

BENDER UK Ltd.

Low Mill Business Park, Ulverston
Cumbria LA12 9EE
Phone: 01229 480 123 • Fax: 01229 480 345
www.bender-uk.com

**General Terms****1. DEFINITIONS AND INTERPRETATION**

1.1 In these General Terms, the following words have the following meanings:

Bender UK Engineer	an employee, agent, consultant or subcontractor of Bender UK;
Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
Construction Products Regulations	Regulation (EU) No 305/2011 and the Construction Products Regulations 2013 (SI 2013/1387);
Contract	the contract between Bender UK and the Supplier for the sale and purchase of the Goods and/or Services in accordance with these Conditions;
Cover Sheet	the front cover sheet(s) to which these General Terms are attached;
Deleterious Materials	any materials, equipment, products or kits, which, at the time of specification or use, are generally accepted, or generally suspected, in the construction industry at the relevant time as: <ul style="list-style-type: none">• posing a threat to the health and safety of any person;• posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;• reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;• not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement; or• having been supplied or placed on the market in breach of the Construction Products Regulations.

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Delivery Date	the date for Delivery of Goods set out in the Cover Sheet;
Delivery Location	the address for delivery of Goods as set out in the Order;
DP Legislation	(i) the General Data Protection Regulation ((EU) 2016/679) (GDPR) unless and until the GDPR is no longer directly applicable in the UK, together with any national implementing laws (including Data Protection Act 2018) regulations and secondary legislation as amended or updated from time to time in the UK; and (ii) any successor legislation to the GDPR and the Data Protection Act 2018;
Event of Insolvency	(a) summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over any of its assets, undertakings or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the party serving notice), is subject to a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation previously approved in writing by the party serving notice), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under Part 26 (arrangements and reconstructions) Companies Act 2006, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person or is the subject of a notice to strike off the register at Companies House; or (b) becomes bankrupt, insolvent, makes any composition with his creditors, has a receiver appointed under the Mental Health Act 1893 or dies; or (c) ceases, or threatens to cease, to carry on all or substantially the whole of its business; or

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(d) or the equivalent of any of the above occurs to the Supplier under the jurisdiction to which the party is subject; or

(e) Bender UK reasonably believes that one of the above circumstances is about to occur.

General Terms	these general terms and conditions;
Goods	the goods (or any part of them) set out in the Order;
Month	a calendar month;
Order	Bender UK's order for the Goods and/or Services, as set out in Bender UK's purchase order form referring to, or the Supplier's written acceptance of, the Quotation, as the case may be;
Quotation	a quotation for Goods and/or Services given by the Supplier;
Services	the services detailed in the Cover Sheet;
Services Performance Date	the date specified for performance of the Services in the Cover Sheet;
Site	means the location that the Services are to be performed and/or the Goods delivered as stated in the Cover Sheet.

1.2 In these Conditions (except where the context requires otherwise):

- (a) headings are for convenience only and do not affect their interpretation;
- (b) references to a "person" includes an individual, corporation (whether incorporated or unincorporated), partnership, trust, unincorporated association and any other entity or association of any nature;
- (c) a reference to a party includes its personal representatives, successors or permitted assigns;
- (d) 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;

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- (e) any words following the terms "including", "include", "for example" or any similar expression are by way of illustration and emphasis only and shall not limit the generality or extent of any other words or expressions;
- (f) where any period of time dates from a given day or the day of an act or event, such period is to be calculated exclusive of that day; and
- (g) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Contract is made up of: a) the Cover Sheet, b) the Purchase Order, c) the General Conditions; and d) the Mandatory Policies.
- 2.2 Any conflict or ambiguity between the terms of the documents listed in clause 2.1 shall be resolved in favour of the document placed earlier in the list in clause 2.1 above.
- 2.3 The terms of the Contract apply 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.
- 2.4 The Order constitutes an offer by Bender UK to purchase the Goods and/or Services in accordance with the terms of the Contract.
- 2.5 The Order shall be deemed accepted upon the earlier of the Supplier issuing a written acceptance of the Order or when the Supplier takes any other steps consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence.
- 2.6 All of the terms of the Contract shall apply to the supply of 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:
 - (a) correspond with their description and any applicable Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Bender UK expressly or by implication, and in this respect Bender UK relies on the Supplier's skill and judgement;

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- (c) where they are manufactured products, be free from defects in design, material 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 Goods.

3.2 Bender UK may inspect and test the Goods at any time before delivery and/or installation (if appropriate). The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract in respect of the Goods.

3.3 If following such inspection or testing Bender UK considers that the Goods do not conform or are unlikely to comply with its undertakings at clause 3.1, Bender UK shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.4 Bender UK may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. TIME FOR PERFORMANCE OF SERVICES AND DELIVERY OF GOODS

4.1 The Supplier shall, subject to clause 4.6 below:

- (a) deliver the Goods on the Delivery Date; and
 - (b) perform the Services by the Services Performance Date,
- and time shall be of the essence with respect to these obligations of the Supplier.

4.2 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 code 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

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- (c) if the Supplier requires Bender UK 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.

4.3 The Supplier shall deliver the Goods:

- (a) at the Delivery Location; and
- (b) during Bender UK's normal business hours, or as instructed by Bender UK.

4.4 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.5 The Supplier may not deliver the Goods in instalments without Bender UK'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. Any delay in delivery or defect in an instalment shall entitle Bender UK to cancel any other instalment.

4.6 Should the Supplier be delayed in the delivery of the Goods or the supply of the Services by an act or omission of Bender UK or any other supplier or subcontractor of Bender UK or by a Force Majeure Event then Bender UK shall grant an extension of time to the Delivery Date and/or Services Performance Date as shall be reasonable in the circumstances.

5. SUPPLY OF SERVICES

5.1 The Supplier shall for the duration of the Contract supply the Services to Bender UK in accordance with the terms of the Contract.

5.2 In providing the Services, the Supplier shall:

- (a) co-operate with Bender UK in all matters relating to the Services, and comply with all instructions of Bender UK;
- (b) co-operate with any other suppliers and subcontractors of Bender UK who are working on the Site and use best endeavours not to cause any disruption or delay to such other suppliers and/or subcontractors.
- (c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

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- (d) 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 the Contract;
 - (e) ensure that the Services will conform with all descriptions, standards and specifications set out in the description of the Services set out or referred to in the Cover Sheet;
 - (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 all goods and materials supplied and used in the Services, will be free from defects in workmanship, installation and design;
 - (h) ensure that all goods and materials supplied are free from Deleterious Materials;
 - (i) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - (j) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Policies;
 - (k) observe all health and safety rules and regulations and any other security requirements that apply at location for the performance of the Services set out in the Cover Sheet.
 - (l) hold all materials, equipment and tools, drawings, specifications and data supplied by Bender UK to the Supplier (**Customer Materials**) in safe custody at its own risk maintain the Customer Materials in good condition until returned to Bender UK, and not dispose or use the Customer Materials other than in accordance with Bender UK's written instructions or authorisation;
 - (m) not do or omit to do anything which may cause Bender UK or, if applicable, Bender UK's customer where the Supplier is acting as sub-contractor to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.
- 5.3 In the event that Bender UK identifies any defects in the Goods or the Services as applicable during the Defects Liability Period then on notice from Bender UK then the Supplier agrees to return to the Site and carry out such remedial works as are necessary to remedy the defects at no cost to Bender UK.

6. REMEDIES

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- 6.1 Subject to clause 4.6, if the Supplier does not deliver the Goods on the Delivery Date, they do not comply with the undertakings set out in clause 3.1, or if the Supplier does not perform the Services by the Services Performance Date then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods (if applicable), Bender UK may exercise any one or more of the following remedies:
- (a) deduct Liquidated Damages at the rate set out in the Cover Sheet from the Delivery Date or the Services Performance Date (as applicable) until the actual date that the Goods are delivered and/or the Services performed as the case may be provided that Bender UK may not recover more than the Maximum Amount as liquidated damages.
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) to reject any Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - (d) to require the Supplier to repair or replace any rejected Goods, or to provide a full refund of the price of such rejected Goods (if paid);
 - (e) to refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;
 - (f) to recover from the Supplier any costs incurred by Bender UK in obtaining substitute goods and/or services from a third party; and
 - (g) to claim damages for any other costs, loss or expenses incurred by Bender UK which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract including for the avoidance of doubt loss of profits and consequential losses.
- 6.2 If the Supplier has supplied Services that do not comply with the requirements of clause 5.2 (e) then, without limiting or affecting other rights or remedies available to it, Bender UK shall 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 require the Supplier to provide repeat performance of the Services, or where it is lawful to do so to provide a full refund of the price paid for the Services (if paid);
 - (c) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

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- (d) to recover from the Supplier any expenditure incurred by Bender UK in obtaining substitute services or deliverables from a third party; and
- (e) to claim damages for any additional costs, loss or expenses incurred by Bender UK arising from the Supplier's failure to comply with clause 5.2(e) including but not limited to any loss of profit and any consequential losses.

6.3 The terms of the Contract shall apply to any substitute or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.4 Bender UK's rights and remedies under the Contract are in addition to its rights and remedies implied by statute or common law.

7. TITLE AND RISK

7.1 Title and risk in any Goods shall pass to Bender UK on completion of delivery to the Site.

8. PRICES AND PAYMENT

8.1 The price of the Goods shall be the price set out in the Cover Sheet, or, if no price is quoted in the Cover Sheet, the price set out in the Order.

8.2 The price of the Services set out in the Cover Sheet and shall be the full and exclusive remuneration of the Supplier in respect of performance of the Services. Unless otherwise agreed in writing by Bender UK, the price of the Services shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services including all expenses and disbursements.

8.3 All amounts payable by Bender UK under the Contract are exclusive of amounts in respect of value added tax (**VAT**). Bender UK 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.

8.4 No extra charges shall be effective unless agreed in writing with Bender UK.

8.5 Subject to any arrangement for payment set out in the Cover Sheet and subject to Schedule 1 if applicable, in respect of the Goods, the Supplier shall invoice Bender on or at anytime after completion for delivery. In respect of Services the Supplier shall invoice Bender UK upon

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completion of the Services. Each invoice shall include such supporting information required by Bender UK to verify its accuracy, including the relevant Order number.

- 8.6 Bender UK shall pay to the Supplier amounts due under the Contract for the provision of the Goods pursuant to correctly rendered invoices within 30 days of receipt unless otherwise stated in the cover sheet (Bdoc189) which should accompany this document. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.7 Bender UK shall pay to the Supplier amounts due under the Contract for the provision of the Services pursuant to correctly rendered invoices either within 30 days of receipt, in accordance with Schedule 1 if applicable or in accordance with specific payment provisions set out in the Cover Sheet (Bdoc189).
- 8.8 If the Cover Sheet provides that a retention is applicable, then Bender UK shall be entitled to deduct the retention at the specified rate from each payment due to the Supplier. The retention shall be released by Bender UK to the Supplier at the end of the Defects Liability Period.
- 8.9 If Bender UK fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then Bender UK shall pay interest on the overdue amount at 4% per annum above Barclays Bank'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. The parties acknowledge that the liability under this paragraph 8.7 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998. This clause shall not apply to payments Bender UK disputes in good faith.
- 8.10 Bender UK may at any time, without limiting any other rights or remedies it may have, set off any liability of the Supplier against any liability of Bender UK to the Supplier, whether either liability is present or future liquidated or unliquidated and whether or not either liability arises under the Contract.

9. BENDER UK OBLIGATIONS

- 9.1 Bender UK shall provide such information relating to the performance of the Services as the Supplier may reasonably request.

10. CUSTOMER MATERIALS

The Supplier acknowledges that the Customer Materials and all rights in the Customer Materials are and shall remain the exclusive property of either Bender UK or its customer (as the case may be). The Supplier shall keep the Customer Materials in safe custody at its own risk,

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maintain them in good condition until returned to Bender UK or its customer (where the Supplier is acting as sub-contractor) and not dispose or use the same other than in accordance with Bender UK's written instructions or authorisation.

11. INDEMNITY

11.1 The Supplier shall keep Bender UK 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 or incurred by Bender UK as a result of or in connection with:

- (a) any claim made against Bender UK for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply of the Services and/or supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against Bender UK by a third party for death, personal injury or damage to property arising out of or in connection with:
 - (i) defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - (ii) the Supplier's failure to provide the Services in accordance with this Contract;
- (c) any claim made against Bender UK by a third party arising out of or in connection with the supply of the Goods and/or the provision of the Services by the Supplier, 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.

11.2 This clause 11 shall survive termination of the Contract.

12. INSURANCE

During the term of the Contract and any period specified in the Cover Sheet the Supplier shall maintain in force, with a reputable insurance company, the insurances set out in the Cover Sheet to cover the liabilities that may arise under or in connection with the Contract, and shall, on Bender UK'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.

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**13. CONFIDENTIALITY**

13.1 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 subcontractors and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

13.2 This clause 13 shall survive termination of the Contract.

14. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

14.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- (b) [comply with the Mandatory Policies as applicable].

14.2 Bender UK may immediately terminate the Contract for any breach of clause 14.

15. TERMINATION

i.1 Bender UK may terminate this Contract in whole or in part:

- (i) at any time before the Goods are delivered or performance of the Services is commenced with immediate effect by giving the Supplier written notice; and
- (ii) at any time by giving 21 days notice in writing,

whereupon the Supplier shall discontinue all work on the Contract and following which Bender UK will pay to the Supplier fair and reasonable compensation for any work in progress on any Goods and/or Services at the time of termination but shall not be liable for loss of profits or consequential loss.

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15.2 Without limiting its other rights and remedies, Bender UK may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier:

- (a) suffers and Event of Insolvency; or
- (b) commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of 10 (ten) Business Days after receipt of notice in writing requiring it to do so.

15.3 If Bender UK terminates the Contract pursuant to clause 15.2 the Supplier shall not be entitled to the compensation payments in clause 15.1 unless Schedule 1 applies to the Contract..

15.4 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.

16. FORCE MAJEURE

16.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, extremes of weather, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

17. VARIATION AND WAIVER

17.1 Except as set out in the Contract 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 Bender UK.

17.2 No failure to exercise or delay in exercising any right or remedy provided under the Contract or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

17.3 No single or partial exercise of any right or remedy under the Contract shall prevent or restrict the further exercise of that or any other right or remedy.

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**18. COLLATERAL WARRANTIES**

- 18.1 Within five Business Days of receiving a written request from Bender UK, the Supplier shall enter into a collateral warranty (in the form set out in Schedule 3) in favour of any Beneficiary identified by Bender UK in a written request or in the Cover Sheet.

19. PERFORMANCE BOND

- 19.1 The Supplier shall provide a performance bond if required in accordance with the requirements of the Cover Sheet in such form as is agreed by Bender.

20. NOTICES

- 20.1 Any notices given under clauses 9 (Termination) or 18 (Notices) must be in writing and may be delivered by hand, first class post, Special Delivery post, fax or email, addressed to the recipient at its registered office or to any other address, fax number or email address as notified in writing to the sender by the other party.

21. ENTIRE AGREEMENT

- 21.1 The Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.
- 21.2 Nothing in these conditions shall limit or exclude any liability for fraudulent misrepresentation.

22. RIGHTS OF THIRD PARTIES

- 22.1 Save as expressed otherwise in the Cover Sheet, no term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.

23. ASSIGNMENT

- 23.1 Bender UK may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate any or all of its obligations under the Contract to any third party or agent.
- 23.2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Bender UK.

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24. SEVERANCE

- 24.1 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 and the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

25. GOVERNING LAW AND JURISDICTION

- 25.1 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, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.