

Services Machinery  
& Trucks Ltd

Standard Terms

For The Purchase

of

Services and/or Products

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions.** In these Conditions, the following definitions apply:
- 1.2 **Applicable Law:** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services and/or Products.
- 1.3 **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 1.4 **Commencement Date:** has the meaning set out in clause 2.3.
- 1.5 **Contract:** The Contract between SMT and the Supplier for the supply of Services and/or Products in accordance with these Conditions.
- 1.6 **Contract Specific IPR:** all IPR in the product of the Services and/or Products and in the Deliverables save for the Supplier Background IPRs.
- 1.7 **Data Protection Legislation:** The UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.
- 1.8 **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 and/or Products in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- 1.9 **Delivery Location:** has the meaning set out in in the Purchase Order.
- 1.10 **Products:** The products (or any part of them) set out in the Purchase Order.
- 1.11 **Products Specification:** any specification for the Products, including any related plans and drawings, that are agreed in writing between SMT and the Supplier.
- 1.12 **Group Company:** SMT, its subsidiaries or holding companies from time to time, and any subsidiary of any holding company from time to time.
- 1.13 **IPRs / Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, the right to sue for passing off, rights in designs, database rights, 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.
- 1.14 **SMT:** Services Machinery and Trucks Limited is registered in England and Wales with company number 10822984, with registered offices at Moorfield Road, Duxford, Cambridgeshire, CB22 4QX (SMT).
- 1.15 **SMT Data:** has the meaning provided in clause 16.3.
- 1.16 **SMT Materials:** has the meaning set out in the Purchase Order.
- 1.17 **Purchase Order:** SMT's order for the supply of Services and/or Products, as set out in SMT's purchase order form. Purchase Orders will typically contain:
- a. the scope of the Supply required under the Purchase Order;

- b. start date for delivery of the obligations of this Contract and the end date (if applicable) under the Purchase Order;
  - c. property or properties which are covered by the Purchase Order;
  - d. and the price for the Services and/or Products covered by the Purchase Order, calculated in accordance with the agreed rates.
- 1.18 **Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
- 1.19 **Service Specification:** the description or specification for Services agreed in writing between SMT and the Supplier.
- 1.20 **Supplier:** the person or the organisation from whom SMT purchases the Services and/or Products.
- 1.21 **Supplier Background IPRs:** IPRs owned by or licensed to the Supplier before the Commencement Date, for example IPR subsisting in the Supplier's standard development tools or generic business methodologies; and/or IPRs created by the Supplier independently of the Contract.
- 1.22 **Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any sub-contractors who are engaged in relation to a Contract from time to time.
- 1.23 **Supply:** means the Services and/or Products to be provided under this Contract.
- 1.24 In these Conditions, the following rules apply:
- a. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - b. a references to a party includes its successors or permitted assigns;
  - c. a reference to a statute or statutory provision is a reference to such statute or statutory 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.
- 1.25 **UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

## 2. **Basis of Contract**

- 2.1 The Purchase Order constitutes an offer by SMT to purchase Services and/or Products from the Supplier in accordance with these Conditions.
- 2.2 Subject to the provisions of this clause the Supplier shall not undertake any Supply without a corresponding Purchase Order having been placed in advance by SMT **provided that** in a true emergency (concerning for example the potential for injury or damage to human life

