

Bentley Motors Limited – Terms and Conditions regulating the ownership, use and other matters in relation to Special Operating Equipment

1. Definitions

In these Terms and Conditions:

- 1.1 **"Company"** means Bentley Motors Limited.
- 1.2 **"Intellectual Property"** means any patents, trademarks, service marks, registered designs, utility models, unregistered design rights, copyright (including copyright in drawings, plans specifications, designs and computer software), database rights, rights in inventions, business or trade names (including internet domain names and e-mail address names), rights in confidential information and trade secrets and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including the right to apply for registration and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights.
- 1.3 **"Order"** means the purchase order and/or nomination agreement issued by the Company for the supply of production material and other goods to be provided by the Supplier to the Company.
- 1.4 **"Equipment"** means all tools, tool elements, moulds, gauges, templates, patterns, models, dies and other special operating equipment required in the manufacture, production or supply of production material and other goods to the Company under the Order.
- 1.5 **"Supplier"** means the Supplier named in the Order and any assignee and sub-contractor permitted under clause 18.2.1

2. Application of Terms

- 2.1 Subject to any variation under Clause 18.8, these terms govern the commission, manufacture, use, servicing, maintenance and acquisition of Equipment, the rights to use the Equipment and of their disposal and they shall govern those matters to the entire exclusion of all other terms and conditions. These terms are in addition to the Company's terms and conditions for the purchase of production material and other goods and/or the purchase of services. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of an Order, specification or similar document shall form part of the contract and the Supplier waives any right which it might have to rely on such terms and conditions.
- 2.2 Unless any terms discussed or arising from any previous course of business between the Company and the Supplier are specifically incorporated into the contract in writing they shall not form part of the contract.

3. Ownership and Possession of Equipment

- 3.1 Where Equipment is manufactured or acquired by the Supplier specially for the purpose of the Order, title to the Equipment shall pass to the Company upon its creation or acquisition. Where the Company issues materials free of charge to the Supplier or arranges for such materials to be issued to the Supplier, such materials shall be and remain the property of the Company.

- 3.2 The Company is the sole and exclusive owner of the Equipment and the Supplier shall have no right, title or interest in or to the Equipment, save the right to possession and use of the Equipment subject to these terms and conditions to enable it to fulfil the requirements of the Order by manufacturing and/or supplying parts, components and other material to the Company.
- 3.3 The Supplier waives, to the full extent permitted by law, any lien or other rights that the Supplier might otherwise have on any of the Equipment. The Supplier will not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it.
- 3.4 Unless the parties have agreed otherwise, the duration of the period of possession commences at the start of production of the relevant part or component and terminates at the end of production of that item. The Supplier will deliver up the Equipment at the end of the period of possession or at any time if required by the Company at such address as the Company requires, or if necessary allow the Company or its representatives access to or any premises where the Equipment is located for the purpose of removing the Equipment.
- 3.5 By no later than 31 October in each calendar year that the Equipment is in its possession, the Supplier will send to the Company a confirmation of that possession. The confirmation will identify the current location of the Equipment. The confirmation will be provided by using the www.vwgroupsupply.com portal with the confirmation being submitted in the "Tools" application under the "Inventory" process.

4. Risk of Loss and Insurance

- 4.1 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Supplier upon the creation or acquisition of the Equipment or upon its delivery to the Supplier. The Equipment shall remain at the sole risk of the Supplier during the whole time that the Equipment is in the possession, custody or control of the Supplier (**Risk Period**) until such time as the Equipment is redelivered to the Company or to a third party at the direction of the Company. During the Risk Period, the Supplier shall, at its own expense, obtain and maintain the following insurances:
- 4.1.1 insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing; and
- 4.1.2 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advised to the Supplier.
- 4.2 All insurance policies procured by the Supplier shall be endorsed to provide the Company with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Company's request name the Company on the policies as a loss payee in relation to any claim relating to the Equipment. The Supplier shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 4.3 The Supplier shall give immediate written notice to the Company in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Supplier's possession or use of the Equipment.
- 4.4 If the Supplier fails to effect or maintain any of the insurances required under this agreement, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Supplier.

- 4.5 The Supplier shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.

