

Standard Conditions of Contract for The Purchase of Goods and Services

I. INTERPRETATION

I.1 Definitions. In these Conditions, the following definitions apply:

Anti-Slavery Laws: any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws (including any common law, judgment, demand, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labor and/or anti-human trafficking, including the Modern Slavery Act.

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 21.6.

Contract: the contract between Instrumentel and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Defect: means any failure of the Goods to comply in any material respect with the requirements of these Conditions or to achieve their purpose whether in consequence of faulty or unsafe design, faulty materials, bad workmanship, or any other reason attributable to the Supplier or its sub-suppliers.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery: has the meaning given to it in clause 4.3 and Delivered shall be construed accordingly.

Delivery Location: has the meaning given to it in clause 4.2(b).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings that is agreed in writing by Instrumentel and the Supplier.

Instrumentel: Instrumentel Limited incorporated and registered in England and Wales with company number 04325633 whose registered office is at Unipart House, Garsington Road, Cowley, Oxford OX4 2PG.

Instrumentel Materials: has the meaning set out in clause 5.3(i).

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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, 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.

Latent Defect: means either (i) a Defect in the Goods which by its nature is likely to occur in substantially all of the Goods or in substantially the whole of such part of the Goods which are of a similar type and/or (ii) a Defect in any part of the Goods which has occurred in at least 5% of the Delivered Goods which are of similar type and in at least 5 pieces.

Modern Slavery Act: the Modern Slavery Act 2015 (as it may be amended from time to time).

Modern Slavery Practice: any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol), (c) human trafficking, or (d) the arranging or facilitation of the travel of another person with a view to that person being exploited.

Order: Instrumentel's order for the Goods and/or Services, as set out in Instrumentel's purchase order form or in Instrumentel's written acceptance (accompanied by its purchase order form) of the Supplier's quotation.

Railway Group Standards: all and any of the Railway Group Standards, Rail Industry Approved Codes of Practice, Guidance Notes and Rail Industry Standards issued from time to time by the Railway Safety and Standards Board Ltd.

Services: the services, including

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by Instrumentel and the Supplier.

Supplier: the person or firm from whom Instrumentel purchases the Goods and/or Services.

Warranty Period: means either: (a) where the Goods are supplied for use by Instrumentel, a period of 15 months following the date of Delivery; or (b) where the Goods are to be supplied by Instrumentel to third parties, the shorter of (i) a period of 15 months following the date of delivery of the Goods to such third party; or (ii) a period of 36 months following the date of Delivery and if the Goods are delivered in separate consignments, the periods specified in (i) and (ii) above shall be measured from the date on which each consignment is Delivered.

I.2 Construction. In these Conditions, unless the context requires otherwise, the following rules apply:

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

- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including**, **include**, in **particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes but not e-mails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by Instrumentel to purchase Goods and/or Services in accordance with these Conditions.
- 2.3 Subject to clause 2.4 below, the Order shall be deemed to be accepted on the earlier of:
- the Supplier issuing a written acceptance of the Order; and
 - the Supplier doing any act consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.
- 2.4 The Order will lapse unless unconditionally accepted by the Supplier within 14 days of its date.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Instrumentel are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. SUPPLY OF GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
- correspond with their description and any applicable Goods Specification or any modifications thereof as required by Instrumentel for the duration of the Warranty Period;
 - be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Instrumentel expressly or by implication, and in this respect Instrumentel relies on the Supplier's skill and judgement;
 - be free from Defects and remain so for the Warranty Period; and
 - comply with all applicable statutory and regulatory requirements (including, without limitation, Railway Group Standards) relating to the Goods, including, but not limited to, in relation to their manufacture, labelling, packaging, storage, handling and delivery.
- 3.2 Notwithstanding the provisions of clause 3.1 above, in the event of any Latent Defect arising at any time within 5 years from the date of Delivery, the Supplier shall at Instrumentel's option and at the Supplier's expense (including reimbursing Instrumentel for any reasonable labour and/or administrative costs it incurs), either supply to Instrumentel for Instrumentel to retrofit replacement Goods or cause such retrofitting of replacement Goods and shall further implement any necessary material or design modifications to the Goods not yet delivered to Instrumentel. Such supply of replacement Goods shall comply with clause 3.1 above. All supply of replacement Goods pursuant to this clause relating to any Latent Defect shall be done in a timely manner. The Supplier shall at its own risk and cost take such remedial steps as may be necessary to replace all of the Goods already supplied to Instrumentel whether or not the Latent Defect shall have manifested itself in all such products.
- 3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract and that it shall comply with all Instrumentel standards, policies and procedures as notified to it from time to time.
- 3.4 The Supplier warrants that it has and shall maintain a documented quality management system certified in accordance with, or of an equivalent standard to ISO 9001 which shall demonstrate the recognition of the quality requirements of these Conditions, a structured management system and the methods for satisfying these requirements.
- 3.5 Instrumentel shall have the right to enter the Supplier's premises to:
- inspect and test the Goods at any time before delivery; and
 - inspect the Supplier's facilities and equipment used in the supply of the Goods and Services, including, but not limited to, auditing the Supplier's processes, operations and conditions and any document and records relating to the foregoing.
- 3.6 If following any inspection or testing carried out pursuant to clause 3.5 Instrumentel considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Instrumentel shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Instrumentel shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.8 If the Supplier stocks spare parts or consumables for the Goods or any of them at the time of Delivery, the Supplier shall ensure that identical spare parts and consumables for the Goods remain available for purchase by Instrumentel at a fair and reasonable price for a period of at least 5 years following the date of Delivery. Prior to the Goods becoming obsolete, at least 12 months written notice shall be given to Instrumentel.