- and/or property) the Supplier may request a Purchase Order immediately after the Supply has been made.
- 2.3 The Purchase Order shall be deemed to be accepted on the earlier of:
- a. the Supplier issuing written acceptance of the Purchase Order; or
  - b. any act by the Supplier consistent with fulfilling the Purchase Order,
- at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 The Supplier shall inform the SMT Contract Manager immediately if in any event if it is unable to accept the Purchase Order or perform its obligations under the Contract or if the Supplier is aware of anything which may prevent the Supplier from complying with the Contract.
- 2.5 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.
- 2.6 All of these Conditions shall apply to the supply of both Services and/or Products except where the application to one or the other is specified.
- 3. Management of the Contract**
- 3.1 The SMT Contract Manager is the person nominated by SMT to act on its behalf for the purposes of a Contract and may:
- a. issue instructions, including orders in accordance with this Contract, to the Supplier on any matter relating to the provision of Supply; and
  - b. appoint representatives to act upon his behalf and shall notify the Supplier of such appointment(s).
- 3.2 The Supplier shall appoint a Supplier Contract Manager approved by SMT (such consent not to be unreasonably withheld or delayed). Any notice, instruction or other information given to the Supplier Contract Manager shall be deemed to have been given to the Supplier.
- 3.3 The Supplier shall notify SMT in writing of the name, company address and contact numbers of the Supplier Contract Manager and any deputy.
- 3.4 Any major complaints or instructions with respect to the performance of the Contract on behalf of SMT in respect of the Supply by the Supplier shall be referred to the Supplier Contract Manager and not to the Supplier's Personnel members, except in cases of emergency or minor issues.
- 4. Supply of Products**
- 4.1 The Supplier shall ensure that the Products shall:
- a. correspond with their description and any applicable Products Specification;
  - b. be of satisfactory quality (within the meaning of the Sale of Products Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by SMT, expressly or by implication, and in this respect SMT relies on the Supplier's skill and judgment;
  - c. where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

- d. comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Products.
- 4.2 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 in respect of the Products.
- 4.3 SMT shall have the right to inspect and test the Products at any time before delivery.
- 4.4 If following such inspection or testing SMT considers that the Products do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, SMT shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 4.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Products and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and SMT shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

## 5. Delivery of Products

- 5.1 The Supplier shall ensure that:
  - a. the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - b. each delivery of the Products is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Products (including the code number of the Products (where applicable)), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
  - c. if the Supplier requires SMT to return any packaging material for the Products to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 5.2 The Supplier shall deliver the Products:
  - a. on the date specified in the Purchase Order or, if no such date is specified, then unless otherwise agreed by the parties in writing, within 20 Business Days of the date of the Purchase Order;
  - b. to the applicable premises or other location as is set out in the Purchase Order or as instructed by SMT before delivery (**Delivery Location**); and
  - c. during SMT's normal hours of business on a Business Day, or as otherwise instructed by SMT.
- 5.3 Delivery of the Products shall be completed on the completion of unloading of the Products at the Delivery Location.
- 5.4 If the Supplier:
  - a. delivers less than the quantity of Products ordered, SMT may reject the Products; or
  - b. delivers more than the quantity of Products ordered, SMT may at its sole discretion reject the Products or the excess Products,

and any rejected Products shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Products ordered, and SMT accepts the delivery, a pro rata adjustment shall be made to the invoice for the Products.

- 5.5 The Supplier shall not deliver the Products in instalments without SMT's prior written consent. Where it is agreed that the Products are 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 SMT to the remedies set out in clause 21.1.
- 5.6 Title and risk in the Products shall pass to SMT on completion of delivery.

## **6. Return of Products**

- 6.1 SMT shall have the right to return products to the Supplier and shall be entitled to a refund of the purchase price subject to the following conditions:
  - 6.1.1 where the Products are returned within 35 days of despatch, a handling charge of 10% of the value of the Products returned shall be levied by the Supplier;
  - 6.1.2 where the Products are returned between 35 days and 7 months from the date of despatch, a handling charge of 50% of the value of the Products shall be levied by the Supplier;
  - 6.1.3 where the Products are returned after 7 months from the date of despatch, the Products will only be accepted by the Supplier on such terms as may be agreed at such time with SMT; and
  - 6.1.4 in all cases, the Products must be returned to the Supplier unused, free of damage, carriage paid, and together with any packaging and/or manuals, instructions or promotional material with which they were despatched to SMT.

## **7. Supply of Services**

- 7.1 The Supplier shall from the Commencement Date (or where a date is specified in the Purchase Order for the commencement of the Services from that date) and for the duration of this Contract provide the Services to SMT in accordance with the terms of the Contract.
- 7.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by SMT.
- 7.3 In providing the Services, the Supplier shall:
  - a. co-operate with SMT in all matters relating to the Services, and comply with all instructions of SMT;
  - 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 SMT;

- e. provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- f. use the best quality Products, materials, standards and techniques, and ensure that the Deliverables, and all Products and materials supplied and used in the Services or transferred to SMT, will be free from defects in workmanship, installation and design;
- g. obtain and at all times maintain all necessary licenses and consents, and comply with all applicable laws and regulations;
- h. observe all health and safety rules and regulations and any other security requirements that apply at any of SMT's premises;
- i. hold all materials, equipment and tools, drawings, specifications and data supplied by SMT to the Supplier (**SMT Materials**) in safe custody at its own risk, maintain SMT Materials in good condition until returned to SMT, and not dispose or use SMT Materials other than in accordance with SMT's written instructions or authorisation; and
- j. not do or omit to do anything which may cause SMT to lose any license, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that SMT may rely or act on the Services.