5. Marking Requirements

- 5.1 The Supplier shall mark the Equipment permanently and in an adequately visible manner with the note "Property of Bentley Motors", the inventory number(s) specified under the tool order, and the Bentley part no./ASSY no. In addition, the specifications in Volkswagen Standard VW 34022 apply, provided the Equipment dimensions allow a corresponding marking. The Supplier shall ensure that at all times the Equipment remains identifiable as being the Company's property.
- 5.2 The Supplier must prepare digital photos of the marked Equipment and submit these to the Company. The digital photos must be created in such a way that the Equipment, all add-on and exchange parts, and the Equipment marking are visible. The costs associated with this requirement are considered to have been paid for within the value of the Order.

6. Equipment Sheet and Equipment Specification/"Tools" application

- 6.1 The Supplier shall fill out an Equipment Sheet in all respects for each item of Equipment in the relevant Order. If the Equipment or parts of the Equipment from one item are located at different locations, a separate Equipment Sheet must be filled out for each location.
- 6.2 The Equipment Specification is the detailed listing of the individual elements of an Equipment item and will form an appendix to the Equipment Sheet. In particular, the cores, gauges, moulds, etc., that are required for the purpose of using the Equipment must be designated.
- 6.3 The Supplier shall send the Equipment Sheet and Equipment Specification to the Company as soon as the Equipment has been created or acquired and no later than the time it submits any invoice to the Company in respect of the Equipment.
- 6.4 The information from clauses 6.1 and 6.2 above and the digital photos from clause 5.2 must be set in the "Tools" application at www.vwgroupsupply.com in the framework of the tool request, and updated for invoicing and in the event of changes. When the Company draws up the Order, the Equipment Specification appendix for the Order is prepared by the system from the Supplier data entered in the framework of the tool request. For invoicing, the data must be updated in the "Tools" application and the Supplier must print out the current Equipment Specification. The printout must be sent to the Company.

7. Operation and Use of the Equipment

- 7.1 The Supplier shall:
- 7.1.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Company. In particular the Equipment will not be used to produce parts or components for any customer other than the Company, without the Company's prior written consent;
- 7.1.2 take such steps (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

- 7.1.3 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was at the start of its use (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
- 7.1.4 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Company unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Company immediately upon installation;
- 7.1.5 keep the Company fully informed of all material matters relating to the Equipment;
- 7.1.6 keep the Equipment at all times at the location agreed by the Company and shall not move or attempt to move any part of the Equipment to any other location without the Company's prior written consent;
- 7.1.7 permit the Company or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 7.1.8 maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Company, together with such additional information as the Company may reasonably require.
- 7.2 The Supplier shall not:
 - 7.2.1 without the prior written consent of the Company, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Supplier shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal;
 - 7.2.2 do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Equipment and, where the Equipment has become affixed to any land or building, the Supplier must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Company of any rights such person may have or acquire in the Equipment and a right for the Company to enter onto such land or building to remove the Equipment;
 - 7.2.3 suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Supplier shall notify the Company and the Supplier shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - 7.2.4 use the Equipment for any unlawful purpose;
 - 7.2.5 do or permit to be done anything which could invalidate the insurances referred to in Clause 4.

- 7.3 The Supplier acknowledges that the Company shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Supplier or its officers, employees, agents and contractors.
- 7.4 The Company reserves the right to reclaim the Equipment from the Supplier or commission the Supplier to scrap it, at the Supplier's expense. If the Equipment is scrapped by the Supplier then the Supplier will provide the Company with all information that the Company may reasonably require to confirm this. If the Supplier generates revenue from scrapping the Equipment then it will advise the Company of the value and, if the value exceeds the scrapping costs then the excess will be split between the Company and the Supplier on a basis to be agreed.
- 7.5 If the Supplier uses the Equipment or parts of the Equipment at one or more of the locations of its approved subcontractors, it must ensure that the subcontractors enter into agreements with the Supplier which correspond with the Supplier's obligations and fully protect the Company's rights. If required, the Supplier will provide the Company with copies of such agreements.