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4. DELIVERY

- 4.1 The Supplier shall ensure that:
- (a) the Goods are properly packed, and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the catalogue number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered and where specified in the Contract with copies of inspection and test certificates, certificates of conformity (which shall include, as a minimum, the name and address of the manufacturer; model and serial number (where applicable); catalogue number or supplier part number; a list of relevant directives (where applicable); a list of the standards used with dates and amendments (where applicable); a declaration statement; the name and position of the person making the declaration; and the signature of the person making the declaration and the date of the signature) and any other certification or documentation;
 - (c) where Instrumentel is not the consignee of the Goods, a copy of the delivery note referred to in sub-clause (b) above is sent to Instrumentel; and
 - (d) if the Supplier requires Instrumentel to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- (a) on the date specified in the Order, or, if no such date is specified, within 7 days of the date of the Order; and to Instrumentel's premises at Hexthorpe Road, Doncaster, DNI IQY or such other location as is set out in the Order, or as instructed by Instrumentel prior to delivery (**Delivery Location**); and
 - (b) during Instrumentel's normal business hours, or as instructed by Instrumentel.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location (**Delivery**).
- 4.4 If the Supplier delivers less than or more than the exact quantity of Goods ordered, Instrumentel may at its discretion reject the Goods or the excess Goods. Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Instrumentel accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without Instrumentel's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Instrumentel to the remedies set out in clause 6.
- 4.6 In relation to all Deliveries of Goods, time shall be of the essence. The Supplier shall notify Instrumentel within five (5) Business Days of any occurrence reasonably outside its control (including, without limitation, any delay or default by Instrumentel), which it reasonably considers will delay the delivery of the Goods. Provided that the Supplier has notified Instrumentel in accordance with this condition, Instrumentel shall consider whether any extension of time is to be granted as a result thereof.
- 4.7 No information of a commercially confidential nature in any form whatsoever, including price information, shall accompany any Goods Delivery.
- 4.8 The Supplier shall ensure that all such Goods are suitably packaged to protect them from damage in transit and identified at the time of delivery with reference to the hazards attaching to them in accordance with statutory requirements.
- 4.9 In the event that the Supplier does not fulfil its responsibilities and obligations under the Contract and Instrumentel thereby incurs costs to which it would not otherwise be liable due to any law or any order, bye-law or regulation having the force of law, the amount of such costs shall be reimbursed by the Supplier to Instrumentel.

5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the date set out in the Order, or such other date as is notified by Instrumentel, and for the duration of the Contract provide the Services to Instrumentel in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by Instrumentel. Time shall be of the essence in relation to the provision of Services.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with Instrumentel in all matters relating to the Services, and comply with all instructions of Instrumentel;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Instrumentel;
 - (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and

used in the Services or transferred to Instrumentel, will be free from defects in workmanship, installation and design;

- (h) obtain and at all times maintain all necessary licences, consents and permits, and comply with all applicable laws and regulations;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of Instrumentel's premises;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by Instrumentel to the Supplier (Instrumentel Materials) in safe custody at its own risk, maintain Instrumentel Materials in good condition until returned to Instrumentel, and not dispose or use Instrumentel Materials other than in accordance with Instrumentel's written instructions or authorisation;
- (k) not do or omit to do anything which may cause Instrumentel to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Instrumentel may rely or act on the Services; and
- (l) in relation to Services connected with (or which could reasonably be expected to be connected with) the United Kingdom railway network, comply with Railway Group Standards and Network Rail QA Standards.

