

ISOMA LIMITED - TERMS AND CONDITIONS OF SALE

The Buyer's attention is in particular drawn to the provisions of clause 14.

1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause 1 apply in these Conditions.
 - 1.1.1. **Business Day:** any day other than Saturday, Sunday or a bank or public holiday on which banks in London are open for business.
Business Hours: the period from 8.00 am to 5.00 pm on any Business Day.
Buyer: the person, firm or company who purchases the Goods and/or Services from Isoma.
Commencement Date: has the meaning given in clause 2.3.
Conditions: these terms and conditions as amended from time to time in accordance with clause 20.9.
Contract: the contract between Isoma and the Buyer for the supply of Goods and/or Services in accordance with these Conditions.
Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** will be interpreted accordingly.
Delivery Point: the place where delivery of the Goods is to take place under clause 5.1.
Force Majeure Event: an event or circumstance beyond a party's reasonable control including (without limitation) acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, collapse of buildings, fire, explosion or accident, any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on the existence of the Force Majeure Event, or companies in the same group as that party), non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on the existence of the Force Majeure Event) and interruption or failure of utility service.
Goods: the goods (or any part of them) set out in the Order.
Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Buyer and Isoma.
IPR: any and all trade marks, rights in designs, get-up, trade, business or domain names, copyrights, future copyrights, patents, rights in databases (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing) rights in inventions, know how, trade secrets and other confidential information and all other intellectual property rights of a similar or corresponding nature that may now or in the future subsist in any part of the world.
Isoma: Isoma Limited (company number: 03349759) with its registered office at George Holmes Way, Swadlincote, Derbyshire, DE11 9DF.
Isoma Materials: has the meaning given in clause 15.1.8.
Order: the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's purchase order form, or the Buyer's written acceptance of Isoma's quotation, or overleaf, as the case may be.
Services: the services supplied by Isoma to the Buyer as set out in the Service Specification.
Service Specification: the description or specification for the Services agreed in writing by Isoma and the Buyer.
Site: the location where the Services are to be performed.
- 1.2. A reference to:
 - 1.2.1. legislation or a legislative provision is a reference to it as amended or re-enacted and will include all subordinate legislation made under that legislation or legislative provision;
 - 1.2.2. words in the singular include the plural and in the plural include the singular;
 - 1.2.3. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - 1.2.4. any words following the terms **including**, **include** or **in particular** or any similar expression will be interpreted as illustrative and will not limit the sense of the words preceding those terms.
 - 1.2.5. **writing** or **written** includes email but not fax.

2. BASIS OF CONTRACT

- 2.1. These Conditions apply in all circumstances when Isoma and the Buyer are trading with each other in the course of their respective businesses.
- 2.2. The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.
- 2.3. The Order will only be deemed to be accepted when Isoma issues written acceptance of the Order at which point and on which date the Contract will come into existence (**Commencement Date**).
- 2.4. Any samples, drawings, descriptive matter or advertising issued by Isoma and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Isoma's 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 will not form part of the Contract nor have any contractual force.
- 2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.6. Any quotation given by Isoma will not constitute an offer, and is only valid for a period of 30 days from its date of issue unless otherwise specified on the quotation and provided that Isoma has not previously withdrawn it.
- 2.7. All of these Conditions will apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.8. Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance of offer, invoice or other document or information issued by Isoma will be subject to correction without any liability on the part of Isoma.
- 2.9. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.

3. SPECIFICATIONS, SURVEYS AND SITE VISITS

- 3.1. The parties will use reasonable endeavours to agree the Goods Specification and, if applicable, the Services Specification.
- 3.2. If the parties cannot agree the Goods Specification or the Services Specification, without prejudice to any other rights or remedies Isoma may have, Isoma may cancel the Buyer's Order without liability. The Buyer will pay Isoma on a time and materials basis fair and reasonable compensation for any work in progress on or in relation to the Goods/Services