## 8. Performance

- 8.1 Where set out in the Services and/or Products Specification (or otherwise requested in writing at any time by SMT), the Supplier shall ensure that only those members of the Supplier Personnel which are in receipt of a valid, up-to-date and satisfactorily enhanced Criminal Record Certificate as issued by the Disclosure and Barring Service (DBS) shall be engaged in carrying out the obligations of this Contract at any of SMT's Properties.
- 8.2 The Suppliers Management of Environmental factors including performance and energy management may be monitored to ensure that the Supplier reduces their negative impact on the environment.
- 8.3 The Supplier shall provide and shall ensure that the Supplier Personnel wear at all times, when engaged in the Supply on SMT's premises, such identification as set out in the Specification or as otherwise notified to the Supplier by SMT in writing.
- 8.4 The Supplier shall comply with SMT's security and access procedures as set out in the Services and/or Products Specification (or as otherwise notified in writing by SMT to the Supplier) at all times when carrying out the Supply to SMT's Property.
- 8.5 If the Supplier is unable to access a Property, the Supplier must promptly inform the SMT Contract Manager.
- 8.6 The Supplier shall ensure that the Supplier Personnel are at all times adequately supervised in carrying out the obligations of this Contract.
- 8.7 The Supplier shall not at any time in the provision of the Supply represent itself as being either:
  - a. the agent of SMT (except as may be expressly authorised in writing and in advance by SMT); or
  - b. authorised to enter into any Contract or other obligation on SMT's behalf (except as may be expressly authorized in writing and in advance by SMT).
- 8.8 In providing the Supply the Supplier shall at all times:

- a. ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Supply shall, if required by SMT attend such meetings at the premises of SMT or elsewhere as may be reasonably required by SMT;
  - b. provide such co-operation and information in relation to the Supply to such of SMT's other Suppliers and contractors as SMT may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that SMT may reasonably require.
- 8.9 The Supplier is responsible for providing any materials and equipment, including vehicles, used in connection with the provision of any the obligations of this Contract. The Supplier is responsible for the storage of such materials and equipment. In the event that SMT makes storage facilities available to the Supplier in respect of such materials and equipment then they shall remain at the Suppliers risk and SMT shall not be liable for any loss or damage to the Products or equipment, except to the extent solely caused by the negligence of SMT or its employees.
- 8.10 It is a condition of the Contract that the Supplier's Personnel shall be supervised at the appropriate level in relation to the Supply.
- 8.11 Upon request from time to time, the Supplier shall promptly provide to SMT:
  - a. a list of the Supplier's Personnel who it proposes undertake or who are undertaking the provision of the Services; and
  - b. an organisational chart showing how the Supply to SMT is managed.
- 8.12 SMT reserves the right to require changes to the Supplier's Personnel providing the Supply at any time, but shall not do so without first consulting the Supplier.
- 9. Performance Reviews**
- 9.1 The Supplier's performance of the obligations of this Contract to SMT will be kept under regular review by SMT.
- 9.2 The Supplier and SMT will meet periodically when requested by SMT. SMT will send out an agenda for each meeting not less than 3 working days prior to the meeting. SMT and the Supplier will ensure that the Supplier Contract Manager and the SMT Contract Manager, or deputy, attends each meeting, as well as any other relevant individuals in light of the items on the agenda. A note of each meeting shall be taken and circulated by SMT to the Supplier and any other attendees at the relevant meeting.
- 10. Statutory Requirements**
- 10.1 In fulfilling the obligations of this Contract, the Supplier shall comply in all respects with all Applicable Law(s).
- 10.2 Throughout the Contract period the Supplier shall make all reasonable endeavours to reduce any negative impact on the environment caused by the provision of the Supply.
- 10.3 Without prejudice to the generality of clause 10.1, the Supplier shall ensure that in the obligations of this Contract that it complies with its duties under the Health and Safety at Work Act 1974. The Supplier shall also comply with SMT's reasonable instructions and/or requirements to enable the Supplier to comply with its duties in relation to the health and safety of visitors and employees of SMT and its Properties.
- 10.4 Without prejudice to the rest of this clause, where new legislation is enacted during the Contract Period, which has the effect of changing the manner in which the Supply or any part of the Supply is to be provided, the Supplier shall ensure that:

- a. SMT is informed of the nature and effect of such legislation and the changes necessitated by it in the services; and
- b. the Supply is provided in accordance with such legislation.

## **11. Materials and Equipment**

- 11.1 The Supplier shall ensure that any products or materials necessarily used in the provision of any Supply and in relation to the carrying out of its obligations under this Contract are:
  - a. suitable for the purpose and use to which they are put; and
  - b. shall comply at all times and be stored at all times in accordance with Good Industry Practice and all Applicable Laws.
- 11.2 The Supplier is responsible for providing any materials and equipment, including vehicles, used in connection with the provision of any the obligations of this Contract. The Supplier is responsible for the storage of such materials and equipment. In the event that SMT makes storage facilities available to the Supplier in respect of such materials and equipment then they shall remain at the Suppliers risk and SMT shall not be liable for any loss or damage to the goods or equipment, except to the extent solely caused by the negligence of SMT or its employees.

## **12. Prevention of Bribery**

- 12.1 The Supplier:
  - a. shall not and shall ensure that its staff do not, in connection with this Contract commit a Prohibited Act for the purposes of the Bribery Act 2010; and
  - b. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by SMT, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to SMT before execution of this Agreement.
- 12.2 The Supplier shall:
  - a. if requested, provide SMT with any reasonable assistance, to enable SMT to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
  - b. Within 28 days of the commencement date of this Contract, and annually thereafter, certify to SMT in writing compliance with this clause 12 by the Supplier and all staff and persons associated with it or other persons who are supplying Services and/or Products in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as SMT may reasonably request.
- 12.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to SMT) to prevent any Supplier or from committing a Prohibited Act and shall enforce it where appropriate.
- 12.4 If any breach of this clause 12 is suspected or known, the Supplier must notify SMT immediately.
- 12.5 If the Supplier notifies SMT that it suspects or knows that there may be a breach of this clause 12, the Supplier must respond promptly to SMT enquiries, cooperate with any investigation, and allow SMT to audit books, records and any other relevant documentation.
- 12.6 SMT may terminate the Contract and recover from the Supplier the amount of any loss suffered by SMT resulting from the termination, including the cost reasonably incurred by

SMT of making other arrangements for the Supply any additional expenditure incurred by SMT throughout the remainder of the Contract Period; or recover in full from the Supplier any other loss sustained by SMT in consequence of any breach of this clause.

### **13. Equality**

- 13.1 The Supplier shall comply with all anti-discrimination Applicable Law and without prejudice to the foregoing the Supplier shall not unlawfully discriminate either directly or indirectly on grounds as race, gender, gender identity, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age.
- 13.2 The Supplier warrants that in provision of the Supply it shall not treat one group of people or any individual less favourably than others on the grounds of marital status, gender, gender identity, colour, race, religion, nationality, ethnic or cultural origin, disability, age, religious belief, sexual orientation, responsibility for dependents, social class, trade union or political activity contrary to statutory requirements and will act to eliminate such discrimination.
- 13.3 The Supplier shall take all reasonable steps to secure the observance of the provision of clauses 13.1 and 13.2 by all servants, employees or agents of the Supplier and all sub-Contractors used by the Supplier in the execution of the Supply.
- 13.4 SMT is committed to responding positively to the wide social diversity of contemporary society. The Supplier is expected to have a similar commitment and uphold all the values and policies that SMT has in place. A copy of SMT's policy will be provided to all of the Supplier's Personnel that will work on this Contract.