6. REMEDIES AND INDEMNITY

- 6.1 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1 then, without limiting its other rights or remedies, Instrumentel shall have the right at any time to any one or more of the following remedies, whether or not it has accepted the Goods:
- (a) to terminate the Contract;
 - (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any costs incurred by Instrumentel in obtaining substitute goods from a third party; and
 - (f) to claim damages for any other costs, loss or expenses incurred by Instrumentel which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 6.2 If the Supplier fails to deliver the Goods and/or perform the Services by the date required by Instrumentel, Instrumentel shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by Instrumentel in obtaining substitute goods and/or services from a third party;
 - (d) where Instrumentel has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by Instrumentel which are in any way attributable to the Supplier's failure to meet such dates.
- 6.3 If the Goods are not delivered on the due date Instrumentel may at its option claim or deduct 1% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 15% of the total price of the Goods. If Instrumentel exercises its rights under this clause 6.3, it shall not be entitled to any of the remedies set out in clause 6.2 in respect of the Goods' late Delivery (but the remedies set out in clause 6.1 shall be available in respect of the Goods' condition).
- 6.4 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier and/or to any substituted or remedial services and, for the avoidance of doubt but without limitation, Goods replaced or repaired under clause 6.1 shall be subject to a full Warranty Period commencing on the actual date of Delivery of the repaired or replaced Goods and clause 6.1 shall apply and continue to apply for the Warranty Period.
- 6.5 The Supplier shall keep Instrumentel indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by Instrumentel as a result of or in connection with:
- (a) any claim made against Instrumentel for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, or receipt, use or supply of the Services;
 - (b) any claim made against Instrumentel by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
 - (c) any claim made against Instrumentel by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (d) any claim made against Instrumentel by any person resulting from or in any way connected with actions taken by Instrumentel pursuant to its rights under clause 17.9 below;
 - (e) any claim made against Instrumentel resulting from any environmental damage which exists as a result of the activities of the Supplier, its directors, employees, servants, agents and sub-contractors; and
 - (f) any breach by the Supplier of the terms of the Contract.