- 3.3. at the time of termination and management time incurred by Isoma in relation to that Order prior to the time of termination including (without limitation) the cost of any survey carried out and the cost of any Goods already purchased or commissioned for manufacture, but whilst such compensation will not include loss of profits in relation anything which Isoma would have done under the Contract had this not been terminated, it is agreed that Isoma will be entitled to its usual margin on all work it has carried out up to termination.
 - 3.4. If requested at any time, the Buyer will allow Isoma (or its appointed surveyor) to inspect the Site to take measurements or for any other reason relating to the Goods/Services.
 - 3.5. Unless otherwise agreed, the Buyer will attend all feasibility, inspection, survey or other meetings relating to the Goods and/or Services required by Isoma at the Buyer's expense.
 - 3.6. It is the Buyer's responsibility to ensure that all measurements, plans, drawings and designs it provides and which form part of the Goods Specification and the Services Specification are accurate, complete and fit for the intended purpose.
 - 3.6.1. If on inspection or survey of the Site it becomes apparent to Isoma that there are one or more problems:
 - 3.6.1.1. which will result in a change to the Goods Specification or the Services Specification;
 - 3.6.1.2. with the structure of the building into which the Goods are to be installed;
 - 3.6.1.3. with any dimensions or measurements provided by the Buyer;
 - 3.6.1.4. with access to the Site;
 - 3.6.1.5. relating to technical matters regarding the Goods and/or Services;
 - 3.6.1.6. resulting (or which may result) in additional works being required before the Services can be carried out or alongside the Services,
- which result in the requirement to increase the price of the Goods and/or the Services, then Isoma reserves the right to so increase the price of the Goods and/or the Services accordingly. If the Buyer does not accept such price increase, Isoma may cancel the Buyer's Order without liability and the Buyer will pay Isoma fair and reasonable compensation for any work in progress on or in relation to the Goods and/or Services at the time of termination and management time incurred by Isoma in relation to that Order prior to the time of termination including (without limitation) the cost of any survey carried out and the cost of any Goods already purchased or commissioned for manufacture, but such compensation will not include loss of anticipated profits or any consequential loss.

4. GOODS

- 4.1. The quantity and description of the Goods will be as set out in Isoma's acceptance of the Order given pursuant to clause 2.3.
- 4.2. To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Buyer, the Buyer will indemnify Isoma 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 Isoma arising out of or in connection with any claim made against Isoma for:
 - 4.2.1. actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Isoma's use of the Goods Specification; and
 - 4.2.2. personal injury, loss or damage to property arising from the use of the Goods except to the extent that such injury, loss or damage is solely attributable to the negligence or default of Isoma or Isoma's employees or agents.
- 4.2.3. Clause 4.2 will survive termination of the Contract.
- 4.3. Isoma reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory, regulatory or EC requirements or, where the Goods are to be supplied to Isoma's specification, which do not materially affect their quality or performance.
- 4.4. No order which has been accepted by Isoma may be cancelled by the Buyer except with the agreement in writing of Isoma and on terms that the Buyer will indemnify Isoma in full against all loss (including without prejudice to the generality of the foregoing loss of profit), costs (including without prejudice to the generality of the foregoing the cost of all labour and materials ordered, whether used or un-used), damages, charges and expenses incurred by Isoma as a result of the cancellation.
- 4.5. Any advice or recommendations given by Isoma or its employees or agents relating to the suitability of the Goods is supplied in good faith but the Buyer must satisfy itself that the Goods are suitable for the intended purpose.

