
DIAMOND ELECTRONIC SYSTEMS LIMITED ("DIAMOND") TERMS AND CONDITIONS OF SALE,
SERVICE AND SUPPLY

1. **DEFINITIONS**

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

"Business Day" means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in Belfast. "Client" the person, firm or company procuring the Services from Diamond who shall be identified in the Contract and with whom Diamond contracts for the provision of Goods and/or Services.

"Client" means the person, firm or company who has requested the provision of Goods or Services from Diamond.

"Client Default" means any act or omission by the Client or failure by the Client to perform any relevant obligation which prevent or delays Diamond from performing its obligations.

"Commissioning Works" the work necessary to confirm Goods installed under the Contract are ready to commence normal operation, such works to be carried out by Diamond's commissioning engineer.

"Confidential Information" means, any information disclosed by one party to the other party in connection when entering into the Contract, whether orally, in writing, electronically, or in any other form or medium, that is designated as confidential or that, under the circumstances surrounding its disclosure, would reasonably be understood to be confidential whether or not the information is expressly stated to be confidential or marked as such.

"Contract" means the contract entered into by Diamond and the Client governing the provision of the Services by Diamond to the Client with the Contract coming into effect and becoming binding on all parties upon the Client accepting the terms set out within the Technical Proposal and which shall incorporate the Project Specification, the Technical Proposal and these Terms and Conditions.

"Data Protection Legislation" means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;

"Deposit" means the amount to be paid in advance of the commencement of the provision of the Services set out in the Technical Proposal

"Goods" means the apparatus, materials or equipment (including any part) which Diamond agrees in writing to supply to or to the order of the Client as described in the Technical Proposal.

"Group" shall mean, in respect of either the Client or Diamond, that party's group composed of that party, its holding company (if any), and all subsidiary companies of that party and of that party's holding company (if any), within the meaning of section 1159 of the Companies Act 2006 (as amended).

"Group Company" any company in Diamond's Group.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, business names, domain names, rights in get-up and trade dress, goodwill and the right to passing off actions, design rights, database rights, [rights subsisting in software,] rights to use confidential information and the right to protect the same, and any and all other intellectual property

rights, whether registered or unregistered, including applications and the right to apply for (and be granted) renewals or extensions of, and rights to claim priority from, any such rights and any and all equivalent rights or other forms of protection subsisting now or in the future anywhere in the world;

"Know-how" means all inventions, discoveries, improvements and processes (whether patentable or non-patentable), copyright works (including without limitation computer programs), designs (whether or not registered or registrable) and all other technical information of whatever nature).

"Materials" all materials, equipment, documents and other property of Diamond.

"Milestone Payment" means a part of the Project Fee in accordance with the Contract

"Order" the Client's order or request for the supply of Goods and/or Services in accordance with the Technical Specification.

"Price List" Diamond's list of prices for goods and/or services published from time to time, or issued to the Client in connection with an Order.

"Project" means, collectively, the work to be carried out by Diamond for the Client as set out in the Technical Proposal

"Project Fee" means the total amount payable for the Project as set out in the Technical Proposal as incorporated on foot of the Order into the Contract

"Project Milestone" means one of the multiple phases into which the Project is divided as set out in the Technical Proposal

"Project Specification" means the full description and specification of the Client's requirements which shall be used by Diamond to prepare the Technical Proposal subject to Clause 4 herein.

"Services" means the services agreed by the parties in writing to be provided by Diamond to the Client in accordance with the Project Specification, the Technical Proposal and the Contract.

"Technical Proposal" means the document produced by Diamond setting out the proposed Services, Materials, Project Milestone, Deposit and Project Fee to the Client.

"Terms and Conditions" these terms and conditions of sale and supply as amended and supplemented from time to time by Diamond.

"Working Hours" means between 9.00am and 5.00pm on any Business Day.

"Written Acceptance" means the Client's written acceptance of the Technical Proposal thereby forming the Contract

2 INTERPRETATION

- 2.1 Any reference to "writing", and any similar expression, includes a reference to any communication sent by fax or email.
- 2.2 Unless expressly stated otherwise, legislation or a provision thereof is a reference to that legislation or provision as amended or re-enacted from time to time.
- 2.3 Unless expressly stated otherwise, legislation or a provision thereof, shall include all subordinate legislation made from time to time under that legislation or provision.
- 2.4 A reference to "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time.
- 2.5 A reference to "the Contract" is a reference to the contract between the Parties as defined above in definitions and further set out below in Clause 3 (Basis of Contract).

- 2.6 A reference to a "Party" or the "Parties" refer to the parties to the Contract.
- 2.7 A reference to any other Contract or document is a reference to that Contract or document as amended or supplemented at the relevant time.
- 2.8 Any obligation on either Party not to do a particular thing includes an obligation to not allow that thing to be done.
- 2.9 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of the Contract.
- 2.10 Words communicating the singular number shall include the plural and vice versa.
- 2.11 References to any gender shall include any other gender.
- 2.12 References to persons shall include natural persons, corporate, or unincorporated bodies (whether or not the same have a separate legal personality).
- 2.13 References to a company shall include companies, corporations, or other bodies corporate, however so and wherever incorporated or established.
- 2.14 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

3. **BASIS OF CONTRACT**

- 3.1 The Client shall supply the Project Specification to Diamond or request that Diamond attend at the Client's nominated site in order to survey the site and prepare the Project Specification.
- 3.2 Subject to the limitations identified in clause 4 and 21 Diamond will prepare the Technical Proposal based on the Project Specification.
- 3.3 The Technical Proposal will remain valid for 30 business days or for such other period as may be specified by Diamond within the Technical Proposal.
- 3.4 The Client may request in writing that Diamond revises or amends the Technical Proposal as a consequence of an agreed change to the Project Specification or by way of a reduction increase or variation of the Services sought. Such revisions must be supplied to Diamond in writing.
- 3.5 Diamond may revise or amend the Technical Proposal to reflect changes sought by the Client but shall be under no obligation to do so.
- 3.6 The Client shall notify Diamond in writing that they accept the Technical Proposal and a binding contract shall come into existence between the Client and Diamond with the date of the Client's written acceptance being the commencement date of the Contract.
- 3.7 These Terms and Conditions shall be incorporated into the Contract and any other terms that the Client seeks to impose or incorporate into the Contract, or which are implied by trade custom, practice, or course of dealing shall be specifically excluded.
- 3.6 No advertising, promotional literature, descriptive matter, drawings, samples, catalogues, brochures, or similar material issued or published by Diamond in any format or medium shall form part of the Contract or have any contractual force. Such material is provided by Diamond only for promotional purposes and for providing an approximate description of the Goods or Services available from the Diamond.