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- 6.6 Nothing in these Conditions shall limit or exclude Instrumentel's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - fraud or fraudulent misrepresentation; or
 - any matter in respect of which it would be unlawful for Instrumentel to exclude or restrict liability.
- 6.7 Subject to clause 6.6:
- Instrumentel shall under no circumstances whatever be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - Instrumentel's total liability to the Supplier in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods/charges for the Services.
- 6.8 Where Goods are rejected by Instrumentel in accordance with clause 6.1(b) above, no payment for them shall be due from Instrumentel. Instrumentel may impose a reasonable charge for handling, storing and returning any rejected Goods. If Instrumentel rejects but does not return Goods then the Supplier may remove the Goods at its own expense and risk within 14 days of receipt by it of notice of rejection. If not removed within this period Instrumentel shall be entitled to dispose of the Goods without having to account to the Supplier for any proceeds of disposal.
- 6.9 Instrumentel's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.
- 6.10 This clause 6 shall survive termination of the Contract.
- 7. TITLE AND RISK**
- 7.1 Except as otherwise provided in this clause 7, title and risk in the Goods shall pass to Instrumentel on completion of Delivery.
- 7.2 If payment for the Goods is made prior to Delivery then title shall pass to Instrumentel on payment for the Goods and risk shall pass to Instrumentel on Delivery.
- 7.3 If Instrumentel has supplied any materials to be incorporated in the Goods then title to the Goods shall pass to Instrumentel on the date of commencement of their manufacture.
- 7.4 Where the Supplier has possession of any Goods title to which has vested in Instrumentel, the Supplier shall set aside and clearly identify those Goods as being the absolute property of Instrumentel and such Goods shall not be removed from the Supplier's premises without the written consent of Instrumentel other than for the purposes of making Delivery.
- 7.5 In each case the Goods shall be at the Supplier's risk until delivery has been accepted by Instrumentel notwithstanding that payment may have already been made and/or title passed to Instrumentel, and the Supplier shall be responsible for any loss thereof or damage thereto and for arranging and paying for the storage, handling and insurance of the same, which insurance shall be endorsed in the name of and protect the interests of Instrumentel on an "all risks" basis and shall so provide cover for loss or damage in transit, and if required produce to Instrumentel a copy of any relevant insurance policy and receipts for premiums paid. All monies received under such policies shall be applied in or towards the replacement or reparation of the Goods lost, destroyed or damaged but this provision shall not affect the Supplier's liabilities under the Contract.
- 8. PRICE AND PAYMENT**
- 8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, at the price agreed in writing between the parties.
- 8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Instrumentel, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 The Supplier agrees that if at any time it sells the Goods or Services to another customer for less than the price for which it sells those Goods or Services to Instrumentel, it shall reduce the relevant price to match the lower price and shall refund Instrumentel the difference between the price it charged Instrumentel for the Goods or Services and the lower price in respect of Instrumentel's purchases.
- 8.4 All amounts payable by Instrumentel under the Contract are exclusive of amounts in respect of any value added tax (VAT) chargeable from time to time, but include the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by Instrumentel.
- 8.5 Instrumentel shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
- 8.6 The Supplier may invoice Instrumentel for the Goods on or at any time after the completion of Delivery. In respect of Services, the Supplier shall invoice Instrumentel on completion of the Services. All invoices for Goods shall be accompanied by a proof of delivery in respect of the Goods to which the invoice relates. All invoices shall include such supporting information required by Instrumentel to verify the accuracy of the invoice, including but not limited to the relevant purchase order number. Invoices submitted in respect of Goods which are rejected in accordance with clause 6.1(b) shall be deemed not to be correctly rendered and shall not be payable by Instrumentel.
- 8.7 Instrumentel shall pay correctly rendered invoices no later than 60 days of the date the invoice was received. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.8 If a party fails to make any payment due to the other under the Contract by the due date for payment (due date), then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Royal Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 8.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Instrumentel to inspect such records at all reasonable times on request.
- 8.10 Instrumentel may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 In respect of the Goods and any goods that are transferred to Instrumentel as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Instrumentel, it will have full and unrestricted rights to sell and transfer all such items to Instrumentel.
- 9.2 The Supplier assigns to Instrumentel, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 9.4 The Supplier shall, promptly at Instrumentel's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Instrumentel may from time to time require for the purpose of securing for Instrumentel the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Instrumentel in accordance with clause 9.2.
- 10. INSTRUMENTEL PROPERTY**
- 10.1 The Supplier acknowledges that all materials, samples, patterns, gauges, jigs, tools, dies, equipment, tools, drawings, Goods and/or Services Specifications, templates, data or other items supplied by Instrumentel to the Supplier (Instrumentel Materials) and all rights in Instrumentel Materials are and shall remain the exclusive property of Instrumentel. The Supplier shall keep Instrumentel Materials in safe custody at its own risk, maintain them in good condition until returned to Instrumentel, and not dispose of or use the same other than in accordance with Instrumentel's written instructions or authorization. The Supplier shall ensure that all Instrumentel Materials supplied to it by Instrumentel are properly labeled as the property of Instrumentel and are kept separate from and not mixed with any materials owned or in possession of the Supplier or with any materials supplied to it by a third party. In the event of the Contract allowing the Supplier to mix Instrumentel Materials with other materials no items incorporating Instrumentel Materials shall be vested in any third party or the Supplier.
- 10.2 The Supplier shall be liable for and shall indemnify Instrumentel against loss or damage to all Instrumentel Materials and the Supplier shall maintain adequate insurance for full replacement value of all Instrumentel Materials against loss, damage or destruction at all times including when they are in transit. All monies received under such insurance shall be applied in or towards the replacement or reparation of the Instrumentel Materials lost destroyed or damaged but without prejudice to the Supplier's liabilities under the Contract.
- 10.3 If any Instrumentel Materials are supplied to the Supplier by Instrumentel for use in connection with any Contract they will be sent to the Supplier carriage paid and when requested by Instrumentel the Supplier shall return them carriage paid and at the Supplier's risk to the address nominated by Instrumentel. The Supplier shall be responsible for their safe custody and return and for any loss of or damage to them, however caused, excepting fair wear and tear.
- 11. ADVERTISING**
- 11.1 The Supplier shall not without the written consent of Instrumentel advertise or announce that it is a supplier to Instrumentel or any Instrumentel customer, such consent will not be unreasonably withheld.
- 11.2 The Instrumentel logo, any Instrumentel customer's logo(s) and the Supplier's Logo are all subject to copyright and as such may not be used without respective prior written permission.
- 12. INSURANCE**
- 12.1 During term of the Contract and for a period of 12 years thereafter the Supplier shall maintain in force the following insurance policies with reputable insurance companies and shall, on Instrumentel's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance:
- public liability insurance for not less than £5,000,000 per claim; and
 - product liability insurance for not less than £10,000,000 for claims arising from any single event and not less than £10,000,000 in aggregate for all claims arising in a year;
 - and professional indemnity insurance for not less than £5,000,000 for claims arising from any single event and not less than £5,000,000 in aggregate for all claims arising in a year.
- 12.2 The Supplier shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under the Contract which they are contracted to fulfil.

