

**Erwin Agri-Care Limited**

**Terms of Conditions for the Supply of Goods and Services**

**The Customer's attention is particularly drawn to the provisions of clause 12**

**(Limitation of liability).**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in this Agreement. "Business Day"

"ERWIN"

a day other than a Saturday, Sunday or public holiday in Northern Ireland, when banks in Northern Ireland are open for business; means Erwin Agri-Care Limited, a company incorporated and registered in Northern Ireland with company number NI053383 and whose registered office is located at 82, Nutts Corner Road, Nutts Corner, Crumlin BT29 4SJ, County Antrim or any Group Company, as specified in the Order, who will be supplying the Goods and/or Services to the Customer;

has the meaning given in clause 2.2;

these terms and conditions as amended from time to time in accordance with clause 18.8;

the contract between ERWIN and the Customer for the supply of Goods and/or Services in accordance with these Conditions;

shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;

the person or firm who purchases the Goods and/or Services from ERWIN;

has the meaning given in clause 4.2;

has the meaning given to it in clause 16;

the goods (or any part of them) set out in the Order, including (where relevant) any goods in respect of which ERWIN performs Services;

any specification for the Goods, that is agreed in writing by the Customer and ERWIN;

in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;

in relation to ERWIN, any member of its Group;

has the meaning given in clause 1.6;

patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade-marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

the Customer's order for the supply of Goods and/or Services, as set out in the Customer's

"Commencement Date"

"Conditions"

"Contract"

"Control"

"Customer"

"Delivery Location"

"Force Majeure Event"

"Goods"

"Goods Specification"

"Group"

"Group Company"

"holding company"

"Intellectual Property Rights"

"Order"

acceptance of ERWIN' quotation, or overleaf, as the case may be;	purchase order form, or the Customer's signed
"Manufacturer"	the manufacturer of the Goods sold or any parts or other materials used in the supply of Goods and/or Services;
"Services"	the services supplied by ERWIN to the Customer as set out in the Service Specification;
"Service Specification"	the description or specification for the Services set out in the Order;
"subsidiary"	has the meaning given in clause 1.6.

#### 1.1 Interpretation:

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

1.3 A reference to a party includes its successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 A reference to **writing** or **written** includes fax and email.

1.6 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.

### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when ERWIN issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 Any samples, drawings, descriptive matter or advertising issued by ERWIN and any descriptions of the Goods or illustrations or descriptions of the Services contained in ERWIN' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by ERWIN shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify ERWIN 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 ERWIN arising out of or in connection with any claim made against ERWIN for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with ERWIN' use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 ERWIN reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and ERWIN shall notify the Customer in any such event.

3.4 Where ERWIN undertakes to carry out work on the basis of instructions from the Customer or any person on the authority of the Customer, the Customer warrants the accuracy of the instructions and that they are in no way misleading. ERWIN shall be entitled to charge in full for all work done and parts or materials supplied at such rate as it considers reasonable whether or not in excess of the Contract price or rates where a Contract is entered into on the basis of inaccurate or misleading instructions.

If ERWIN shall be unable to carry out the supply of Goods and/or Services by reason of the Manufacturer ceasing after the date of the Contract to produce or accept orders for any necessary Goods, parts, materials or other goods it shall give notice thereof in writing to the Customer whereupon the Customer shall have the right, to be exercised by notice in writing to ERWIN within 28 days thereafter, to require the Contract to be amended by substituting in the Contract, in place of such Goods, parts, materials or goods, such other goods, parts or materials then currently produced and in such case the price shall be amended by such amount as ERWIN may consider reasonable. If the Customer shall give to ERWIN such notice the Contract shall be amended accordingly and shall continue in full force and effect as though amended. In the event of the Customer failing to give such notice within the time specified above the Contract shall forthwith determine and become null and void without any liability whatsoever on the part of ERWIN.

#### **4. DELIVERY OF GOODS**

4.1 ERWIN shall ensure that each delivery of Goods is accompanied by a delivery note which shows the date of the Order and all relevant Customer and Supplier reference numbers, the type and quantity of the Goods, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Customer shall collect the Goods from ERWIN' premises at 82, Nutts Corner Road, Crumlin, BT29 4SJ, County Antrim or such other location as may be agreed with the Customer before delivery (the "**Delivery Location**") within 14 days of Erwin notifying the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed when the Supplier places the Order at the Customer's disposal at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. ERWIN shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide ERWIN with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 ERWIN will, at the request and expense of the Customer endeavour to arrange on behalf of the Customer for the carriage of Goods to any destination named by the Customer on the Order, provided that such carriage shall be at the sole risk of the Customer and the Customer pays to ERWIN, in advance the cost of such carriage and further provided that, in the case of export outside the UK, the provisions of clause 19 shall apply.