4. **PROJECT SPECIFICATION**

- 4.1 The Client acknowledges that Diamond shall rely upon the Project Specification in preparing the Technical Proposal and shall use its best endeavours to ensure the accuracy of the Project Specification at all times.
- 4.2 The Project Specification shall set out in full the Services required by the Client and shall be either:
- (i) prepared by the Client and provided to Diamond; or
 - (ii) a design plan prepared by a consultant or appropriate expert instructed by the Client; or
 - (iii) prepared by Diamond following as site survey carried out by Diamond.
- 4.3 Either Party may request or propose amendments to the Project Specification. Any proposed amendments must be made in writing.
- 4.4 Diamond shall have no liability or responsibility arising from any failure by the Client to provide any relevant details or information or for any errors or inaccuracies in the Project Specification provided by the Client.
- 4.5 Where Diamond have carried out a site survey Diamond shall have no liability or responsibility arising from any errors or inaccuracies in any information provided to Diamond by the Client during such site survey.
- 4.6 The Parties agree that the Project Specification can be revised or amended in writing by either party up to the issue of the Technical Proposal. Any changes to the Project Specification may, at Diamond's sole discretion, render the Technical Proposal invalid and incapable of being accepted by the Client.

5. **PAYMENTS**

- 5.1 The Client shall, if included within the Contract pay the non-refundable deposit upon the signing of the Contract. Diamond shall not be obliged to commence the Project or provide the Services until any Deposit has been paid.
- 5.2 The Project Fee may be divided into a series of Milestone Payments, each falling due on the successful completion and acceptance of the relevant Project Milestone in accordance with the Project Specification.
- 5.3 Diamond shall invoice the Client for all sums due under the Contract.
- 5.4 Subject to Clause 13.7.1 and unless otherwise stated in writing by Diamond the due date for payment shall be the date of the invoice stated on Diamond's invoice for any Goods and/or Services supplied or to be supplied ("Due Date"). Except where clause 13.7.1 applies, the final date for payment shall be thirty calendar (30) days after the Due Date.
- 5.5 All payments required to be made pursuant to the Contract by the Client shall be made in GBP Sterling, unless payment in Euro has been agreed in advance, in cleared funds to such bank in such a location as Diamond may from time to time nominate without any set-off, withholding or deduction. Diamond shall be entitled to invoice the amounts due in advance, notwithstanding that Services may not have been carried out or completed and/or that delivery of Goods may not have taken place and/or property in the Goods passed to the Client. The time of payment of each invoice shall be of the essence under the Contract. Diamond may invoice for Goods and Services together or separately. Diamond may invoice in respect of Services at periodic intervals, no more frequently than once every 14 days, until issuing a final invoice following completion of the Services.
- 5.6 Where any payment pursuant to the Contract is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

- 5.7 Any quoted discount shall be void and of no effect unless payment is made strictly in accordance with the Contract.
- 5.8 Should payment not be made by the Due Date then, without limiting Diamond's other remedies under the Contract or otherwise at law, the Client shall pay interest on the overdue amount at four per cent per annum over Bank of England plc Base Rate from time to time. This interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount (whether before or after judgment). The Client shall pay the interest together with the overdue amount. Diamond reserves the right to charge the Client for any costs in obtaining payment of monies overdue, which may include but are not limited to professional fees, solicitors' fees, court costs, enforcement costs etc. Interest shall also apply in accordance with the foregoing to the cost to Diamond of collection of the monies due.
- 5.9 If the Client receives an invoice and reasonably believes that it is incorrect the Client must notify Diamond in writing as soon as reasonably possible and practicable and in any event no later than 7 days from receiving the invoice.

6. ADDITIONAL CHARGING RATES

- 6.1 Unless otherwise agreed between the parties in writing, the fee for any Services over and above the Services Agreed between the Partys as set out in the Technical Specification shall be calculated on a time cost basis as follows:
- 6.1.1 the charges shall be calculated in accordance with Diamond's daily fee rates applicable at the date that the Services are provided;
- 6.1.2 Diamond's daily fee rates for each individual person are calculated on the basis of Working Hours worked on Business Days;
- 6.1.3 Diamond shall be entitled to charge an overtime rate as set out in the Price List or for any time worked by individuals engaged in performing the Services outside normal Working Hours;
- 6.1.4 Diamond shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Diamond engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Diamond for the performance of the Services, and for the cost of any materials.
- 6.2 All prices and other charges payable hereunder are exclusive of Value Added Tax, which shall be payable by the Client at the applicable rate.

7 RETENTION

- 7.1 Unless the contrary is agreed separately in writing between the Client and Diamond (at Diamond's sole absolute discretion), the Client is not entitled to withhold any retention under this Contract. Where it is agreed separately in the Contract that retention will be withheld, this shall be subject to the following rules:
- 7.1.1 the retention amount will be 3% (unless otherwise agreed in the Contract); and
- 7.1.2 the Client's interest in the retention is fiduciary as trustee for Diamond; and
- 7.1.3 the Client shall, if Diamond so requests, place the retention in a separate bank account and notify Diamond that the amount has been so placed; and
- 7.1.4 the Client shall be entitled to the full beneficial interest in any interest accruing on the separate bank account and will be under no duty to account for any such interest to Diamond; and
- 7.1.5 the whole retention must be released within 12 months of Diamond providing the Goods and/or Services.

8. CREDIT

8.1 Any Order is accepted subject to Diamond being satisfied (in its absolute discretion) with the Client's credit standing and/or that of its key personnel, directors, representatives, or individual partners ("Key Individuals") as determined by Diamond in its sole discretion. Without prejudice to the generality of clause 25, the Client hereby acknowledges and agrees that Diamond may share information provided by or on behalf of the Client about it or any Key Individual with Diamond's bankers/financiers and credit reference agencies in connection with credit checking at any time until full payment is made in accordance with the Contract, including, without limitation, for the following purposes:

8.1.1 obtaining credit insurance;

8.1.2 making credit reference agency searches;

8.1.3 credit control;

8.1.4 assessment and analysis (including credit scoring, market, product and statistical analysis);

8.1.5 securitisation; and/or

8.1.6 protecting Diamond's interests.