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12.3 The Supplier's liabilities under the Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 12.1.

13. CONFIDENTIAL INFORMATION

13.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, Goods and/or Services Specifications, inventions, processes, prices, costs or initiatives which are 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 products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

13.2 The Supplier shall not disclose the existence and terms of this Contract nor shall it make any disclosure of its commercial relationship with Instrumentel without the prior written consent of Instrumentel.

14. TERMINATION

14.1 Instrumentel may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. Instrumentel shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

14.2 Instrumentel may terminate the Contract with immediate effect by giving notice in writing to the Supplier if the Supplier commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within a period of 7 days after receipt of notice in writing requiring it to do so.

14.3 Instrumentel may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- (g) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.3(a) to clause 14.3(h) inclusive;
- (j) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (k) the Supplier's financial position deteriorates to such an extent that in Instrumentel's opinion the Supplier's capability to adequately fulfill its obligations under the Contract has been placed in jeopardy; or
- (l) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

14.4 On termination of the Contract or any part of it for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to Instrumentel all Deliverables, whether or not then complete, and return all Instrumentel Materials. If the Supplier fails to do so, then Instrumentel may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any

breach of the Contract which existed at or before the date of termination; and

- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 5 Business Days, Instrumentel may terminate this Contract immediately by giving written notice to the Supplier.

16. ETHICAL TRADING

16.1 The Supplier shall maintain and operate an ethical trading policy in respect of the provision of the Goods and/or the Services, and in respect of any goods, works, services or materials which it purchases from others to carry out its obligations.

16.2 The Supplier shall and shall procure that its servants, agents, suppliers and subcontractors shall comply at all times in the provision and manufacture, repair, replacement and provision of goods and/or services to the Supplier with the local, European, national and any international laws or regulations applicable to such suppliers or subcontractors in respect of:

- (a) child labour, and in any event the Supplier shall not and shall procure that any of its servants, agents, suppliers or subcontractors shall not employ any person below the age of 14 in the provision of the goods and/or services; and
- (b) forced labour, and for the purposes of these Conditions forced labor includes all forms of slavery or practice similar to slavery, serfdom or compulsory labour; and
- (c) minimum wage and working hours relating to its employees, servants, agents and subcontractors, together with their employees and any persons retained by them.

The Supplier shall not discriminate against any person on the grounds of race, creed, gender, gender reassignment, pregnancy and maternity, religion or belief, marital status, disability, sexual orientation or age or on any other grounds within the meaning and scope of the Equality Act 2010.

17. CORRUPTION AND ANTI-SLAVERY

17.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 17.1(b), and will enforce them where appropriate;
- (d) promptly report to Instrumentel any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement.

17.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 17 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Instrumentel for any breach by such persons of any of the Relevant Terms.

17.3 Breach of this clause 17 shall be deemed a material breach of this agreement.

17.4 For the purpose of this clause 17, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 17 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

17.5 The Supplier shall not engage in any Modern Slavery Practice.

17.6 The Supplier will:

- (a) comply at all times with any anti-slavery policy which Instrumentel may have or put in place from time to time and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with the Contract will comply with the same at all times;
- (b) conduct proper and detailed checks on any agency or person used by the Supplier to provide labor, employees, contractors, sub-contractors or other persons to undertake tasks for the Supplier (in each case whether on a permanent or temporary basis) to ensure that any such agency or person does not engage in any Modern Slavery Practice;
- (c) provide Instrumentel (at the Supplier's cost) with such reasonable assistance and information as it may require from time to time to enable Instrumentel to:
 - (i) perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of

