

INTRODUCTION

The following terms and conditions of trading (these "Conditions") apply to all contracts, agreements or arrangements, written or oral, (a "Contract") entered into by the company within the Coopers Group of Companies (the "Company") with any other person, company, firm or organisation ("the Counterparty") each as named in the Contract. These Conditions have supremacy over all equivalent terms and conditions purporting to be applied to a Contract by the Counterparty, irrespective of any communication or provision claiming supremacy.

These Conditions apply whether the Company is buying, selling or supplying goods and/or services or appointing or being appointed by the Counterparty for a particular task or creating some other form of commercial relationship between the Company and the Counterparty. Accordingly, these Conditions are even-handed between the Company and the Counterparty and can only be amended by an express written provision within the Contract.

1. INTERPRETATION

- 1.1 In the Contract (including these Conditions)-
 - 1.1.1 any reference to a clause or schedule is to a clause of or schedule to the Contract. Reference to a paragraph is to a paragraph of a schedule to the Contract;
 - 1.1.2 use of the singular includes the plural and vice versa and use of any gender includes the other genders and any reference to a person includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations or trusts;
 - 1.1.3 a "Subsidiary" or "Holding" company is described by section 1159 Companies Act 2006 and a "Group" means the group of companies comprising the Holding company and its Subsidiaries.
 - 1.1.4 all references to a statutory provision shall be construed as including references to:
 - (a) any statutory modification, consolidation or re-enactment (whether before or after the date of the Contract) for the time being in force;
 - (b) all statutory instruments or orders made pursuant to a statutory provision; and any modification, consolidation or re-enactment thereof.
 - 1.1.5 any phrase introduced by the terms "including", "include", "in particular" or any similar expression is illustrative only and does not limit the sense of the words preceding those terms;
 - 1.1.6 where the consent of a Party is required, such consent shall be given or withheld before the action takes place and shall be in writing and such consent shall not be unreasonably withheld, delayed or conditioned.
 - 1.1.7 any obligation on a person not to do something includes an obligation not to agree allow that thing to be done.
 - 1.1.8 where either Party comprises two or more persons, any obligations on their part are joint and several.
 - 1.1.9 headings are to be ignored in the interpretation of the Contract.
 - 1.1.10 any specific term or condition in the Contract shall prevail over any inconsistent term or condition in these Conditions.
- 1.2 A reference in these Conditions to "a Party" is to either Party to the Contract, and a reference to "the Parties" is a reference to all Parties to the Contract.
- 1.3 The Contract may be executed in any number of counterparts or duplicates, each of which when executed and delivered, shall be an original, and all counterparts or duplicates together shall constitute one and the same instrument.
- 1.4 The Contract and any other document provided in connection with the Contract must be in English, or, if in any other language, there must be a properly prepared translation in English, and the English translation will prevail in the case of any conflict between them.

2. FORCE MAJEURE

- 2.1 Neither Party will be liable for any failure or delay in performing its obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party (a "Force Majeure Event") which includes industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war or governmental action.
- 2.2 The affected Party shall-
 - 2.2.1 immediately, notify the other Party, stating the commencement date, nature and extent of the Force Majeure Event, the cause thereof, how the affected Party proposes to mitigate the impact, and its estimated duration;
 - 2.2.2 exercise all reasonable endeavours to mitigate the effect of the Force Majeure Event and to recommence performance of the affected obligations to the extent reasonably practicable as soon as possible.
- 2.3 If the Force Majeure Event continues for a continuous period of more than 3 months either Party may terminate this Agreement by written notice to the other Party.

3. WAIVER

No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Contract will either be or be deemed to be a waiver or in any way prejudice any right of that Party, and no waiver by either Party of a breach of any provision of the Contract will be deemed to be a waiver of any subsequent breach of the same or any other provision. No right, power or remedy in the Contract conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party.

4. SEVERANCE

- 4.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions of the Contract will remain in full force and effect.
- 4.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with the minimum modification as is necessary to make it valid, enforceable or legal.

5. ASSIGNMENT AND ALIENATION

- 5.1 Except as provided otherwise, neither Party may assign sub-contract or delegate any of its rights or obligations under the Contract or any document referred to in it without the consent of the other Party.
- 5.2 In the event of any permitted assignment the assignee shall first enter into a contract of novation with the assignor and the other Party whereby the assignee undertakes with the other Party to perform and observe all the obligations on the part of the assignor.
- 5.3 In the event of a permitted sub-contract or delegation of any of the rights or obligations under the Contract, the sub-contractor or delegate shall first enter into a deed of covenant with the other Party, whereby it undertakes with the other Party to observe and perform all relevant obligations of the Contract, provided that the obligations to the other Party of the Party seeking to sub-contract or delegate shall not be affected.