### **14. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES**

- 14.1 In performing its obligations under the agreement, the Supplier shall:
  - 14.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
  - 14.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
  - 14.1.3 include in its contracts with its direct subcontractors and supplier's anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 14 **OR** require that each of its direct subcontractors and suppliers shall comply with the Anti- slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

### **15. Living Wage Foundation**

SMT is an accredited Living Wage employer, if you are supplying regular contracted staff to SMT please confirm you are paying at least the relevant wage as per [www.livingwage.org.uk](http://www.livingwage.org.uk)

### **16. Prevention of Fraud**

- 16.1 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its staff (including its shareholders, members, directors) in connection with the receipt of monies from SMT.
- 16.2 The Supplier shall notify SMT immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 16.3 If the Supplier or its staff commits fraud in relation to this or any other Contract with SMT, SMT may:
  - a. terminate the Contract and recover from the Supplier the amount of any loss suffered by SMT resulting from the termination, including the cost reasonably incurred by SMT of making other arrangements for the Supply and any additional expenditure incurred by SMT throughout the remainder of the Contract Period; or
  - b. recover in full from the Supplier any other loss sustained by SMT in consequence of any breach of this clause.

## **17. Data Protection**

- 17.1 The Supplier and SMT acknowledge that for the purposes of the Data Protection Legislation, and the SMT Data, SMT is the data controller and the Supplier is the data processor.
- 17.2 The Supplier and SMT will comply with the Data Protection Legislation.
- 17.3 SMT Data is the Personal Data (as defined in the Data Protection Legislation) of SMT customers, contractors, suppliers and employees, which the Supplier may be required to process as part of the Services. The Supplier shall process such SMT Data solely in relation to the provision of Services under this agreement.
- 17.4 The Supplier shall, in relation to any Personal Data processed in connection with the Contract and clause 16.3:
  - 17.4.1 Process that Personal Data only on written instructions of SMT.
  - 17.4.2 Keep the Personal Data confidential.
  - 17.4.3 Comply with SMT Data protection policy and data retention guidelines.
  - 17.4.4 Comply with SMT's reasonable instructions with respect to processing Personal Data.
  - 17.4.5 Not transfer any Personal Data outside of the European Economic Area without SMT's prior written consent.
  - 17.4.6 Assist SMT in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators.

- 17.4.7 Notify SMT without undue delay on becoming aware of a Personal Data breach or communication which relates to SMT or Supplier's compliance with the Data Protection Legislation.
  - 17.4.8 At the written request of SMT, delete or return Personal Data and any copies thereof to SMT on termination of the Contract unless required by the Data Protection Legislation to store the Personal Data.
  - 17.4.9 Maintain complete and accurate records and information to demonstrate compliance with this clause 16 and allow for audits by SMT or SMT's designated auditor.
- 17.5 The Supplier shall ensure that it has in place appropriate technical or organisational measures, reviewed and approved by SMT to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Such measures may include, where appropriate:
- 17.5.1 Pseudonymising and encrypting Personal Data.
  - 17.5.2 Ensuring confidentiality, integrity, availability and resilience of its systems and Services
  - 17.5.3 Ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident.
  - 17.5.4 Regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.
- 17.6 SMT does not agree to the Supplier appointing any third party processor of Personal Data under this agreement without consent.
- 17.7 The Supplier shall have liability for and shall indemnify SMT and any Group Company for any loss, liability, costs (including legal costs), damages, or expenses resulting from any breach by the Supplier of the Data Protection Legislation, and shall maintain in force full and effect comprehensive insurance policies.
- 18. Notification and Assistance**
- 18.1 The Supplier shall notify SMT of any accident, damage, claim or breach of any statutory provision relating to the obligations of this Contract as soon as reasonably possible after becoming aware of such matter.
  - 18.2 If required by SMT, the Supplier shall provide relevant information and assistance in connection with any legal inquiry, arbitration, court proceedings or internal disciplinary proceedings relating to the Supply and if required shall give evidence in such inquiries or proceedings or hearings.

## **19. Ombudsman**

- 19.1 The Supplier should note that if a complaint is made to SMT by a third party relating to the obligations of this Contract, the relevant ombudsman who has the power to investigate such complaint shall be contacted and SMT will require the Supplier fully to co-operate in such investigation.
- 19.2 If the ombudsman determines against SMT as a result of any act or default of the Supplier, then the Supplier shall indemnify SMT in respect of the costs, expenses and liabilities which SMT has incurred or is liable for as a result of such finding.

## **20. Indemnity and Insurance**

- 20.1 The Supplier shall indemnify SMT against all actions, claims, damages, costs and other expenses in relation to the injury to, or death of, any person, and loss of, or damage to, any property, real or personal which is attributable to the negligent act or default of the Supplier in connection with the Supply including the performance of any Supply to SMT.
- 20.2 The Supplier shall take out and maintain from the Commencement Date and for the duration of this Contract, public liability insurance against its liabilities under the performance of this Contract for the minimum sum of £10 million in respect of any one event, act or occurrence or series of claims, acts or occurrences and which complies with any statutory requirements.
- 20.3 The Supplier shall take out and maintain from the Commencement Date and for the duration of this Contract, employer's liability insurance for the minimum sum of £10 million in respect of and arising out of each and every claim of any one event, act or occurrence or series of claims, acts or occurrences and which complies with statutory requirements.
- 20.4 Where the Supply is a supply of consultancy services the Supplier shall maintain from the Commencement Date professional indemnity insurance for the minimum sum of £5 million applying in the aggregate in any one year during the Contract Period and for 6 years afterwards to cover its liability to SMT under the Contract.
- 20.5 The Supplier shall supply to SMT on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with clauses 19.2 to 19.4 inclusive.

## **21. LIMITATION OF LIABILITY**

- 21.1 References in this clause 20 to liability include every kind of liability arising under or in connection with this Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 21.2 SMT's total liability to the Supplier arising under or in connection with this Contract shall be limited to the charges due under this Contract.
- 21.3 Nothing in the Contract seeks to exclude or limit any liability of either party for death or personal injury caused by its negligence or for its fraudulent misrepresentation.

## **22. SMT Remedies**

- 22.1 If the Supplier fails to deliver the Services and/or Products by the applicable date, SMT 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 Products which the Supplier attempts to make;
  - c. to recover from the Supplier any costs incurred by SMT in obtaining substitute Services and/or Products from a third party;
  - d. where SMT has paid in advance for Services and/or Products that have not been provided by the Supplier and/or Products 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 SMT which are in any way attributable to the Supplier's failure to meet such dates.
- 22.2 If the Supplier has delivered Products that do not comply with the undertakings set out in clause 4.1, then, without limiting its other rights or remedies, SMT shall have one or more of the following rights, whether or not it has accepted the Products:
- a. to reject the Products (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - b. to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - c. to require the Supplier to repair or replace the rejected Products, or to provide a full refund of the price of the rejected Products (if paid);
  - d. to refuse to accept any subsequent delivery of the Products which the Supplier attempts to make;
  - e. to recover from the Supplier any expenditure incurred by SMT in obtaining substitute Products from a third party; and
  - f. to claim damages for any additional costs, loss or expenses incurred by SMT arising from the Supplier's failure to supply Products in accordance with clause 4.1.
- 22.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement Products supplied by the Supplier.
- 22.4 SMT's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 23. Charges and Payment**
- 23.1 The price for the Products:
- a. shall be the price set out in the Purchase Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
  - b. shall be inclusive of the costs of packaging, insurance and carriage of the Products, unless otherwise agreed in writing by SMT. No extra charges shall be effective unless agreed in writing and signed by SMT.
- 23.2 The charges for the Services and/or Products shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services.
- 23.3 Unless otherwise agreed in writing by SMT, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 23.4 In respect of Products, the Supplier shall invoice SMT on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice SMT on completion of the Services.
- 23.5 Each invoice shall include such supporting information required by SMT to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number, details of the Supply and the charge specified in the Contract or Purchase Order. The Supplier shall provide separate invoices for each Purchase Order.
- 23.6 Invoices should be provided in a form as may be agreed by SMT and must be submitted by e-mail to [smtapinv@smtgb.co.uk](mailto:smtapinv@smtgb.co.uk). In the event that electronic submission is not possible the Supplier may submit invoices to: Accounts Payable, Services, Machinery and Trucks Ltd, Moorfield Road, Duxford, Cambridgeshire, CB22 4QX. The Supplier will cooperate with SMT in any development of electronic invoicing which may be implemented.
- 23.7 Subject to the provisions of this clause 22, SMT shall pay the invoiced amounts 30 days after the end of the month of receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 23.8 The charges of the Supplier are exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by SMT following delivery of a valid VAT invoice. The Supplier shall indemnify SMT against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on SMT at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Contract.
- 23.9 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% 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 the date of actual payment of the overdue amount, whether before or after judgment.
- 23.10 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 SMT to inspect such records at all reasonable times on request.
- 23.11 SMT may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to SMT against any liability of SMT to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 23.12 If SMT considers that the amount due to the Supplier is less than the amount set out in the Supplier's invoice, SMT will notify the Supplier in writing within 15 days of receipt of the invoice stating the reasons why the invoice is being queried. No payment by SMT shall prevent its later reconsideration or adjustment.

## **24. Intellectual Property Rights**

- 24.1 In respect of the Products and any Products that are transferred to SMT 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 SMT, it will have full and unrestricted rights to sell and transfer all such items to SMT.
- 24.2 The Supplier assigns to SMT, with full title guarantee and free from all third party rights, all Contract Specific IPR in the Products of the Services, including for the avoidance of doubt in the Deliverables. The Supplier grants SMT an irrevocable and perpetual royalty free licence to use the Supplier background IPRs so as to enable SMT to enjoy the full commercial benefit and use of the Products of the Services and the Deliverables.

24.3 The Supplier shall, promptly at SMT's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as SMT may from time to time require for the purpose of securing for SMT the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to SMT in accordance with clause 23.2.

24.4 All SMT Materials are the exclusive property of SMT.

24.5 The Supplier shall keep SMT indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or 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 incurred by SMT as a result of or in connection with any claim made against SMT for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Products, or receipt, use or supply of the Services.

## 25. Confidentiality

25.1 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 sub-contractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain.

25.2 The receiving party shall only disclose such confidential information to those of its employees, agents and sub-contractors 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 sub-contractors 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.

## 26. Termination

26.1 Without limiting its other rights or remedies, SMT may terminate the Contract:

- a. in respect of the supply of Services, by giving the Supplier one months' written notice; and
- b. in respect of the supply of Products, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. SMT shall pay the Supplier fair and reasonable compensation for any work in progress on the Products at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

26.2 In any of the circumstances in these Conditions in which SMT may terminate the Contract, where both Products and Services are supplied, SMT may terminate the Contract in respect of the Products, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

26.3 Without limiting its other rights or remedies, SMT may terminate the Contract with immediate effect by giving written notice to the Supplier if one or more of the following occurs:

- a. the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of receipt of notice in writing to do so;

- b. the Supplier repeatedly breaches any of the terms of 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 terms of the Contract;
  - c. 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 or limited liability partnership) 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;
  - d. 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, other than (where a company) 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;
  - e. 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 (being a company) 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;
  - f. the Supplier (being an individual) is the subject of a bankruptcy petition or order;
  - g. 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;
  - h. 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 (being a company);
  - i. the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - j. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
  - k. 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 within this clause 22;
  - l. the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;
  - m. the Supplier's financial position deteriorates to such an extent that in SMT's opinion, the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - n. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 26.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **27. Consequences of Termination**

- 27.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to SMT all Deliverables whether or not then complete, and return all SMT Materials. If the Supplier fails to do so, then SMT may 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.

## **28. Force Majeure**

- 28.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).
- 28.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 28.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 20 Business Days, SMT may terminate the Contract immediately by giving written notice to the Supplier.

## **29. Assignment and other dealings**

- 29.1 SMT may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 29.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of SMT.

## **30. Notices**

- 30.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service.
- 30.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to within this clause 29; if sent by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 30.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **31. Severance**

- 31.1 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.
- 31.2 Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**32. Waiver**

A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**33. No Partnership or Agency**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

**34. Third Parties**

A person who is not a party to the Contract shall not have any rights to enforce its terms.

**35. Variation**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by SMT.

**36. Governing Law**

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 the law of England and Wales.

**37. 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).