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- compliance with any applicable anti-slavery laws or as required by Instrumentel;
- (ii) prepare a slavery and human trafficking statement as required by section 54 of the Modern Slavery Act and to include the matters referred to in section 54(5) of that Act;
- (iii) identify any non-compliance with any codes or policies of Instrumentel that relate to its supply chains or business partners; and
- (iv) conduct due diligence and to measure the effectiveness of the steps Instrumentel is taking or wishes to take to ensure that Modern Slavery Practices are not taking place in its business or supply chains;
- (d) permit Instrumentel, and any person nominated by it for this purpose, to have such access on demand to the Supplier's premises, personnel, systems, books and records as Instrumentel may require to verify the Supplier's compliance with this Clause 17.
- 17.7 The Supplier warrants to Instrumentel that its responses to any anti-slavery due diligence questionnaire that may be issued by Instrumentel are and/or will be complete and accurate.
- 17.8 The Supplier will immediately give written notice to Instrumentel:
- (a) upon a breach, or suspected breach, of any of its obligations referred to in clauses 17.5 or 17.6 occurring;
- (b) upon becoming aware of a breach of its warranty set out in clause 17.7; and
- (c) of any non-compliance by it or its officers, employees, agents or sub-contractors with any anti-slavery policy which Instrumentel may have or put in place, including a failure to meet any standard set out in that policy.
- The notice will set out full details of the breach or suspected breach or non-compliance.
- 17.9 Without prejudice to the other terms and conditions of the Contract, Instrumentel may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of any of its obligations under clauses 17.5 or 17.6 or its warranty under clause 17.7. The parties agree that a breach by the Supplier of any of its obligations or warranties under this clause 17 is a material breach of the Contract, irrespective of the level of financial loss, deprivation of benefit, or exposure to liability that such breach would or potentially would give rise to.
- 17.10 Instrumentel will be entitled, by giving written notice to that effect to the Supplier, to require the Supplier to:
- (a) remove from the performance of the Contract any of the Supplier's officers, employees, agents or sub-contractors whom Instrumentel believes to be engaging in any Modern Slavery Practice; or
- (b) take such action as Instrumentel requires to ensure that the Supplier fully complies with any Anti-Slavery Law and any anti-slavery policy which Instrumentel may have or put in place.
- 17.11 The Supplier shall keep Instrumentel indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Instrumentel as a result of or in connection with any claim brought or threatened against Instrumentel in each case arising out of or in connection with:
- (a) any breach by the Supplier of any of its obligations under this clause 17 (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations);
- (b) any breach by the Supplier of any of its warranty under clause 17.6; and
- (c) any breach by any contractor of the Supplier of any equivalent provisions to this clause 17 contained in the relevant contract (including any failure or delay in performing, or negligent performance or non-performance of, any obligations).
- including the costs of procuring the Goods or Services from a person other than the Supplier and the costs of any interim service provision, the costs of any re-tender and the amount by which any new supplier's charges exceed the charges payable to the Supplier under the Contract and including where such losses, liabilities, costs, damages or expenses arise from the negligence or failure of Instrumentel. However, the Supplier will have no liability to Instrumentel under this clause 17.11 for any loss, liability, cost, damage, expense, claim or proceeding to the extent that it would not have been incurred or suffered but for Instrumentel's criminal liability.
- 18. ALCOHOL DRUGS HEALTH & SAFETY**
- 18.1 The Supplier shall ensure that no directors, employees, servants, agents, or subcontractors of the Supplier shall at any time attend Instrumentel's premises or any Delivery Location:
- (a) having consumed alcohol within the previous 8 hours; and/or
- (b) under the influence of illegal drugs; and/or
- (c) in an unfit state due to the use of alcohol or illegal drugs; and/or
- (d) while in possession of alcohol or illegal drugs; and/or
- (e) and consume alcohol or illegal drugs.
- 18.2 The Supplier shall comply in full with Instrumentel's drugs and alcohol policy, which is available upon request.
- 18.3 If the Instrumentel suspects that any person referred to in clause 18.1 is in breach of clause 18.1 Instrumentel may require:
- (a) that such person is immediately tested for alcohol and/or illegal drugs, at the sole cost of the Supplier; and
- (b) the immediate removal and replacement of such person from Instrumentel's premises and/or any Delivery Location notwithstanding the result or non-performance of any test; and
- (c) the Supplier to immediately provide replacement personnel.
- 18.4 While present on any Instrumentel premises and/or any Delivery Location the Supplier will ensure that its personnel observe at all times all rules and
- safety requirements applicable to and/or notified to the Supplier by Instrumentel in relation to the supply of Goods and/or Services.
- 18.5 The Supplier will ensure that it complies with all the requirements of any Act of Parliament, statutory instrument or any other regulation having the force of law or bye-law and all regulatory requirements relevant to the Supplier's business and/or Instrumentel's business from time to time in force which are or may become applicable to the Goods or the Services. The Supplier shall promptly notify Instrumentel if the Supplier is required to make any change to the Goods or the Services for the purposes of complying with its obligations under this clause 18.5.
- 18.6 In addition to the general requirements of clauses 18.4 and 18.5, the Supplier shall comply and shall ensure the compliance of its sub-contractors with all health and safety law applicable in supplying the Goods or performing the Services and will enable and assist Instrumentel to comply with all relevant health and safety law applicable to Instrumentel. In particular, but without limitation, the Supplier shall ensure any of its personnel who are or may be engaged in providing Goods or Services in close proximity to the railway network shall have undertaken comprehensive training in personal track safety with an approved provider and all of its personnel shall be equipped with appropriate personal protective equipment.
- 19. DISPUTE RESOLUTION**
- 19.1 Before resorting to litigation, the parties shall attempt to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.
- 19.2 If the parties are unable to resolve the dispute, either party may, at any time, refer the dispute to mediation by a neutral advisor or mediator ("the Mediator"). If the parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator. The parties shall seek to agree directions as to how the mediation is to be conducted and, failing agreement, they shall seek and adhere to directions from the Mediator.
- 19.3 If the parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.
- 20. SAFETY CRITICAL PRODUCT**
- 20.1 Where Instrumentel indicates that the Goods are safety critical, the Supplier is required to comply with the requirement of ATOC ACOP EC/01003 – Approved Code of Practice – Supplier Accreditation scheme as a minimum. Other accreditation schemes may be suitable as alternatives, in the discretion of Instrumentel (such as RISAS, IRIS, UTD).
- 21. GENERAL**
- 21.1 Assignment and subcontracting.**
- (a) Instrumentel may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without Instrumentel's prior written consent.
- 21.2 Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed (i) in the case of Instrumentel to FAO Legal Counsel, Instrumentel Limited, Jupiter Building, First Point, Bally Carr Bank, Doncaster, DN4 5JQ; and (ii) in the case of the Customer to its registered office (if it is a company) or its principal place of business (in any other case) or such other address as the Customer may have specified to Instrumentel in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 21.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 21.3 Severance.**
- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 21.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 21.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