4.6 The property in Goods shall not pass and ERWIN shall retain the right of disposal until delivery of the Goods to the Customer or until payment of all charges due to the Company in connection therewith whichever is the later.

4.7 If ERWIN fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. ERWIN shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide ERWIN with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.8 If the Customer fails to take delivery of the Goods within 14 days of ERWIN notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by ERWIN' failure to comply with its obligations under the Contract in respect of the Goods:

4.8.1 Delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourteenth day following the day on which ERWIN notified the Customer that the Goods were ready; and

4.8.2 ERWIN shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including interest & insurance).

4.9 If two weeks after ERWIN notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, ERWIN may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.10 ERWIN may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.11 Delays in the delivery of an Order shall **not** entitle the Customer to:

4.11.1 refuse to take delivery of the Order; or

- 4.11.2 claim damages; or
- 4.11.3 terminate this Agreement.

## **5. QUALITY OF GOODS**

- 5.1 ERWIN warrants that on delivery, the Goods shall:
  - 5.1.1 Conform in all material respects with the Goods Specification;
  - 5.1.2 Be free from material defects in design, material and workmanship for a period of 12 months from first date of delivery to a final customer.
- 5.2 ERWIN will use its reasonable endeavours to give the Customer the benefit of any warranty, guarantee or undertaking supplied by the Manufacturer.
- 5.3 The Customer may reject any Goods delivered to it that do not comply with clause 5.1, provided that:
  - 5.3.1 notice of rejection is given to ERWIN:
    - 5.3.1.1 in the case of a defect that is apparent on normal visual inspection, within 48 hours of delivery;
    - 5.3.1.2 in the case of a latent defect, within a reasonable time of the latent defect having become apparent but no later than 3 months from the date of delivery; and.
  - 5.3.2 none of the events listed in clause 5.6 apply.
- 5.4 If the Customer fails to give notice of rejection in accordance with clause 5.3, it shall be deemed to have accepted these Goods.
- 5.5 Subject to clause 5.6, ERWIN shall, at its option, repair or replace the defective Goods, or provide credit to the Customer equal to the price of the defective Goods in full if:
  - 5.5.1 the Customer gives notice in writing in accordance with clause 5.3;
  - 5.5.2 ERWIN is given a reasonable opportunity of examining such Goods;
  - 5.5.3 the Customer (if asked to do so by ERWIN) returns such Goods to ERWIN' place of business at the Customer's cost; and
  - 5.5.4 (where the Goods are not manufactured by ERWIN) ERWIN itself has redress against the Manufacturer or supplier of the defective Goods except where the Goods are defective by reason of the negligence of an employee of ERWIN.
- 5.6 ERWIN shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
  - 5.6.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - 5.6.2 the defect arises because the Customer failed to follow ERWIN' or the Manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 5.6.3 the defect arises as a result of ERWIN following any drawing, design or Goods Specification supplied by the Customer;
  - 5.6.4 the Customer alters or repairs such Goods without the written consent of ERWIN;
  - 5.6.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 5.6.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.7 Except as provided in this clause 4.11.3, ERWIN shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.8 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by ERWIN.
- 5.9 All parts of Goods replaced will become the property of ERWIN.

## **6. TITLE AND RISK**

- 6.1 The risk in the Goods shall pass to the Customer on delivery/Collection.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
  - 6.2.1 ERWIN receives payment in full (in cash or cleared funds) for the Goods and any other goods that ERWIN has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
  - 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as ERWIN' property;
  - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on ERWIN' behalf from the date of delivery;

6.3.4 notify ERWIN immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4; and

6.3.5 give ERWIN such information relating to the Goods as ERWIN may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before ERWIN receives payment for the Goods. However, if the Customer resells the Goods before that time:

6.4.1 it does so as principal and not as ERWIN' agent; and

6.4.2 title to the Goods shall pass from ERWIN to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, then, without limiting any other right or remedy ERWIN may have:

6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2 ERWIN may at any time:

6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. SUPPLY OF SERVICES**

7.1 ERWIN shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 ERWIN shall use all reasonable endeavours to meet any repair dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 ERWIN reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and ERWIN shall notify the Customer in any such event.