6. THIRD PARTY RIGHTS

- 6.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from such Act.
- 6.2 The Parties may vary, amend or rescind the Contract or any part thereof without first obtaining the consent of any third party.
- 6.3 Each Party confirms to the other Party that it is acting as principal and not as a broker or agent.

7. CONFIDENTIALITY

- 7.1 Either Party (the "Recipient") receiving from the other Party (the "Provider") confidential information ("Confidential Information") (including confidential data, know-how, formulae,

processes, designs, photographs, drawings, specifications, software programs, samples and other material attributable to or relating to the Contract and any business, customer, financial, commercial, economic, operational, technical, administrative, marketing, strategic and planning information of the Provider) shall:-

- 7.1.1 keep the Confidential Information secret;
 - 7.1.2 use the Confidential Information exclusively for purposes permitted by the Contract;
 - 7.1.3 not disclose the Confidential Information to anyone or make copies of it;
 - 7.1.4 ensure that no one discovers Confidential Information from the Recipient; and
 - 7.1.5 inform the Provider immediately upon becoming aware or suspecting that an unauthorised person has become aware of Confidential Information.
- 7.2 Information is not Confidential Information if:-
- 7.2.1 it is or becomes public knowledge other than as a result of the information being disclosed in breach of the Contract; or
 - 7.2.2 the Recipient can establish to the reasonable satisfaction of the Provider that it obtained the information from a source unconnected with the Provider before the date of the Contract and that its source was not under any obligation of confidence in respect of the information; or
 - 7.2.3 the Provider agrees in writing that it is not confidential; or
 - 7.2.4 the Receiving Party is required by law, court order or a governmental agency to disclose Confidential Information, in which case the Receiving Party will give the Provider as much notice thereof as reasonably practicable and disclosure will be done only to the extent required, and subject to confidentiality protection to the extent reasonably possible.

8. PUBLICITY AND ANNOUNCEMENTS

Neither Party shall make any press announcements in connection with the Contract or publicise the existence of the Contract or its contents in any way (including referring to the Contract to its customers or potential customers or on its Public Relations material or its website) without the consent of the other Party.

9. NO PARTNERSHIP OR AGENCY

The Contract will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract.

10. COSTS OF MAKING AGREEMENT

Each Party will bear its own costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of the Contract.

11. NOTICES AND NOTIFICATIONS

- 11.1 Any notice or notification to be served under the Contract shall-
 - 11.1.1 be in English and in writing and be marked for the attention of the person whose name appears for that purpose in the Contract or if no such name appears, for the attention of the Company Secretary of the Party receiving the notice or notification;
 - 11.1.2 be delivered by hand, by courier, or by pre-paid recorded delivery post or (subject as below) by facsimile or by email, to the addresses which appear for that purpose in the Contract or if no such addresses appear, to the Registered Office of the Party receiving the notice or notification (and in these circumstances, the notice may not be served by facsimile or email) or to such other address as either Party may notify to the other Party; and
 - 11.1.3 take effect:
 - a) when delivered, if delivered by hand, by courier or by pre-paid recorded delivery post; or
 - b) if transmitted by facsimile or e-mail, when the Party serving notice or notification is able to evidence delivery to the other Party
- 11.2 Any notice of a proposed termination or amendment of, or of an alleged breach of the Contract shall not be sent by facsimile or email.

12. VARIATION OF TERMS

No amendment to, or variation or relaxation of the Contract will be binding on either Party unless in writing and signed by or on behalf of both Parties.

13. ENTIRE AGREEMENT

- 13.1 The Contract, together with the documents referred to or attached to it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters.
- 13.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 13.3 Nothing in this Condition shall operate to exclude liability for fraud.
- 13.4 Rights arising under the Contract are cumulative and shall be in addition to any other rights which the Parties may have under the general law or otherwise.

14. FURTHER ASSURANCE

Each Party shall from time to time forthwith upon request from the other Party, and at the expense of the Party requesting, execute and do all such deeds, documents, assurances, acts and things as the requesting Party may reasonably require for giving to it the full benefit of the Contract or to enable the Parties to abide by the spirit aims and intent of the Contract.