8. Intellectual Property

- 8.1 All Intellectual Property whatsoever arising during the course of this Order including without limitation all Intellectual Property developed jointly by the parties or by the Supplier during the course of or for the purposes of manufacturing, acquiring or operating the Equipment shall belong to and upon their creation vest solely and absolutely in the Company.
- 8.2 To give effect to Clause 8.1, the Supplier, with effect from the date of the Order, assigns to the Company with full title guarantee and free from all encumbrances, all of the right, title and interest in all the present and (to the extent that future rights are capable of assignment) future Intellectual Property together with all the rights, powers and benefits arising or accrued from them. To the extent that future Intellectual Property is not capable of assignment with effect from the date of the Order, the Supplier shall as and when such Intellectual Property comes into existence:
- 8.2.1 hold such Intellectual Property on trust for the Company;
- 8.2.2 assign to the Company, with full title guarantee and free from all encumbrances all of the right, title and interest in such Intellectual Property together with all the rights, powers and benefits arising or accrued from them.
- 8.3 The Supplier shall at the discretion and request of the Company and at the Company's expense execute any further documents, forms and authorisations anywhere in the world and perform any such acts or things as the Company may require to enable the Company to secure full legal title to the Intellectual Property and otherwise to secure the benefits of the rights assigned in this Clause 8 and to obtain registered protection in respect of the Intellectual Property.
- 8.4 Notwithstanding Clause 8.3, the Supplier shall procure that its employees, agents and sub-contractors shall waive absolutely and irrevocably their moral rights granted under the Copyright, Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in all Intellectual Property.

- 8.5 Where in manufacturing or using the Equipment the Supplier uses any Intellectual Property which is not specific to the Equipment or is licensed to the Supplier (“**Existing IPR**”) the Supplier shall grant to the Company, or shall procure that the Company is granted (without charge to the Company and for the benefit of the Company and all companies within the Company’s group) a perpetual, non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property. Such licence shall include the right for any person providing services to the Company or any company within the Company’s group to use, adapt, maintain and support such Existing IPR for the benefit of the Company or any company within the Company’s group.
- 8.6 The Supplier shall keep the Company indemnified in full on demand against any and all losses arising from or in connection with any infringement or alleged infringement of any Intellectual Property of any third party arising from the provision or use of the Equipment except to the extent (and only to the extent) that such infringement or alleged infringement arose directly from specifications, instructions or materials provided by the Company to the Supplier for purposes of the Order, provided that the Supplier shall not be entitled to the benefit of this exclusion:
- 8.6.1 if the Supplier did not act in accordance with such instructions or specifications or used such materials for purposes other than for which they were provided by the Company;
- 8.6.2 if as soon as the Supplier was aware or should reasonably have been aware that following such specifications or instructions or using such materials would or may infringe such Intellectual Property, it failed to take reasonable steps to inform the Company of this; and/or
- 8.6.3 where the Supplier could reasonably have followed any such instructions or specifications or used such materials in a manner which did not infringe such Intellectual Property, it failed to do so.

9. Technical Changes

9. In the event that the Company makes technical changes to the part, component or other material produced from the Equipment then the Supplier shall conduct appropriate sample testing before the start of production deliveries. This Order is applicable to all such changes in technical design.

10. Sampling

- 10.1 As part of the sampling of parts and components manufactured from the Equipment, the Supplier shall submit to the Company the EU safety data log sheet currently in effect and to meet the requirements specified in any applicable quality documents issued by the Company. The EU safety data log sheet can be downloaded from www.vwgroupsupply.com

11. Price & Payment

- 11.1 The price to be paid by the Company in respect of the Equipment shall be the price set out in the Order. No increase in price will be accepted by the Company without prior written agreement.
- 11.2 The price is exclusive of amounts in respect of value added tax (VAT). Where the Company has paid for or contributed to the cost of the production or acquisition of the Equipment, the Supplier will provide the Company with all documentation requested by the Company, such as bills or delivery notes that are reasonably required by the Company to recover any VAT or other tax in respect of the Equipment. No extra charges shall be effective unless agreed in writing and signed by the Company.

- 11.3 The Company shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Equipment. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 11.4 The Order shall set out the payment terms in respect of the Equipment and the Company shall pay correctly rendered invoices in line with the agreed contracted payment terms for which an invoice is received. Payment shall be made to the bank account nominated in writing by the Supplier.
- 11.5 If the Company fails to pay any amount properly due and payable by it under the Order, the Supplier shall have the right to charge interest on the overdue amount at the rate of Two per cent per annum above the base rate for the time being of HSBC accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Company disputes in good faith.
- 11.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Equipment, and shall allow the Company to inspect such records at all reasonable times on request.
- 11.7 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Company to the Supplier.

12. Confidentiality

- 12.1 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Order, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 12 shall survive termination of the Order.
- 12.2 The Supplier will not advertise, publish or disclose to any third party (other than to the Supplier's professional advisers on a confidential and need to know basis) in any manner the fact that the Supplier has contracted with the Company in relation to the Equipment covered by the Order or any terms of the Order (including prices) or use any trademarks or trade names of the Company in any press release, advertising or promotional materials, without first obtaining the Company's prior written consent.