5. DELIVERY

- 5.1. Delivery of the Goods will take place at Isoma's place of business or as otherwise set out in Isoma's acceptance of the Order given pursuant to clause 2.3.
- 5.2. The Buyer will take delivery of the Goods within 7 days of Isoma giving notice that the Goods are ready.
- 5.3. Delivery of the Goods will be completed on the completion of unloading of the Goods at the Delivery Point.
- 5.4. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Isoma will not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, the Buyer's failure to provide Isoma with adequate delivery instructions or any other instructions, access or information that are relevant to the supply of the Goods or the Buyer's failure to obtain any required licences, consents or authorisations.
- 5.5. If the Buyer fails to accept delivery of any of the Goods within 3 Business Days of Isoma notifying the Buyer that the Goods are ready, then except where such failure or delay is caused by Isoma's failure to comply with its obligations under the Contract in respect of the Goods:
 - 5.5.1. delivery of the Goods will be deemed to have been completed at 9.00 am on the third Business Day following the day on which Isoma notified the Buyer that the Goods were ready and risk in the Goods will pass to the Buyer (including for loss or damage caused by Isoma's negligence) accordingly on that date; and
 - 5.5.2. Isoma will store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance and storage costs).
- 5.6. If 10 Business Days after the day on which Isoma notified the Buyer that the Goods were ready for delivery the Buyer has not taken actual delivery of them, Isoma may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 5.7. The Buyer will provide at the Delivery Point and at its own expense adequate and appropriate equipment and manual labour for loading the Goods onto the onward transport arranged by the Buyer.
- 5.8. Isoma may deliver the Goods by separate instalments. Each separate instalment will be invoiced and paid separately. Each instalment will constitute a separate contract. Any delay in delivery or defect in an instalment will not entitle the Buyer to cancel any other instalment.
- 5.9. If the Buyer wishes to change a pre-agreed delivery date or time for a later date/time then it must give Isoma 72 hours' notice. The Buyer will pay Isoma's costs in connection with such a request including (without limitation) storage and re-delivery costs.

6. NON-DELIVERY

If Isoma fails to deliver the Goods, its liability will be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Isoma will 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 Buyer's failure to provide Isoma with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7. RISK AND TITLE

- 7.1. The risk in the Goods will pass to the Buyer on completion of delivery.
- 7.2. Title to the Goods will not pass to the Buyer until Isoma has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 7.2.1. the Goods;
 - 7.2.2. the Services; and
 - 7.2.3. all other sums which are or which become due to Isoma from the Buyer on any account.
- 7.3. Until title to the Goods has passed to the Buyer, the Buyer will:
 - 7.3.1. hold the Goods on a fiduciary basis as Isoma's bailee;
 - 7.3.2. store the Goods (at no cost to Isoma) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Isoma's property;
 - 7.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 7.3.4. maintain the Goods in satisfactory condition and keep them insured on Isoma's behalf for their full price against all risks to the reasonable satisfaction of Isoma. On request the Buyer will produce the policy of insurance to Isoma;
 - 7.3.5. give Isoma such information as Isoma may reasonably require from time to time relating to the Goods and the ongoing financial position of the Buyer;
 - 7.3.6. notify Isoma immediately if it becomes subject to any of the events listed in clauses 17.1.2 - 17.1.4.
- 7.4. The Buyer's right to possession of the Goods pursuant to clause 7.3 will terminate immediately if the Buyer becomes subject to any of the events listed in clauses 17.1.2 - 17.1.4 or if the Buyer encumbers or in any way charges any of the Goods.
- 7.5. Isoma will be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Isoma.
- 7.6. The Buyer grants Isoma, its agents and employees an irrevocable licence at any time before title to the Goods passes to the Buyer to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7.7. Where Isoma is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by Isoma to the Buyer in the order in which they were invoiced to the Buyer.
- 7.8. On termination of the Contract, howsoever caused, Isoma's (but not the Buyer's) rights contained in this clause 7 will remain in effect.

8. SERVICES

- 8.1. Isoma will supply the Services to the Buyer in accordance with the Service Specification in all material respects.
- 8.2. Isoma will use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification or otherwise agreed in writing, but any such dates will be estimates only and time will not be of the essence for the performance of the Services.
- 8.3. Isoma 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 Isoma will notify the Buyer in any such event.
- 8.4. Isoma will provide the Services using reasonable care and skill.
- 8.5. Isoma will provide the Services during Business Hours. If the Buyer requests that Services be performed outside of Business Hours and Isoma agrees, Isoma reserves the right to increase the cost of the Services. Such cost increase will reflect the increase in the cost to Isoma of providing the Services outside of Business Hours and be calculated on a time and materials basis in accordance with Isoma's then current daily fee rates.
- 8.6. If the Buyer wishes to change a pre-agreed date or time for a later date/time for the supply of the Services then it must give Isoma 72 hours' notice. The Buyer will pay Isoma's costs in connection with such a request.