Diamond may also process, retain and use the information referred to above for the purposes of generally running the Client's account and providing the Goods and/or Services.

8.2 Diamond may in its absolute discretion at any time require payment of the price in whole or in part, whether before accepting an Order, before taking any steps to fulfil an Order or before making delivery of any Goods to, or performing any Services for, the Client. Receipt of such payment by Diamond shall be a condition precedent to any further obligations on the part of Diamond arising under the Contract.

8.3 Diamond shall only deliver Goods or Services to the Client after satisfactory credit approval has been received by Diamond or pro-forma payment has been received in cash or cleared funds in accordance with this clause. If neither a satisfactory credit approval has been received nor pro-forma payment has been received in cash or cleared funds in accordance with this clause then Diamond shall have the right to terminate the Contract with immediate effect by serving notice on the Client.

8.4 Without prejudice to any other rights or remedies that Diamond may have under the Contract (including, without limitation, under clause 8.2 and 13.7.1), if Diamond, at its sole discretion, at any time considers that the economic and financial standing of the Client has deteriorated, or is likely to deteriorate, then Diamond may vary the final date for payment of monies due from the Client and/or any other payment terms agreed between the parties by giving written notice to the Client to that effect.

9. WARRANTY

9.1 Diamond shall guarantee that all Services provided shall be free from any and all defects for a period of 12 months commencing on the date of completion of the Commissioning Works subject to the provisos below.

9.2 If any defect or fault is discovered in relation to Services Diamond warrants to the Client that it will make good the defect by either repair or replacement (whichever is deemed solely by Diamond to appropriate) without charge to the Client provided always that the fault is notified in writing and with sufficient technical detail to allow Diamond to identify and consider the alleged fault and that such fault is reported immediately after being identified by the Client.

- 9.3 Diamond reserve the right to enter the Client's premises by prior agreement in order to inspect the alleged fault in order to determine the cause of any reported issue. Should following such inspection it be found that repairs are excluded due to any of the provisos set out at clause 6.6 below, the Client will be responsible of Diamond's costs and expenses incurred in the said inspection.
- 9.4 Upon completion of a repair under warranty, Diamond will have no further liability to the Client in respect of the defect or fault identified and shall not be liable to complete any subsequent or further repairs under warranty at the expiration of the Warranty Period.
- 9.5 In the case of Goods manufactured by third parties and fitted or supplied by Diamond, Diamond will pass on only those terms of warranty or guarantee passed to it by the manufacturer of such Goods, if any, and to the extent legally assignable or transferable.
- 9.6 The Warranty will not apply (and Diamond shall be under no obligation to carry out repairs where damage has been caused by:
- normal wear and tear;
 - rust, condensation, water damage or deterioration, improper; operating temperature or environment;
 - improper use, abnormal or unusual use;
 - improper testing;
 - negligent use of improper voltage or current;
 - accidental damage;
 - wilful damage or vandalism;
 - use or addition of unauthorised accessories;
 - repair, dismantling or alteration by unauthorised technical personnel; Diamond shall not be liable for any defects or damage arising out of incorrect installation, repair, maintenance or alteration by any party other than Diamond;
 - use contrary to the operating instructions;
 - lack of regular maintenance. It is a condition of the Warranty that the Goods shall have been regularly serviced by Diamond directly or in accordance with the manufacturer's and/or Diamond's recommendations;
 - the Client continues to make use of the Goods having identified and reported a fault in accordance with clause 9.2;
 - the Goods differing from their description as a result of changes to ensure they comply with applicable statutory or regulatory standards;
 - Where Diamond have not been paid in full Diamond shall be under no liability under the Warranty (or any other warranty, condition or guarantee) or under the Contract if the total Project Fee has not been discharged in accordance with the Contract.
- 9.7 The terms of the Contract shall apply to any repaired or replacement Goods supplied by Diamond to the Client pursuant to the Warranty for the duration of the unexpired term of the original period referred to in the Contract
- 9.8 Save as expressly provided otherwise in the Contract, all warranties, conditions or other terms implied by statute, common law, custom or practice shall be excluded to the fullest extent permitted by law.
- 10 **LIMITATION OF LIABILITY**
- 10.1 Nothing in the Contract shall limit or exclude either Party's liability under or in relation to the Contract for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation, for the wilful misconduct of either Party or that of its employees or agents, for any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services

Act 1982 (relating to title and quiet possession), or any other form of liability which cannot be limited or excluded by law.

- 10.2 Nothing in this clause shall exclude or limit the Client's payment obligations under the Contract.
- 10.3 The Client shall not have the right to benefit from any of the exclusions or limitations of liability set out in this Clause in respect of any liability under or in relation to the Contract which arises out of the deliberate default of either that the Client or of the Client's employees or agents.
- 10.4 Subject to sub-Clauses 10.1 to 10.3 and to any other provision to the contrary in the Contract, Diamond shall not be liable under or in relation to the Contract for any loss suffered by the Client, whether suffered directly or indirectly, or whether immediate or consequential, arising in contract, tort (including negligence), breach of statutory duty, or otherwise, which falls within any of the following categories:
- a) loss of profits;
 - b) loss of sales or business;
 - c) loss of business opportunity;
 - d) loss of agreements or contracts;
 - e) loss of anticipated savings;
 - f) loss or corruption of data;
 - g) loss of, or damage to, goodwill;
 - h) indirect or consequential loss; or
 - i) special damages, even in the event that the relevant Party was aware of the circumstances in which the same could arise.
- 10.6 Subject to the terms of this clause, the total aggregate liability under or in relation to the Contract for all related or unrelated acts or omissions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the sums paid by the Client to Diamond under the Contract in respect of the Goods and/or Services supplied to the Client. This limit shall apply however such liability arises.
- 10.7 Subject to any provision of the Contract where liability is excluded to a lesser amount Diamond's liability for any claim shall not exceed the amount recoverable by way of indemnity against the claim in question under any prevailing indemnity insurance which Diamond may have in force at the time that the claim is notified to Diamond and/or are reported to the said insurers.
- 10.8 Diamond shall have no liability to any person other than the Client in respect of any Goods or Services supplied under the Contract.
- 10.9 Diamond shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by Diamond.
- 10.10 Diamond shall not be liable to the Client or be deemed to be in breach of the Contract by of any delay and/or hindrance in performing the Contract if the delay was due to any fault of the Client.
- 10.11 Diamond shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay and/or hindrance in performing the Contract if the delay was due to a "Force Majeure Event" being any circumstances beyond that Diamond's reasonable control including, but not limited to, any strike, lockout, or other form of industrial action; shortage of components or raw materials; lack of, interruption to, or failure of any utility service, or lack of available facilities; non-performance by suppliers or sub-contractors; collapse of buildings, fire, explosion, accident, acts of God, storm,