15. ENVIRONMENT

Subject to compliance with law, each Party is committed to environmental sustainability and seeks to build strong relationships with similarly minded organizations. Each Party is committed to supporting innovation where there are environmental and social benefits. If applicable, the Parties shall regularly seek to identify improvements to the goods and/or services to be supplied under the Contract which benefit the environment and/or society. The Parties shall seek to implement organizational controls to control and reduce harmful emissions to the environment in pursuance of the Contract and, on request by either Party, the other Party shall identify the key environmental impacts of the supply of goods and/or services under the Contract.

16. ANTI-CORRUPTION BRIBERY

- 16.1 Each Party shall-
 - 16.1.1 comply with all applicable laws and regulations relating to anti-bribery and anticorruption including but not limited to the Bribery Act 2010 (the "Relevant Regulations");
 - 16.1.2 not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct were carried out in the United Kingdom;
 - 16.1.3 ensure that all persons associated with it or other persons who are performing obligations in connection with the Contract comply with this Condition; and
 - 16.1.4 have and shall maintain in place throughout the term of the Contract its own policies and procedures (including but not limited to adequate procedures under the Bribery Act 2010 where applicable), to ensure compliance with all Relevant Regulations

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and will enforce them where appropriate.

16.2 Breach of this Condition shall be deemed a breach of a material condition of the Contract and the Party not in breach of this Clause shall be entitled to terminate the Contract with immediate effect upon written notice to the defaulting Party.

17. DATA PROTECTION

In so far as the same are applicable to the performance of the Contract, each Party shall comply at all times with the Data Protection Act 1998 (the Act) including any guidance issued by the Information Commissioner, in particular the Seventh Data Protection Principle, and shall not perform its obligations under the Contract in such a way as to cause the other Party to breach any of its obligations under the Act.

18. EMPLOYMENT

A Party will not during the course of the Contract nor within 12 months after the termination of the Contract (howsoever terminated) solicit, procure, or attempt to procure the employment of, or contract via a third party organisation the services of, any of the employees of the other Party who has been involved in the Contract.

19. SET OFF

Neither Party shall be entitled to any legal right of set off in respect of any sum due to that Party from the other Party.

20. TERMINATION

Either Party shall be entitled to terminate the Contract without liability to the other Party by giving notice to the other Party at any time if:-

- 20.1 the other Party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) 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 purpose of solvent amalgamation or reconstruction); or
- 20.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the other Party; or
- 20.3 the other Party ceases or threatens to cease, to carry on business; or
- 20.4 the Party giving notice reasonably apprehends that any of the events mentioned above is about to occur in relation to the other Party; or
- 20.5 the other Party is in material and/or persistent breach of the Contract, and has failed to remedy any breach capable of remedy, after the Party serving notice to terminate has served notice requiring the other Party to remedy such breach in a period which was reasonable in the circumstances of the breach.

21. DISPUTE ESCALATION AND RESOLUTION

21.1 Where there is a dispute or disagreement between the Parties, the aggrieved Party shall notify the other Party of the nature of the dispute or disagreement. A representative from senior management of each of the Parties ("representative") will meet in person or communicate by telephone within 10 days of the date of the written notification. If no agreement is reached by the representatives on any remedial action, then the Chief Executive Officer (or equivalent) of each Party will meet in person or communicate by telephone to try to resolve the dispute or disagreement failing which, the Parties may agree to attempt to resolve the dispute by mediation in accordance with Condition 21.2.

21.2 The following provisions will apply to any such reference to mediation:-

21.2.1 the reference will be under the Model Mediation Procedure ("MMP") of the Centre for Effective Dispute Resolution ("CEDR") for the time being in force;

21.2.2 both Parties will, immediately on such referral, cooperate fully, promptly and in good faith with CEDR and the mediator and will do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and

21.2.3 to the extent not provided for by such agreement of the MMP:

(a) once the Parties have agreed refer the matter to mediation, the mediation will commence by either Party serving on the other setting out, in summary form, the issues in dispute or disagreement and calling on that other Party to agree the appointment of a mediator; and

(b) the mediation will be conducted by a sole mediator (which will not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR;

21.2.4 unless agreed otherwise in any Mediation, each Party shall bear its own costs of Mediation; and

21.2.5 if and to the extent that the Parties do not resolve any dispute or disagreement in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved dispute or disagreement.

22. PROPER LAW AND JURISDICTION

22.1 If the Parties have been unable to resolve any dispute or disagreement between them as provided for in Condition 21 above, the Parties irrevocably agree to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with the Contract.

22.2 The Contract shall be governed by and construed in accordance with the laws of England notwithstanding any conflict of law provisions and other mandatory legal provisions.

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