- 22.1 A notice given to a party under or in connection with the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier or by email, to each party required to receive the notice or communication to the relevant party's registered office (or if the Customer is not a company or LLP to its trading address) and if by email to the email address provided for such use by a party as may be changed by notice in writing to the other party.
- 22.2 Delivery of a notice is deemed to have taken place (provided that all other requirements in this clause have been satisfied):
- 22.3 if delivered personally, at the time the notice is left at the address;
- 22.4 if delivered by commercial courier, on the date and time that the courier's delivery receipt is signed;
- 22.5 if sent by pre-paid first class post or recorded delivery, at 9.00am on the second Business Day after posting; or
- 22.6 if sent by email, upon transmission of the email unless such transmission is outside of normal business hours (being 9.00am to 5.00pm on a Business Day) in which case delivery shall be deemed to have taken place at 9.00am on the next Business Day).
- 22.7 Any party may notify to the other parties an alternative postal or email address in accordance with this Contract.
- 22.8 This clause 22 does not apply to the service of any proceedings or other documents in any legal action.
- 23. DISPUTE RESOLUTION**
- 23.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("**Dispute**"), then, except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, a senior officer of each party shall attempt in good faith to resolve it; and
- (b) if the senior officers are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 45 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR Notice**") to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.
- 23.2 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 90 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 24.9.
- 24. GENERAL**
- 24.1 Entire Agreement**
- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) The Customer acknowledges that in entering into these Terms it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract and that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- (c) Nothing in this clause 24 shall limit or exclude any liability for fraud.
- 24.2 Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the Contract.
- 24.3 Third party rights:** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the Terms. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 24.4 Variation:** Except as set out in the Contract, no variation of these Terms or any Order Confirmation or Quotation shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 24.5 Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 24.6 Customer Authority:** The Customer warrants to the Supplier that it has the power and authority to enter into this Contract.
- 24.7 Supplier Authority:** No employee or agent of the Supplier has any authority to give or make any representation or warranty relating to Goods or Services provided or to be provided by the Supplier unless such representation or warranty is in writing and signed on behalf of the Supplier by a Director or a Manager of the Supplier.
- 24.8 Governing law:** Subject to clause 23 above, this agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 24.9 Jurisdiction:** each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