flood, drought, earthquake, epidemic, pandemic, or other natural disaster; terrorist attack, civil commotion or riots, war, civil war, threat of preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off diplomatic relations; nuclear, chemical, or biological contamination, or sonic boom; any law or action taken by a government or public authority including, but not limited to, imposing an export or import restriction, quota, or prohibition, difficulties in obtaining raw materials, labour, fuel, parts, or machinery; default by the Diamond's supplier; power failure or breakdown in machinery; exhaustion of stock; or failing to grant a necessary licence or consent, any law or action taken by a government or public authority in relation to any public health concern or issue, pandemic or epidemic, or any similar or dissimilar circumstances.

- 10.12 If any Force Majeure Event occurs in relation to either Party which affects or may affect that Party's performance of its obligations under the Contract, the affected Party shall notify the other Party as soon as reasonably possible and practicable of the nature and extent of the circumstances in question. The affected Party shall use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 10.13 Subject to compliance with sub-Clause 10.2, neither Party shall be deemed to be in breach of the Contract or shall otherwise be liable to the other by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that performance of that obligation is prevented, hindered, or delayed by a Force Majeure Event of which it has notified the other Party, and the time for that performance shall be extended accordingly.
- 10.14 If the performance by either Party of any of its obligations under the Contract is prevented, hindered, or delayed by a Force Majeure Event for a continuous period in excess of 14 calendar days, the Parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable

11. DELIVERY AND RISK

- 11.1 Diamond shall deliver the Goods to the location set out in the Technical Proposal or such other location as the parties may agree (the "Delivery Location").
- 11.2 The Delivery Location must be accessible to Diamond's nominated carrier for standard commercial delivery and be clean and secure and suitable for the safe storage of the Goods pending installation.
- 11.3 If the Delivery Location is unsuitable Diamond reserves the right not to complete the delivery and the Client shall be responsible for any additional costs.
- 11.4 Diamond accept no liability for the Goods following delivery to the Delivery Location (or any other location substituted by the Client, their servants or agents) and assume no responsibility for the suitability or otherwise of the Delivery Location.
- 11.5 Save where otherwise set out in writing, the Client shall be liable to pay the costs of delivery as set out in the Technical Proposal.
- 11.6 Risk of damage to or loss of the Goods shall pass to the Client:
- 11.6.1 in the case of Goods to be delivered at Diamond's premises, the time when Diamond notifies the Client that the Goods are available for collection;
- 11.6.2 in the case of Goods to be delivered otherwise than at Diamond's premises, the time of delivery to the Delivery Location or, if the Client wrongfully fails to take delivery of the Goods, the time when Diamond has tendered delivery of the Goods; or
- 11.6.3 in the case of Goods to be delivered to the Client, the time of delivery or, if the Client wrongfully fails to take delivery of the Goods, the time when Diamond has tendered delivery of the Goods; or

11.6.4 in the case of goods being installed by Diamond, the time that Diamond notifies the Client that the installation is complete.

12 RETENTION OF TITLE

- 12.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title of the Goods shall not pass to the Client until Diamond has received in cash or cleared funds payment in full of the price of the Goods.
- 12.2 Until payment has been made to Diamond in accordance with the Contract and title in the Goods has passed to the Client, the Client shall be in possession of the Goods as bailee for Diamond and the Client shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by Diamond and shall insure the Goods against all reasonable risks.
- 12.3 The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of Diamond, but if the Client does so all money owing by the Client to Diamond shall (without prejudice to any other right or remedy of Diamond) forthwith become due and payable.
- 12.4 Diamond reserves the right to repossess any Goods in which Diamond retains title without notice. The Client irrevocably authorises Diamond to enter the Client's premises during normal business hours for the purpose of repossessing the Goods in which Diamond retains title and inspecting the Goods to ensure compliance with the storage and identification requirements 12.2.
- 12.5 The Client's right to possession of the Goods in which Diamond maintains legal and beneficial title shall terminate if;
- 12.6 The Client commits or permits any material breach of his obligations under these Conditions;
- 12.7 The Client enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with his creditors;
- 12.8 The Client is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- 12.9 The Client convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Client, notice of intention to appoint an administrator is given by the Client or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client.
- 12.10 Should the Client resell (or purport to resell) the Goods, or any of them, before title in the Goods passes to the Client, the Client agrees to hold any proceeds of such sale or sufficient part thereof to pay all amounts outstanding to Diamond as fiduciary for Diamond. Any such sale shall be subject to Diamond's title in the Goods.
- 12.11 Diamond shall be entitled at any time to take repossession of any Goods and products that remain Diamond's property, and to enter the Client's premises or where the Goods and products may be with such transport as may be necessary and to repossess any such Goods or products freely and unimpeded.
- 12.13 Where Goods or products in which Diamond has property are attached to or stored within any premises other than the Client's premises the Client will secure from the owners or occupiers of such premises equivalent rights to those at clause 10.5 and shall preserve, notwithstanding termination or

expiry of the Client's right of entry to such premises, Diamond's right to enter those premises for the purpose of repossession of the Goods and products still in Diamond's ownership.