9. DELAYS

- 9.1. If Isoma's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):
 - 9.1.1. without limiting or affecting any other right or remedy available to it, Isoma will have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays Isoma's performance of any of its obligations;
 - 9.1.2. Isoma will not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Buyer's failure or delay to perform any of its obligations as set out in clause 15; and
 - 9.1.3. the Buyer will reimburse Isoma on written demand for any costs or losses sustained or incurred by Isoma arising directly or indirectly from the Buyer Default.

10. INTELLECTUAL PROPERTY

Isoma neither represents nor undertakes expressly or impliedly that the whole or any part of the Goods do not or will not infringe the IPR of a third party.

11. PRICE

- 11.1. The price for the Goods and Services will be the price set out in Isoma's acceptance of the Order given pursuant to clause 2.3.
- 11.2. Unless otherwise agreed by Isoma in writing the price for the Goods and Services will be exclusive of all costs and charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.
- 11.3. The Buyer must bear any customs duties and taxes that may be levied by reason of the importation of the Goods unless otherwise stated in Isoma's acceptance of the Order given pursuant to clause 2.3 (if applicable).
- 11.4. Isoma reserves the right to increase the price of the Goods and/or Services, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods and/or Services to Isoma that is due to:
 - 11.4.1. any factor beyond the control of Isoma (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

- 11.4.2. any request by the Buyer to change the delivery date(s) and/or times, quantities or types of Goods or Services ordered, or the Goods Specification or Services Specification; or
- 11.4.3. any delay caused by any instructions of the Buyer in respect of the Goods or Services or failure of the Buyer to give Isoma adequate or accurate information or instructions in respect of the Goods or Services.
- 11.5. If for whatever reason (other than due to Isoma's breach of the Contract) Isoma cannot access the Buyer's premises either to deliver Goods or to attend to provide Services, the Buyer will pay Isoma's costs in connection with such situation including (without limitation) storage, personnel and re-delivery costs.

12. PAYMENT

- 12.1. In respect of Goods, Isoma will invoice the Buyer on or at any time after completion of delivery.
- 12.2. In respect of Services, Isoma will invoice the Buyer at the milestones specified in Isoma's acceptance of the Order given pursuant to clause 2.3 but if no milestones are specified, monthly in arrears.
- 12.3. The Buyer will pay each invoice submitted by Isoma in pounds sterling on the last working day of the month following the month in which the invoice is dated in full and cleared funds to a bank account nominated in writing by Isoma. Time for payment will be of the essence of the Contract.
- 12.4. No payment will be deemed to have been received until Isoma has received cleared funds.
- 12.5. Unless otherwise agreed by Isoma in writing the Buyer will make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 12.6. If the Buyer fails to make any payment due to Isoma under the Contract by the due date for payment, then the Buyer will pay interest on the overdue amount at the greater of 5% per annum above the Bank of England's base rate from time to time and the High Court judgment rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer will pay the interest together with the overdue amount.
- 12.7. All amounts payable by the Buyer 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 Isoma to the Buyer, the Buyer will, on receipt of a valid VAT invoice from Isoma, pay to Isoma 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.

13. QUALITY

- 13.1. Where Isoma is not the manufacturer of the Goods, Isoma will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to Isoma by the manufacturer.
- 13.2. Isoma warrants that (subject to the other provisions of these Conditions) on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**) the Goods will:
 - 13.2.1. be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - 13.2.2. conform in all material respects with their description and any applicable Goods Specification.
- 13.3. Isoma will not be liable for a breach of any of the warranties in clause 13.2 unless:
 - 13.3.1. the Buyer gives written notice during the Warranty Period within a reasonable time of discovery (and where Isoma has only supplied Goods, within 24 hours of delivery, if the alleged defect is apparent on visual inspection) that some or all of the Goods do not comply with any of the warranties in clause 13.2; and
 - 13.3.2. Isoma is given a reasonable opportunity after receiving the notice pursuant to clause 13.3.1 of examining such Goods and the Buyer (if asked to do so by Isoma) returns such Goods to Isoma's place of business at Isoma's cost for the examination to take place there.
- 13.4. Isoma will not be liable for a breach of the warranty in clause 13.2 if:
 - 13.4.1. the Buyer makes any further use of such Goods after giving notice pursuant to clause 13.3.1; or
 - 13.4.2. the defect arises because the Buyer failed to follow Isoma'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; or
 - 13.4.3. the Goods differ from their description and/or any applicable Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
 - 13.4.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 13.4.5. the defect arises as a result of Isoma following any drawing, design or Goods Specification supplied by the Buyer; or
 - 13.4.6. the Buyer alters or repairs such Goods without the written consent of Isoma.
- 13.5. Subject to clauses 13.3 and 13.4, if Isoma agrees that any of the Goods do not conform with any of the warranties in clause 13.2 Isoma will at its option repair or replace such Goods or refund the price of such provided that, if Isoma so requests, the Buyer will, at Isoma's expense, return the Goods or the part of such Goods which are defective to Isoma.
- 13.6. If Isoma complies with clause 13.5 it will have no further liability to the Buyer for a breach of any of the warranties in clause 13.2 in respect of such Goods.
- 13.7. Any Goods replaced will belong to Isoma and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the original Warranty Period.