13. Termination

- 13.1 Without limiting its other rights or remedies, the Company may terminate the Order by giving the Supplier 3 months' written notice.
- 13.2 Without limiting its other rights or remedies, the Company may terminate the Order with immediate effect by giving written notice to the Supplier if:
- 13.2.1 the Supplier commits a material or persistent breach of the Order and (if such a breach is remediable) fails to remedy that breach within 10 days of receipt of notice in writing of the breach;

- 13.2.2 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 13.2.3 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 13.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 13.2.5 the Supplier (being an individual) is the subject of a bankruptcy petition order;
- 13.2.6 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 13.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- 13.2.8 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 13.2.9 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 13.2.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.2 to clause 13.1.9 (inclusive);
- 13.2.11 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- 13.2.12 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14. Effect of Termination

- 14.1 On termination of the Order for any reason:
- 14.1.1 the Supplier shall immediately deliver to the Company all of the Equipment, material provided by the Company to the Supplier and other Company property. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Order;

14.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Order which existed at or before the date of termination; and

14.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. Audit

15.1 The Supplier shall maintain complete and accurate records relating to all matters relevant to the relationship between the parties described in the Order including the calculation of the price and the provision of Equipment. Subject always to the confidentiality provisions of this Order, the Company and/or its appointed auditors (whether internal or external to the Company) shall have the right, exercisable by fourteen (14) days' prior written notice given to the Supplier, to audit and take copies of such records.

15.2 Any such audit shall take place during normal business hours, with minimal disruption to the Supplier, and the Supplier shall provide to the Company and/or its appointed auditors such reasonable co-operation, assistance and access as the Company may require. The Supplier may, at its own expense, involve a person from its own auditors (whether internal or external to the Supplier) in such audit. Any such audit shall be conducted at the cost of the Company.

15.3 The Company may exercise its audit right under this clause no more than once in any period of twelve (12) months unless the Company has reasonable grounds on which to suspect that the Supplier has knowingly over-charged the Company or failed to provide Equipment in accordance with the Order, in which case the Company may exercise its rights under this clause at any time without notice.

15.4 The Supplier shall establish the same right of audit in favour of the Company in its contracts with third parties to whom it has subcontracted the performance of any obligations under this Order with the Company's consent.

16. Anti-Corruption

16.1 Both parties shall:

16.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");

16.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and

16.1.3 have and shall maintain in place throughout the term of this Order its own policies and procedures in relation to the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010 and will enforce them where appropriate.

16.2 Breach of this clause shall entitle the party who is not in breach to terminate this Order forthwith upon written notice to the other.

17. Sustainable Development

- 17.1 The Company is a member of the Volkswagen Group which has set requirements for sustainable development to be met by its business partners. These requirements can be found on the portal vwgroupsupply.com under the section Cooperation and sub-section Sustainability.
- 17.2 The Supplier will at all times during the term of this Order ensure that it is aware of these requirements and will comply with them.

18. General

- 18.1 **Force majeure** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Order if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from performing its obligations for more than 4 weeks, the Company shall have the right, without limiting its other rights or remedies, to terminate this Order with immediate effect by giving written notice to the Supplier.

18.2 Assignment and subcontracting

- 18.2.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Order without the prior written consent of the Company.
- 18.2.2 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Order and may subcontract or delegate in any manner any or all of its obligations under the Order to any third party or agent.

18.3 Notices

- 18.3.1 Any notice or other communication required to be given to a party under or in connection with this Order shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 18.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 18.3.3 This clause 18.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Order shall not be validly served if sent by e-mail.

18.4 Waiver and cumulative remedies

- 18.4.1 A waiver of any right under the Order is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Order or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 18.4.2 Unless specifically provided otherwise, rights arising under the Order are cumulative and do not exclude rights provided by law.

18.5 **Severance**

18.5.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Order is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Order shall not be affected.

18.5.2 If any invalid, unenforceable or illegal provision of the Order would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.6 **No partnership** Nothing in the Order is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

18.7 **Third parties** A person who is not a party to the Order shall not have any rights under or in connection with it.

18.8 **Variation** Any variation, including any additional terms and conditions, to the Order shall only be binding when agreed in writing and signed by Company.

18.9 **Governing law and jurisdiction** The Order, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.