7.4 ERWIN warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 ERWIN will notify the Customer once any Services have been completed and Goods are ready for collection. The Goods must be collected by the Customer within 14 days of the date ERWIN notifies the Customer that the Goods are ready for collection.

7.6 If the Customer fails to collect the Goods within 14 days of ERWIN notifying the Customer that the Goods are ready for collection then ERWIN shall store the Customer's Goods until collection takes place, and charge the Customer for all related costs and expenses (including insurance).

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer shall:

ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;

8.1.2 co-operate with ERWIN in all matters relating to the Goods and Services;

8.1.3 provide ERWIN with such information and materials as ERWIN may reasonably require in order to supply the Goods and Services, and ensure that such information is complete and accurate in all material respects;

8.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for ERWIN' supply of the Goods and the supply of the Services before the date on which the Services are to start;

8.1.5 comply with any additional obligations as set out in the Service Specification and the Goods Specification; and

8.1.6 carefully examine and test all Goods and goods to which Services have been supplied and will notify the Company in writing of any defect or other failure to comply with the Contract which is or ought to be apparent upon such examination and test, within 48 hours of their being delivered;

8.1.7 notify the Company in writing within 48 hours of becoming aware of any defect or other failure to comply with the contract which was not apparent upon such examination and test as aforesaid.

8.2 If ERWIN' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

8.2.1 without limiting or affecting any other right or remedy available to it, ERWIN shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays ERWIN' performance of any of its obligations;

8.2.2 ERWIN shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ERWIN' failure or delay to perform any of its obligations as set out in this clause 8.2; and

8.2.3 the Customer shall reimburse ERWIN on written demand for any costs or losses sustained or incurred by ERWIN arising directly or indirectly from the Customer Default.

## **9. CHARGES AND PAYMENT**

9.1 The price for Goods and Services shall be:

9.1.1 the price set out in the Order or, if no price is quoted, the price for Goods will be set out in ERWIN' published price list as at the date of delivery and the price for Services will be such reasonable price for the work undertaken;

9.1.2 inclusive of all costs of delivery where the Customer collects the Goods or any goods which Services have been performed to from ERWIN' premises;

9.1.3 exclusive of all costs of delivery where delivery is not at ERWIN' premises, which shall be at the sole cost and expense of the Customer.

9.2 If after the date a Contract is entered into but before delivery to the Customer there shall be an increase in the price (exclusive of any appropriate taxes) at which the Company can obtain the Goods, parts, materials or labour which it considers necessary or desirable in its supply of Goods or Services, ERWIN shall be entitled to give notice of the amount of such increase to the Customer who in such event may cancel its Contract by counter-notice in writing within 7 days of receipt of ERWIN' notice. If the Customer shall not give such counter notice the price in the Contract shall be deemed to be increased by the amount of such increase and the Contract shall remain in full force and effect.

9.3 In the case of a Contract which has been partly executed by the Company before giving such a notice in accordance with clause 9.2 above, if the Customer elects to cancel the Contract it shall pay such reasonable price as the Company shall determine for the work already undertaken in its supply of Goods or Services to the date of cancellation and there shall be deemed to be a Contract between ERWIN and the Customer for ERWIN' performance of the Contract to the date of cancellation.

9.4 In the event of any work being suspended by the Customer's instructions or owing to lack of instructions or in the event of any variation of the Order made at the Customer's request or pursuant to clause 9.5 then if no new price is agreed ERWIN shall be entitled to increase the price by such amount as it considers reasonable.

9.5 If at any time in carrying out any work it shall appear to ERWIN that further or different work is required then ERWIN shall so inform the Customer and the Customer shall forthwith either give a written order for such further or different work or shall pay such reasonable price as the Company may determine for the work already undertaken and shall collect the Goods or any goods to which Services have been performed.

9.6 ERWIN shall invoice the Customer or his nominated Finance Company on or at any time after the date the Contract is entered into for its supply of Goods and/or Services.

9.7 Subject to clause 9.8, and unless otherwise agreed in writing, the price and all other charges are payable in full within one Business Day of the date of ERWIN' invoice to the Customer. Payment must be received before any Goods will be supplied to the Customer or goods upon which Services have been supplied are returned to the Customer.

9.8 Where credit terms are agreed by ERWIN with the Customer, the price and all other charges are payable by the Customer on or before the 25th day of the month following the month in which the invoice is dated.