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- 21.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Instrumentel.
- 21.7 **Records and audit.** The Supplier will, and will procure that its sub-contractors and sub-suppliers will, maintain a true and correct set of documents and records pertaining to all activities relating to their performance of or compliance with the Contract and a complete documentary record of all transactions entered into by the Supplier for the purposes of the Contract including copies of any documentation generated by or in the possession of the Supplier, all sub-contracts and all such other information reasonably required by Instrumentel. The Supplier agrees, and will procure that its sub-contractors and sub-suppliers agree to maintain and retain such documentation and records for a period of not less than twelve years (or such other longer period as may be required by law) after completion of performance under the Contract. Instrumentel will have the right to inspect and audit any and all such records at any time during performance of the Contract and during the twelve year period (or such longer period as may be required by law) following completion of performance under the Contract.
- 21.8 Instrumentel may from time to time undertake any inspection or audit pursuant to clause 21.7 and shall have the right to audit or check any and all information and any documents and records regarding any matter related to the Supplier's or any sub-contractor's or sub-supplier's performance of or compliance with the Contract including without limitation any aspect of the Supplier's or sub-contractor's or sub-supplier's operations, costs and expenses, sub-contracts, claims related to variations and financial arrangements. Instrumentel may in its absolute discretion inform the Supplier of the objective of the audit prior to its commencement. Any audit referred to in clauses 21.7 and 21.8 shall be conducted on an open book basis. The Supplier shall undertake any obligations and exercise any rights which relate to the performance of the Contract on an open book basis.
- 21.9 **Data protection.** The parties shall at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 in storing and processing personal data.
- 21.10 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales. Notwithstanding the foregoing, the Supplier shall not be entitled to bring any proceedings, disputes or claims against Instrumentel in any jurisdiction other than the jurisdiction of the courts of England and Wales.