13. TERMINATION

13.1. Without prejudice to any other right or remedy available to it, either Party may terminate the Contract immediately by giving written notice to the other Party in the event that:

- a) the other Party does not pay any sum due under the Contract when it is due to be paid and such sum remains outstanding for at least 28 calendar days after receiving written notification to pay that sum;
- b) the other Party commits a material breach of any term of the Contract and (if that breach is capable of remedy) does not remedy that breach within 14 calendar days after receiving written notification to do so;
- c) the other Party threatens to, or does, suspend, payment of its debts as they fall due, admits that it is unable 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 (as if the meaning of the words "it is proved to the satisfaction of the courts" contained in sections 123(1)(e) or 123(2) of the Insolvency Act 1986 did not appear in those sections), or (being an individual) is deemed either to be unable to pay its debts or as having no reasonable prospect of paying its debts, 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 applies;
- d) the other Party begins negotiations with any class or all of its creditors about the rescheduling of any of its debts, or proposes any compromise or arrangements with any of its creditors or enters into the same, other than (being a company) solely for the purpose of a scheme for the solvent amalgamation of that other Party with one or more other companies or for the solvent reconstruction of that other Party;
- e) the other Party applies to the court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or otherwise in connection with the winding up of the other Party (being a company, limited liability partnership, or a partnership) other than solely for the purpose of a scheme for the solvent amalgamation of that other Party with one or more other companies or for the solvent reconstruction of that Party;
- g) an application is made to the court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given, or an administrator is appointed, over the other Party (being a company, limited liability partnership, or a partnership);
- h) the holder of a qualifying floating charge over the assets of that other Party (being a company or limited liability partnership) has become entitled to appoint, or has appointed, an administrative receiver;
- i) a person becomes entitled to appoint a receiver over any or all of the assets of the other Party, or a receiver is appointed over all or any of the assets of the other Party;
- j) the other Party (being an individual) is the subject of a bankruptcy petition, application, or order;
- k) a creditor or encumbrancer of the other Party 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 part of the other Party's assets and such attachment or process is not discharged within 14 calendar days;

- l) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject, that has a similar effect to any of the events set out above in sub-Clauses 14.1(c) to (k) (inclusive);
 - m) the other Party ceases or suspends, or threatens to cease or suspend, carrying on all or a substantial part of its business;
 - n) the other Party (being an individual) dies, or due to illness or incapacity (whether mental or physical), becomes incapable of managing their own affairs or becomes a patient under any mental health legislation; or
 - o) there is a change of control of the other Party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 13.2 Diamond shall further be entitled to cancel the Client's order by written notice to the Client and without liability to the Client in the event of any change or Force Majeure Event (after acceptance by Diamond of such Order) which affects Diamond's ability to comply with the Contract (including without limitation where the change or Force Majeure Event results in increased costs to Diamond).
- 13.3 Diamond shall be entitled to postpone any Commissioning Works until full payment for the relevant Goods and/or Services has been received by Diamond, in accordance with the Contract.
- 13.4 Diamond shall be entitled to postpone the issue of any certification, manual, drawings or the like until full payment has been received by Diamond, in accordance with the Contract.
- 13.5 Cancellation of any Order under the Contract by the Client shall be permitted by express written agreement of Diamond only. In the event of any such cancellation the Client shall indemnify Diamond in full against all loss (including loss of profit and consequential losses), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Diamond as a result of cancellation.
- 13.6 Diamond shall have no liability to the Client in respect of any loss, expense, liability, penalty or other costs the Client may incur in connection with Diamond's exercise of its rights under this clause.
- 13.7 On termination of the:
- Upon the termination or expiry of the Contract for any reason:
- 13.7.1 any sum owing by either Party to the other Party under the Contract shall become immediately due and payable;
 - 13.7.2 each Party shall (except to the extent referred to in Clause 7 (Confidentiality)) immediately cease to use, either directly or indirectly, any Confidential Information belonging to the other Party, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information;
 - 13.7.3 termination or expiry shall not affect or prejudice any rights, remedies, obligations, or liabilities of the Parties that have accrued up to the date of termination or expiry including, but not limited to, the right to claim damages or any other remedy in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 13.7.4 any provision of the Contract which either expressly or by implication is intended to continue in force or come into force after or upon the termination or expiry of the Contract shall remain in full force and effect.

- 13.7.5 any sum owing by either Party to the other under any of the provisions of the Contract shall become immediately due and payable;
- 13.7.6 the Client shall immediately pay to Diamond all of Diamond's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Diamond shall submit an invoice, which shall be payable by the Client immediately on receipt; and
- 13.7.7 the Client shall return to Diamond all of Diamond Materials and any Goods which have not been fully paid for, failing which Diamond may enter the Client's premises or any location where the Goods or Diamond Materials are stored and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and insurance against loss or damage, and will not use them for any purpose.

14. NO WARRANTY AS TO FITNESS FOR PURPOSE

The Client must satisfy itself that the Goods ordered and supplied are fit for its purpose, as this is not guaranteed or warranted by Diamond, and all warranties as to fitness for purpose save those expressly set out in the Contract are hereby excluded to the fullest extent permitted by law.

15. CLIENT'S OBLIGATIONS

The Client shall:

- 15.1 ensure that the terms of Project Specification and any information (including without limitation any drawing, measurement or quantity) it provides to Diamond are complete and accurate;
- 15.2 co-operate with Diamond in all matters relating to the Contract, the Goods or any of the Services;
- 15.3 provide Diamond, its employees, agents, consultants and subcontractors, with access to the Client's premises and other facilities as reasonably required by Diamond to provide the Services;
- 15.4 prepare the Client's premises for the supply of the Goods and Services;
- 15.5 If the nature of the Services requires that Diamond has access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that Diamond has access to the same at the times to be agreed between Diamond and the Client as required.
- 15.6 In the event that Diamond requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner, in accordance with the Project Specification.
- 15.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 15.8 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 15.9 comply with all applicable laws, including health and safety laws;
- 15.10 keep any Diamond Materials at the Client's premises in safe custody at its own risk, maintain Diamond Materials in good condition until returned to Diamond, and not dispose of or use Diamond Materials other than in accordance with Diamond's written instructions or authorisation;
- 15.11 give Diamond any necessary information relating to the Goods and/or Services within a sufficient time to enable Diamond to perform the supply of Goods and/or Services accordance with the Contract; and

- 15.12 comply strictly with the payment obligations set out in the Contract.
- 15.13 If Diamond's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default").
- 15.14 without limiting or affecting any other right or remedy available to it, Diamond shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Diamond's performance of any of its obligations.
- 15.15 Diamond shall have no liability to the Client in respect of any loss, expense, liability, penalty or other costs the Client may incur (directly or indirectly) in connection with Diamond's exercise of its rights under this clause.
- 15.16 the Client shall reimburse Diamond on written demand for any costs or losses sustained or incurred by Diamond arising directly or indirectly from the Client Default.