9.9 Time of payment of any invoice submitted by ERWIN shall be of the essence of the Contract.

9.10 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by ERWIN to the Customer, the Customer shall, on receipt of a valid VAT invoice from ERWIN, pay to ERWIN such additional amounts

in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.11 If the Customer fails to make a payment due to ERWIN under the Contract by the due date, then, without limiting ERWIN' remedies under clause 14 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.11 will accrue each day at 6% a year above the Bank of England's base rate from time to time, but at 6% a year for any period when that base rate is below 0%.

9.12 All amounts due under the Contract 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).

#### **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by ERWIN.

#### **11. CONFIDENTIALITY**

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

11.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

#### **12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

12.1 Nothing in these Conditions shall limit or exclude ERWIN' liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

12.1.5 defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1, ERWIN shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; and (vii) any indirect or consequential loss.

12.3 Subject to clause 12.1, ERWIN' total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 100% of the total charges paid under the Contract under which the liability arises.

12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.5 This clause 12 shall survive termination of the Contract.

#### **13. INDEMNITY**

13.1 Where a Contract includes loading, off-loading, assembly, installation, demonstration or servicing of machinery on a site other than ERWIN' premises, or where ERWIN assists in any such matters at the request or with the consent (express or implied) of the Customer, the Customer shall be responsible for and shall indemnify ERWIN from and against all liabilities whether for damages, costs, expenses or otherwise under the law of England or the law of any other country or state arising out of the death or personal injury of any person or damage

to any property howsoever caused, PROVIDED that this indemnity shall not apply to liabilities arising solely from the negligence of ERWIN or its employees, agents or subcontractors.

#### **14. TERMINATION**

14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;

14.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

14.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

14.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.2 Without affecting any other right or remedy available to it, ERWIN may terminate the Contract with immediate effect by giving written notice to the Customer if:

14.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment;

14.2.2 the Customer fails to take delivery of the Goods or any goods to which Services have been performed to in accordance with the terms of the Contract; or

14.2.3 there is a change of control of the Customer.

14.3 Without affecting any other right or remedy available to it, ERWIN may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and ERWIN if

Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4, or ERWIN reasonably believes that the Customer is about to become subject to any of them.

#### **15. CONSEQUENCES OF TERMINATION**

15.1 On termination of the Contract the Customer shall immediately pay to ERWIN all of ERWIN' outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, ERWIN shall submit an invoice, which shall be payable by the Customer immediately on receipt.

15.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

#### **16. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

#### **17. ARBITRATION**

17.1 Any dispute, controversy or claim arising out of or relating to this Agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Agreement, shall be finally resolved by arbitration. It is agreed that:

17.1.1 the tribunal shall consist of one arbitrator (who is to be a specialist in mechanical engineering;

17.1.2 in default of the parties' agreement as to the arbitrator(s), the appointing authority shall be the Chartered Institute of Mechanical Engineers;

17.1.3 the seat of the arbitration shall be in the United Kingdom;

17.1.4 the law and language governing any arbitration shall be English.

#### **18. GENERAL**

18.1 **Assignment and other dealings**



18.1.1 ERWIN may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

18.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

#### 18.2 **Notices.**

18.2.1 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 fax to its main fax number or sent by email to the address specified in the Order.

18.2.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.

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

18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

18.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

#### 18.6 **Entire agreement.**

18.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misrepresentation] based on any statement in the Contract.

18.6.3 Nothing in this clause shall limit or exclude any liability for fraud.

18.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

18.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Northern Ireland.

18.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

### 19. **EXPORT TERMS**

19.1 Where Goods are supplied for export from the UK, the provisions of clause 19 shall (subject to any special terms agreed in writing between Buyer and Seller) apply, notwithstanding any other provisions of these conditions, but without prejudice to clause 13.1.

19.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation on the Goods into the country destination and notifying to the Seller the requirement of such legislation or regulation requiring action on the part of the Seller and for the payment of duties in connection with the Goods.

19.3 Where Goods are customer collect and for export within the EC, the Buyer must provide a valid VAT number and documentation to prove export out of the UK.

19.4 Unless otherwise agreed in writing between the Buyer and Seller, the Goods shall be delivered FOB from the air or seaport of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act.

19.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of damage during transit.

19.6 Payment of all amounts due to the Seller shall be made in such manner as shall be agreed between the seller and Buyer in Writing.