14. LIMITATION OF LIABILITY

- 14.1. The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.2. Neither party may benefit from the limitations and exclusions set out in this clause 14 in respect of any liability arising from its deliberate default.
- 14.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - 14.3.1. death or personal injury caused by negligence;
 - 14.3.2. fraud or fraudulent misrepresentation;
 - 14.3.3. 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 (title and quiet possession); and
 - 14.3.4. defective products under the Consumer Protection Act 1987.
- 14.4. Subject to clause 14.3, Isoma's liability to the Buyer will not exceed the price of the Goods and/or Services ordered.
- 14.5. Subject to clause 14.3, the following types of losses are wholly excluded by both parties:
 - 14.5.1. loss of profits;
 - 14.5.2. loss of sales or business;
 - 14.5.3. loss of agreements or contracts;
 - 14.5.4. loss of anticipated savings;
 - 14.5.5. loss of use or corruption of software, data or information;
 - 14.5.6. loss of or damage to goodwill; and

14.5.7. indirect or consequential loss.

14.6. Isoma has given commitments as to compliance of the Goods and Services with relevant specifications in clause 8 and clause 13. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.7. This clause 14 will survive termination/expiry of the Contract.

15. BUYER'S OBLIGATIONS

15.1. The Buyer will:

- 15.1.1. ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- 15.1.2. co-operate with Isoma in all matters relating to the Services;
- 15.1.3. provide Isoma, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by Isoma to provide the Services;
- 15.1.4. provide Isoma with such information and materials as Isoma may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 15.1.5. prepare the Buyer's premises for the supply of the Services;
- 15.1.6. 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;
- 15.1.7. comply with all applicable laws, including health and safety laws;
- 15.1.8. keep all materials, equipment, documents and other property of Isoma (**Isoma Materials**) at the Buyer's premises in safe custody at its own risk, maintain the Isoma Materials in good condition until returned to Isoma, and not dispose of or use the Isoma Materials other than in accordance with Isoma's written instructions or authorisation; and
- 15.1.9. comply with any additional obligations as set out in the Service Specification and the Goods Specification.

16. DATA PROTECTION

Each party will, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation (EU) 2016/679 and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK). Each party will ensure that it has all necessary consents and notices in place to enable the lawful transfer of personal data to the other for the purposes of each party fulfilling its obligations under the Contract. Neither party will use or disclose personal data provided to it by the other in connection with the Contract other than for the purpose of fulfilling the Contract.

17. TERMINATION

17.1. 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:

- 17.1.1. 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 21 days after receipt of notice in writing to do so;
- 17.1.2. 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), obtaining a moratorium, 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 17.1.3. 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
- 17.1.4. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

17.2. Without affecting any other right or remedy available to it, Isoma may terminate the Contract with immediate effect by giving written notice to the Buyer if:

- 17.2.1. the Buyer fails to pay any amount due under the Contract on the due date for payment; or
 - 17.2.2. there is a change of Control of the Buyer.
- 17.3. Without affecting any other right or remedy available to it, Isoma may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and Isoma if the Buyer fails to pay any amount due under the Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 17.1.2 - 17.1.4, or Isoma reasonably believes that the Buyer is about to become subject to any of them.

17.4. On termination/expiry of the Contract:

- 17.4.1. the Buyer will immediately pay to Isoma all of Isoma's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Isoma will submit an invoice, which will be payable by the Buyer immediately on receipt;
 - 17.4.2. the Buyer will return all Isoma Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then Isoma may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer will be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 17.5. Termination or expiry of the Contract will not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

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

18. DISPUTE RESOLUTION

18.1. An Expert is a person appointed in accordance with this clause 18 to resolve any disagreement between the parties as to whether the Goods comply with the warranties at clause 13.2 or any other disagreement of a technical nature relating to the Goods and/or Services. Where under the Contract a party wishes to refer a matter to an Expert, the parties will first agree on the appointment of an independent Expert and agree with the Expert the terms of his appointment. If the parties are unable to agree on an Expert or the terms of the Expert's appointment within 7 days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Centre for Effective Dispute Resolution (**CEDR**) to appoint a suitable and appropriate Expert with the required expertise. The Expert is required to prepare a written decision including reasons and give notice of the decision to the parties within a maximum of 3 months of the matter being referred to

the Expert. If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required, then either party may apply to CEDR to discharge the Expert and to appoint a replacement Expert with the required expertise and this clause 18 will apply to the new Expert as if they were the first Expert appointed. Each party will with reasonable promptness supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make submissions to the Expert. The Expert will act as an expert and not as an arbitrator. The Expert will determine the matters referred to the Expert under the Contract. The Expert's written decision on the matters referred to the Expert will be final and binding on the parties in the absence of manifest error or fraud. All matters concerning the process and result of the determination by the Expert will be kept confidential among the parties and the Expert. Each party will act reasonably and co-operate to give effect to the provisions of this clause 18 and otherwise do nothing to hinder or prevent the Expert from reaching their determination. The Expert and CEDR will have no liability to the parties for any act or omission in relation to this appointment, save in the case of bad faith.

18.2. For the avoidance of doubt, clause 18 will not prevent Isoma from immediately initiating court proceedings to seek any interim relief (including injunctive relief) or take advantage of any applicable time limitation.

19. INSURANCE

19.1. During the term of the Contract Isoma will maintain in force the following insurance policies with reputable insurance companies:

- 19.1.1. public liability insurance with a limit of at least £10 million a claim;
 - 19.1.2. employer's liability insurance with a limit of at least £10 million for claims arising from a single event or series of related events in a single calendar year;
 - 19.1.3. product liability insurance with a limit of at least £10 million for claims arising from a single event or series of related events in a single calendar year.
- 19.2. Isoma's insurance cover in respect of loss or damage to the Buyer's capital equipment occurring during the lifting and re-siting or re-location of any such item of capital equipment by Isoma is limited to £250,000 per item moved by Isoma.

20. GENERAL

20.1. **Force Majeure.** Isoma will not 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 results from a Force Majeure Event. In such circumstances, Isoma will be entitled to a reasonable extension of the time for performing such obligations.

20.2. **Assignment and other dealings.** Isoma 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. The Buyer will not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Isoma

20.3. Each right or remedy of Isoma under the Contract is without prejudice to any other right or remedy of Isoma whether under the Contract or not.

20.4. **Severance.** If any provision or part-provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be or otherwise becomes wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it will to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision will continue in full force and effect. The parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

20.5. **Waiver.** A waiver of any right or remedy is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy will not waive that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.

20.6. **Third party rights.** The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

20.7. **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 will be governed by and construed in accordance with the law of England and Wales.

20.8. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales will 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.

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

20.10. **Confidentiality.** Each party undertakes that it will not disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by this clause 20.10. Each party may disclose the other party's confidential information: (i) to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each party will ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 20.10. No party will use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

20.11. **Notices.** Any formal notice given to a party under or in connection with the Contract will be in writing and will 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). Any such formal notice will be deemed to have been received: (i) if delivered by hand, at the time the notice is left at the proper address and (ii) 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. This clause 20.11 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20.12. **No partnership or agency.** Nothing in the Contract is intended to, or will 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.

20.13. **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.