16. LAWS and POLICIES

- 16.1 Diamond shall comply with all applicable health and safety rules and regulations and security requirements in place at the Client's premises.
- 16.2 The Client shall comply with all applicable health and safety rules and regulations and security requirements at their premises and the location of the installation or commissioning at all times during the provision of the Services.

17. STATUTORY REQUIREMENTS AND INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 17.1 Whilst every effort is made by Diamond not to infringe any patents or trademarks or other Intellectual Property Rights belonging to any third party, and whilst Diamond is not aware that the supply to the Client of the Goods, or the possession or intended use by the Client of the Goods, would infringe any Intellectual Property Right of a third party, Diamond takes no responsibility for the existence of such third party rights which may be so infringed and the Client must assume the risk of infringement of the same.
- 17.2 To the extent that the Goods are to be manufactured in accordance with the Project Specification supplied by the Client, the Client shall indemnify Diamond against all liabilities, costs, expenses, damages and losses (including 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 Diamond arising out of or in connection with any claim made against Diamond for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Diamond's use of any Client Materials. This clause shall survive termination of the Contract.
- 17.3 The Client acknowledges that all of the Intellectual Property Rights subsisting in or relating in any way to: (a) any drawings, reports, specifications and other similar documents and/or materials provided or prepared by Diamond in connection with the sale and supply of the Goods and/or the Services, whether in hard copy or electronic form (the "Documents"); and (b) the Goods, and all Know-how embodied in, or used in connection with, any of the foregoing are and shall remain vested in and the sole property of Diamond or its licensors and that the Client shall acquire no further interest in the same than is expressly granted by the Contract. Unless all payments under this Contract made in full, Diamond may revoke any Intellectual Property Rights licence granted to the Client to use and reproduce the Documents under this Contract at any time.
- 17.4 No licence is granted by Diamond for the reconfiguration or commissioning of the Goods and/or the software comprised in the Goods by the Client or any third party. Use of the Goods and/or the

software comprised in the Goods for such purposes may only be licensed by separate Contract signed by a Director of Diamond on payment of the appropriate fee as determined by Diamond at its sole discretion.

17.5 Diamond reserves the right to, without liability to the Client, make any changes in the Technical Proposal to conform with any applicable statutory or regulatory requirement.

18. **CONFIDENTIALTY**

18.1 Each Party undertakes that, except as provided by sub-Clause 18.2 or as authorised in writing by the other Party (such authorisation not to be unreasonably withheld), it shall, at all times during the term of the Contract 12 months after its termination or expiry:

- a) keep confidential all Confidential Information;
- b) not disclose any Confidential Information to any other party;
- c) not use any Confidential Information for any purpose other than as contemplated by the Contract; and
- d) ensure that (as applicable) none of its employees, directors, officers, agents, or sub-contractors does any act which, if done by that Party, would be a breach of the provisions of this Clause 18.

18.2 Subject to sub-Clause 18.3, either Party may disclose any Confidential Information to:

- a) any sub-contractors, substitutes, or suppliers;
- b) any governmental or other authority or regulatory body; or
- c) any employee or officer of that Party or of any of the aforementioned persons, parties, or bodies.

18.3 Disclosure under sub-Clause 18.2 may be made only to the extent that it is necessary for the purposes contemplated by the Contract, or as required by law. In each case, the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 18.2(b) or is an authorised employee or officer of such a body, the Party disclosing the Confidential Information under sub-Clause 18.2 must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.

18.4 Either Party may use any Confidential for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.

18.5 When using or disclosing Confidential Information under sub-Clause 18.4, the Party using or disclosing that Confidential Information must ensure that it does not use or disclose any part of that Confidential Information which is not public knowledge.

18.6 The provisions of this Clause 18 shall continue in force in accordance with their terms, notwithstanding the termination or expiry of the Contract for any reason.

19. **CLIENT'S ORDERS**

19.1 The acceptance of the Technical Proposal as subject to these Terms and Conditions must be agreed in writing by an authorised person or director of the Client.

19.2 For contractual purposes any communications sent electronically shall satisfy any legal requirement that such communications be in writing.

19.3 It is agreed and warranted by the Parties that any individual signing any contractual document on behalf of the Client is duly authorised to execute such an agreement and that no further proof of authorisation shall be required by Diamond and Diamond is entitled to rely upon such person having the requisite authority to bind the Client and that no further approvals, actions or ratifications are

needed for the full enforceability and that the Client indemnifies Diamond against any breach of the foregoing representation and warranty .

20. ENTIRE AGREEMENT

- 20.1 Contract contains the entire Contract between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 20.2 Each Party shall acknowledge that, in entering into the Contract, it does not rely on any representation, warranty or other provision except as expressly provided in the Contract, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

21. DESIGN

- 21.1 Any design undertaken by Diamond is based the Project Specification and is subject to the limitations and conditions set out in clause 3 herein.
- 21.2 Diamond shall have no responsibility or liability in connection with:
- 21.2.1 any failure by the Client to provide all details necessary in connection with the production of any Supplier's design and/or
- 21.2.2 any errors or inaccuracies in such designs caused by any errors or inaccuracies in the documentation, Specifications and details provided by the Client; and/or
- 21.2.3 such designs being used for any particular purposes not made known to Diamond.
- 21.2.4 any failure by the Client to provide all details necessary in connection with the production of any Supplier's design and/or
- 21.2.5 any errors or inaccuracies in such designs caused by any errors or inaccuracies in the documentation, Specifications and details provided by the Client; and/or
- 21.2.6 such designs being used for any particular purposes not made known to Diamond.
- 21.3 The Client is responsible for obtaining all design approvals including without limitation Fire Officer Licensing and Public and Local Authority approvals.
- 21.4 Any drawings, specifications or designs issued by Diamond to the Client for approval shall be deemed to have been approved without reservation by the Client if no comment is made in respect thereof in writing within a period of fourteen days from the date of issue to the Client.
- 21.5 Responsibility for any failure of any design to meet any criteria specified by the Client or required by any competent authority shall rest with the Client.
- 21.6 Siting of field devices on any design drawing produced by Diamond is intended to give the audibility or intelligibility levels required by B.S.5839, based on information reasonably available to Diamond when producing the drawing. Diamond does not, however, guarantee and accepts no liability in respect of the attainment of such levels, and upon completion of any installation and audibility/ intelligibility tests it may be found that additional field devices may be required to meet the levels required. In the event that additional field devices are required to enable any installation to meet a particular standard, Diamond may supply them at prices current at date of dispatch upon receipt of the Client's supplemental order and upon and subject to these Terms and Conditions.
- 21.7 Diamond shall not incur any liability for non-conformance or non-compliance in the event that the performance of the Goods is affected by circumstances not made known to Diamond at the time of

issuing any design including without limitation the acoustic qualities of any structure, the siting of machinery, plant, furniture, or fittings or the interior qualities or structure of any building.

21.8 In the event that additional work and/or materials are required to any installation to achieve any particular standard in consequence of any circumstance not made known to Diamond at the date of its quotation, Diamond shall be entitled to charge for all such additional work and/or materials, which charges shall be payable by the Client in accordance with the payment terms set out in these Terms and Conditions.

21.9 If the Goods are to be manufactured or any process is to be applied to the Goods by Diamond in accordance with a Specification submitted by the Client, the Client shall indemnify Diamond against all loss, damages, costs and expenses awarded against or incurred by Diamond in connection with, or paid or agreed to be paid by Diamond in settlement of, any claim for infringement of any Intellectual Property Rights of any other person which results from Diamond's use of the Project Specification.

22. **INSTALLATION**

22.1 The time required to enable Diamond to provide its Services to the Client is set out in the Technical Proposal or as otherwise varied in writing by Diamond. The Client acknowledges that this is an estimate only.

22.2 Any additional works or services required by the Client must be instructed to Diamond in writing with additional works or services being fully chargeable by Diamond and provided upon and subject to the terms of the Contract, and the Client shall pay such additional costs in accordance with clause 6.

22.3 For the avoidance of doubt, Diamond shall have no liability for any delays, loss or damage, howsoever arising, in consequence of a failure by the Client to instruct Diamond in accordance with clause 22.2 in a timely manner, or at all.

22.4 The Client shall be responsible for providing Diamond with unimpeded access to any premises where the Goods and/or Services are to be delivered or provided, with all services available to Diamond to enable it to discharge its responsibilities effectively.

22.5 Diamond's quotation for any installation is prepared on the basis of the following requirements namely that:

22.5.1 electrical power and lighting to and for any works to be undertaken by Diamond will be provided to Diamond free of charge;

22.5.2 scaffolding as necessary will be provided for Diamond free of charge;

22.5.3 use of welfare storage and administration facilities on sites away from Diamond's Head Office will be provided to Diamond free of charge;

22.5.4 builders work in connection with any of Diamond's Goods and Services will be provided free of charge by the Client including the costs of making good;

22.5.5 containment equipment such as cable trays trunking channels and the like will be provided free of charge by the Client for Diamond's wiring, cables and equipment; and

22.5.6 Diamond will only provide to the Client the documents stated within Diamond's quotation.

22.6 The Client shall, following any installation by Diamond, attend and witness the final commissioning of the Goods and confirm that the Goods operate correctly and in accordance with the Client's requirements and that the installation is fit for the purpose required by the Client. If the Client does not attend the final commissioning, having been given reasonable notice of the date for attendance, the Client shall be deemed to accept the Goods as installed.

22.7 When the Goods are installed and the Commissioning Works are completed, Diamond shall if requested by the Client issue, at the Client's cost, a commissioning certificate to the Client provided that the entirety of any account or invoice has been settled or at the discretion of Diamond. If the Client uses, activates or operates the Goods prior to the date of the certificate, practical completion shall be deemed to be the date the Client used, activated or operated the Goods.

23. COMMISSIONING

23.1 Where the Client is to install Goods and Diamond is carrying out the Commissioning Works only:

23.1.1 the Client shall complete, sign and deliver to Diamond not less than fourteen days before commissioning is required Diamond's form of application for Commissioning Works ("Commissioning Application");

23.1.2 the Client shall ensure that the whole of the works to be commissioned are available to Diamond to enable Diamond to carry out the Commissioning Works in one continuous operation; and

23.1.3 Diamond shall be entitled to charge and the Client shall pay Diamond standing time and additional costs at Diamond's stated daily rate set out in the Technical Proposal or multiples thereof incurred if the works to be commissioned are incomplete or not available to Diamond on the date stated for commissioning or if the Commissioning Works are delayed or interrupted due to the fault of the Client.

23.1.4 Diamond Provider shall have the right to charge an overtime rate of 150% of its daily rate on a pro-rata basis for each part-day or for any overtime worked by personnel that it engages in the provision of the Services outside of Working Hours; and

23.1.5 Diamond shall have the right to charge the Client for any reasonable expenses incurred by the personnel that it engages in the provision of the Services including, but not limited to, travel expenses, accommodation expenses, subsistence, and any other associated expenses, and for the cost of any services procured from third parties by Diamond necessary for the performance of the Services, and for the cost of any materials required.

23.2 Diamond will carry out Commissioning Works on Business Days only and during normal Working Hours.

23.3 In the event that the Client requires Commissioning Works outside normal Working Hours it must issue to Diamond an amendment to the Commissioning Application. Commissioning works that take place outside Working Hours shall be chargeable at Diamond's overtime rate in accordance with clause 23.1.4.

23.4 Diamond's quotation for Commissioning Works is prepared upon the basis that there shall be provided by the Client free of charge to Diamond for use by Diamond's commissioning engineer(s):

23.4.1 mains and temporary power;

23.4.2 scaffolding and access equipment;

23.4.3 storage and welfare facilities;

23.4.4 as fitted installation drawing/installation schematic drawings;

23.4.5 installers' test sheets and attendance by a representative of the installer;

23.4.6 containment equipment such as cable trays trunking channels and the like will be provided free of charge by the Client for Diamond's wiring, cables and equipment; and

23.5 Diamond will only provide to the Client the documents stated within the Technical Proposal.

- 23.6 Diamond shall not be required to complete any Commissioning Works or issue a commissioning certificate unless there is a representative of the Client and/or the person responsible for installing the Goods present during the process of commissioning.
- 23.7 The Client shall be responsible for witnessing the Commissioning Works and signature on completion certifying that he/she/its authorised representative has witnessed the satisfactory operation of the Goods. In the event that the Client fails to do so, the Warranty in clause 3 shall not be available or apply in respect of the Goods.
- 23.8 "Cause and effect" testing is not included as standard as part of our maintenance/service contracts unless expressly detailed and agreed otherwise. Such testing generally requires the assistance of both the system owner and third parties whose systems interact with the fire alarm system. The level of any "cause and effect" testing should be determined as part of the Fire Risk Assessment that is undertaken as a statutory requirement of the building owner/responsible person. Once the need for and extent of "cause and effect" testing is established a methodology and associated costs may be agreed between Diamond and the Client as a separate instruction for services.

24. **RETURN OF GOODS AND RESTOCKING FEE**

- 24.1 Return of goods is at the absolute discretion of Diamond.
- 24.2 Diamond shall charge a restocking fee for the return of Goods or Materials provided to the Client but not used.
- 24.3 On receipt of returned Goods, Diamond shall assess them and may reject the return of any Goods which are incomplete or damaged.
- 24.4 Where Diamond will accept the return of Goods, they will issue any refund payable to the Client within 28 days of receipt subject to a restocking fee of 25% of the cost of the individual item being deducted per item, subject to a minimum restocking charge of £150 + VAT.

25. **DATA PROTECTION**

The Parties undertake to implement appropriate technical and organisational measures in such a manner that any data processing will meet the requirements of the European Union General Data Protection Regulation (Regulation (EU) 2016/679) and ensure the protection of the rights of the data subject in accordance with the terms of each party's GDPR policy.

26. **NON-SOLICITATION**

- 26.1 Neither Party shall, for the Term of the Contract and for a defined period (which shall be defined in the Contract) after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Contract [without the express written consent of that Party].
- 26.2 Neither Party shall, for the Term of the Contract and for a defined period (which shall be defined in the Contract) after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party [without the express written consent of that Party].
- 26.3 Client shall not during the continuance of the Contract or of the provision by, on behalf of, or (directly or indirectly) through Diamond of any engineering, maintenance or servicing services in relation to the Goods (the "Maintenance Services"), or in each case within 6 months thereafter, whether by itself or with or through any third party and whether for its own account or for any third party, directly or indirectly solicit, approach or canvass away from Diamond or any Group Company or employ or engage any employee or contractor of Diamond or of any Group Company which in the previous 6 months had been engaged by Diamond or any Group Company in the supply of the Goods and/or Services or any of the Maintenance Services, with a view to the specific knowledge or skills of any

such employee or contractor which were utilised in such supply being used by or for the benefit of the Client, any company in its Group, or any party in competition with Diamond, nor shall the Client suffer or permit any third party to do any of the above acts.

27. SET OFF

- 27.1 All amounts due under the Contract from the Client to Diamond shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 27.2 Without prejudice to the foregoing, and for the avoidance of doubt, the Client shall not be entitled to set off any amounts due to Diamond under the Contract or any other contract against any sums due, or alleged to be due, from Diamond to the Client under the Contract or any other contract.
- 27.3 Diamond may at any time, without notice to the Client, set off any liability of the Client to Diamond against any liability of Diamond to the Client, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Diamond may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Diamond of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

28. ERRORS - OMISSIONS

In the event that any quotation by Diamond is found to contain an error or omission then Diamond reserves the right to amend the same without any liability.

29. WAIVER

- 29.1 No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision
- 29.2 No waiver or forbearance by Diamond in respect of any breach of the Contract by the Client shall be effective unless it is given or confirmed in writing. No such waiver or forbearance shall be taken as a waiver of any subsequent breach of the same or any other provision.

30. FURTHER ASSURANCE

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Contract into full force and effect.

31. ASSIGNMENT AND SUB-CONTRACTING

- 31.1 The Contract shall be personal to the Parties. The Client cannot assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of Diamond, such consent not to be unreasonably withheld.
- 31.2 Diamond shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors.

32. SEVERABILITY

- 32.1 If any provision of the Contract between Diamond and the Client is held by a court or other competent authority to be invalid or unenforceable in whole or part, the provision shall be amended to the extent necessary to remove any invalid terms and the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

32.2 In the event that one or more of the provisions of the Contract and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Contract and/or these Terms and Conditions. The remainder of the Contract and/or these Terms and Conditions shall be valid and enforceable.

33. **THIRD PARTY RIGHTS**

33.1 No part of the Contract is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

33.2 Diamond shall not be responsible for nor shall it accept any costs, damages or other liabilities as a result of any undertakings given by a third party.

33.3 Diamond shall not accept or be required to accept any undertakings or conditions offered to the Client by or on behalf of any third party.

34. **NOTICES**

34.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in Diamond's quotation or Written Acceptance or the Client's Order.

34.2 Any notice or communication shall be deemed to have been received:

34.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

34.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service

34.2.3 if sent by email, at the time of transmission, or, if this time falls outside Working in the place of receipt, when Working Hours resume.

34.3 This clause does not apply to the service of any proceedings or other documents in any action or, where applicable, any other method of dispute resolution.

34.4 All notices under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

34.4.5 Notices shall be deemed to have been duly given:

34.5.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

34.5.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

34.5.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

34.5.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

34.5 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

35. **TIME**

The times and dates referred to in the Contract shall be for guidance only and shall not be of the essence of the Contract and may be varied by mutual agreement between the Parties.

36. PROPER LAW AND JURISDICTION

Any dispute arising out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute") shall be governed by and construed in accordance with law of Northern Ireland and the Client and Diamond submit to the exclusive jurisdiction of the Courts in Northern Ireland.

37. DISPUTE RESOLUTION PROCEDURE

- 37.1 If a Dispute arises then except as expressly provided in the Contract, the parties shall follow the procedure set out in this clause 38.
- 37.2 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (the "Dispute Notice"), together with relevant supporting documents.
- 37.3 On service of the Dispute Notice, a senior representative of Diamond and senior representative of the Client shall attempt in good faith to resolve the Dispute;
- 37.4 If the senior representative of Diamond and senior representative of the Client are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a Director of Diamond and a Director, partner or business owner of the Client who shall attempt in good faith to resolve it;
- 37.5 If the Director of Diamond and senior officer of the Client are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith within 30 days to settle the Dispute with either party serving notice in writing to the other party referring the dispute to mediation.;
- 37.6 In the event that the Parties are unable to agree on the mediator within the 30 day period in clause 38.5 then either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Law Society for Northern Ireland for the appointment of a mediator and for any decision on rules that may be required.
- 37.7 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute.