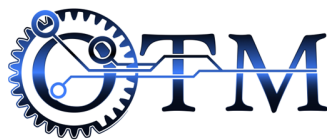


Terms and Conditions of Purchase



MAY 2024 | Issue 11



Terms and Conditions of Purchase

1. Introduction

- 1.1. We are OTM Servo Mechanism Limited, a company registered in England and Wales under company number 00696076 ("OTM").
- 1.2. These are the terms and conditions upon which we do business.

2. Definitions

- 2.1. In these terms and conditions,
 - a) unless the context otherwise requires, the following expressions shall have the following meanings:
 - "Bespoke Products and/or Services" has the meaning given to that term in clause 6.1;
 - "Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
 - "Contract" has the meaning given to that term in clause 4.2;
 - "Days" means calendar days;
 - "Force Majeure Event" shall have the meaning given to that term in clause 30.1;
 - "OTM Items" has the meaning given to that term in clause 6.1;
 - "Products" means the type and specification of Products to be supplied by Supplier as set out in the purchase order, and for clarity includes any Products supplied by Supplier as part of the supply of any Services;
 - "REACH" has the meaning given to that term in clause 12.1;
 - "Regulations" has the meaning given to that term in clause 19.4;
 - "Relevant Policies" shall have the meaning given to that term in clause 26.1(c);
 - "Relevant Requirements" shall have the meaning given to that term in clause 26.1(a);
 - "Relevant Terms" shall have the meaning given to that term in clause 26.2;
 - "Services" means the type and specification of Services to be supplied by Supplier as set out in the purchase order;
 - "Specification" means, in respect of each Contract, OTM's technical and/or business requirement(s) for the Products and/or Services to be supplied by Supplier to OTM as set out in, attached to or otherwise referenced in the purchase order;
 - "Supplier" means any person who enters into a Contract with OTM in accordance with the terms of clause 4.2;
 - "Traceability Document" has the meaning given to that term in clause 13.3;
 - b) Words importing the singular shall include the plural and vice versa, words importing a gender shall include all genders, and words importing persons shall include bodies corporate, unincorporated associations and partnerships;
 - c) Any reference to a statute, statutory provision or subordinate legislation is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;
 - d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
 - e) References to clauses are references to clauses of these terms and conditions; and
 - f) Headings are included for ease of reference only and shall not affect the interpretation or construction of these terms and conditions.



Terms and Conditions of Purchase

3. Application

- 3.1. These are the terms and conditions (as revised and/or updated from time to time by notice to Supplier) upon which OTM is willing to buy Products and/or Services from Supplier and they will apply to all dealings between OTM and Supplier to the exclusion of all other terms and conditions which Supplier may purport to apply under any quotation, offer, confirmation of order or similar document.
- 3.2. No variation to these terms and conditions will be binding unless confirmed in writing by OTM.
- 3.3. For clarity, nothing in these terms and conditions, in any Agreement, or in any forecasts submitted to Supplier by or otherwise on behalf of OTM shall be construed or otherwise regarded as creating an obligation on OTM to place purchase orders with Supplier for the purchase of Products and/or Services from Supplier.

4. Orders

- 4.1. OTM makes an offer for the purchase of Products and/or Services by submitting a valid OTM purchase order to Supplier. A purchase order will, as a minimum, specify the type and number of Products and the details of any Services OTM wishes to buy and the price OTM is willing to pay for those Products and/or Services. A purchase order will only be valid if it is submitted by an authorised representative of OTM. If Supplier is uncertain as to whether a purchase order is valid Supplier shall contact an authorised representative of OTM for written confirmation that the purchase order is a valid purchase order. OTM will not be deemed to make a valid offer to Supplier for the purchase of Products and/or Services unless it is made in accordance with the provisions of this clause 4.1.
- 4.2. Supplier must notify OTM of its unconditional acceptance or rejection of OTM's offer within two days of the date the offer is made by OTM or such other period as OTM may agree in writing. If OTM does not receive Supplier's acceptance or rejection of OTM's offer within two days of the date OTM makes the offer then Supplier will be deemed to have unconditionally accepted OTM's offer. Any attempt by Supplier to accept OTM's offer on terms that are different to OTM's original offer as set out in its order will be deemed to be a rejection of OTM's original offer. It is at the moment the Supplier unconditionally accepts OTM's offer that a contract (the "Contract") is made between Supplier and OTM for the supply of the Products and/or Services specified in the purchase order. Each Contract is subject to these terms and conditions to the exclusion of all other terms and conditions (including any terms and conditions which Supplier may purport to apply under any quotation, offer, confirmation of order or similar document).
- 4.3. If Supplier rejects, or is deemed to reject, OTM's original offer but supplies the Products and/or Services specified in OTM's purchase order then OTM may in its discretion accept those Products and/or Services, and OTM's original offer and these terms and conditions will be deemed to apply to such supply.
- 4.4. OTM retains the right to have all Products and/or Services supplied to OTM pursuant to an offer that is not, or is not deemed to be, a valid offer removed and/or cancelled at Supplier's sole expense.
- 4.5. OTM may terminate a Contract (or any part thereof) in respect of all or any of the:
 - a) Products to be delivered under that Contract by giving Supplier notice of the cancellation at any time before those Products (or any part thereof) have been delivered; and



Terms and Conditions of Purchase

- b) Services to be performed under that Contract by giving Supplier notice of the cancellation at any time before those Services (or any part thereof) have been performed, and OTM will not be liable to pay for those Products and/or Services that have been cancelled in accordance with the terms of this clause 4.5.

5. Price

- 5.1. New clause
Unless otherwise agreed in writing by the Parties, Supplier shall supply the Products and/or Services to OTM at the price(s) set out in the purchase order.
- 5.2. If OTM has agreed a price with Supplier for the purchase of any Products and/or Services in advance of the submission by OTM of a valid OTM purchase order for those Products and/or Services then no alteration to that price may be made without the prior written consent of OTM.
- 5.3. In limited circumstances, OTM may (at its discretion) raise a purchase order which does not specify the price for all or part of the Products and/or Services to be provided by Supplier. Such a purchase order may specify the means to calculate the final price for the Products and/or Services (eg, an hourly rate), or an estimate in respect of the Products and/or Services to be supplied. Upon completion of the supply of Products and/or Services by Supplier (or sooner if Supplier is reasonably able to do so), Supplier shall notify OTM of the applicable charges and Supplier shall invoice OTM in accordance with clause 16.
- 5.4. All prices, however so agreed are (unless otherwise expressly agreed in writing by OTM):
 - a) exclusive of any applicable value added tax (which will be payable by OTM subject to receipt by OTM of a valid value added tax invoice from Supplier); and
 - b) inclusive of all charges for packaging, packing, insurance and delivery of the Products and/or Services (as applicable) and any duties, taxes or levies other than value added tax.
- 5.5. Details of the price paid by OTM for Products and/or Services shall be treated by Supplier as information which is of a confidential nature.

6. OTM Items

- 6.1. OTM may supply Supplier with items, such as design drawings, product information and technical specifications, tooling and patterns, and trademarks, designs, logos, get up, and/or components and/or raw materials on a free issue basis ("OTM Items") in connection with and/or to use as part of the design and manufacture of Products to be made and/or Services to be provided to OTM's specification ("Bespoke Products and/or Services").
- 6.2. All OTM Items are and will remain at all times OTM's property (and any intellectual property in respect of such OTM items shall remain the property of OTM and/or its respective owners) and Supplier must return all OTM Items to OTM on demand. Supplier may use OTM Items only for the purpose of designing, manufacturing and selling and/or supplying to OTM Bespoke Products and/or Services and Supplier must maintain the OTM Items in good order and condition and make good any loss or damage to any OTM Items.
- 6.3. Supplier shall keep the OTM Items in safe custody at its own risk, maintain them in good condition (as appropriate) until returned to OTM, and not dispose or use or mix them with the property of any other



Terms and Conditions of Purchase

customer of Supplier or otherwise handle them in any way other than in accordance with OTM's written instructions or authorisation and Supplier shall maintain an appropriate and adequate policy of insurance in respect of such OTM Items whilst they are in Supplier's custody. For clarity, the insurance policy shall, as a minimum, be capable of providing OTM (either directly or via Supplier) with full financial compensation for any damage or loss caused to the OTM Items whilst in Supplier's custody or under Supplier's control.

7. Delivery

- 7.1. Delivery of Products shall be strictly in accordance with the requirements set out in the purchase order, or, in the absence of such requirements, in accordance with the instructions of OTM. Delivery must be made on the date and to the location specified in the purchase order and during the hours of 7:30 am - 12.45 pm and 1.15 pm - 4 pm Monday to Thursday and 7:30 am - 12 pm Friday. Delivery is not permitted on any bank holiday or national holiday or any day between 24 and 31 December inclusive, unless the prior written consent of OTM has been obtained on each such occasion. Delivery outside of these times will only be permissible following specific written authorisation from OTM. If no delivery date is specified in the purchase order, then Supplier shall contact OTM to ascertain the required delivery date.
- 7.2. All Products must be properly and securely packed in accordance with the currently applicable national and international standards. All packaging materials supplied by Supplier shall be recyclable.
- 7.3. If requested by OTM, Supplier shall promptly remove any and all packing cases and/or containers that accompanied the delivered Products, failing which Supplier shall reimburse OTM for any disposal costs incurred by OTM in removing such materials from its premises.
- 7.4. OTM shall not be deemed to have accepted any of the Products until OTM (or an OTM Subsidiary acting on OTM's behalf) has had a reasonable amount of time to inspect them following delivery or, in the case of latent defects, notified the Supplier in writing as soon as reasonably possible after OTM or the relevant OTM Subsidiary (as the case may be) becomes aware of any defects (latent or otherwise) in the Products.
- 7.5. Supplier shall provide the Services requested by OTM in a purchase order to OTM in accordance with the timetable set out in the purchase order or, in the absence of such timetable, within a reasonable period of time.
- 7.6. Final acceptance of the Services shall be deemed to take place when the Services have been completed and OTM has provided written notification to Supplier that the Services satisfy the requirements of the Specification.
- 7.7. If Supplier fails to supply any Products in accordance with the terms of the Contract and any purchase order then OTM may, in addition to its other rights:
 - a) require Supplier to repair the Products or to supply replacement Products in accordance with the Contract; or
 - b) treat such failure as a material breach not capable of remedy and accordingly terminate the Contract and require the repayment of any part of the price that OTM has paid Supplier for the Products.



Terms and Conditions of Purchase

- 7.8. If any of the Products (or any part thereof) are not delivered by the delivery date specified in the purchase order or, where no delivery date is specified, within a reasonable period of time after the Contract has been entered into then OTM may:
- a) (in acknowledgement by the parties of the fact that OTM may incur loss as a consequence of any such delay in the delivery of Products) deduct from the total price payable for the Products, or if OTM has already paid the price, claim from Supplier by way of liquidated damages for delay, up to 50% of the price of the relevant Products, provided that OTM substantiates any such deduction or claim with evidence of the loss to which it relates (and, for clarity, Supplier shall pay to OTM such liquidated damages even where the delay is attributable to a Force Majeure Event); and/or
 - b) subject to clause 7.10, at any point after the due delivery date for the Products (or the relevant part thereof) but prior to the Products (or the relevant part thereof) being delivered, terminate the Contract by giving written notice of that termination to Supplier. Upon any such termination, the provisions of clause 17.4(d) shall apply.
- 7.9. If final acceptance of the Services in accordance with clause 7.6 has not taken place within 30 days of the date the Services are scheduled to be completed as set out in the timetable, or, where no completion date is specified, within a reasonable period of time, then OTM shall, subject to clause 7.10, be entitled to reject the Services (in whole or in part) and terminate the Contract by giving written notice of that termination to Supplier. OTM shall only be liable to pay for any accepted Services in accordance with clause 17.4(d).
- 7.10. Where the delay (in respect of clause 7.8(b)) in delivering the Products and/or (in respect of clause 7.9) in the final acceptance of the Services is attributable to a Force Majeure Event, OTM shall not be entitled to exercise its rights under (in respect of the delivery of Products) clause 7.8(b) and/or (in respect of the provision of Services) clause 7.9 until the day after the expiry of the 28 day period that applies during the continuance of the Force Majeure Event pursuant to clause 29. At any point after the expiry of such period, and prior to the performance by Supplier of its obligations under the Contract, OTM may terminate the Contract in accordance with clause 7.8(b) and/or clause 7.9, as applicable.
- 7.11. The time is of the essence in respect of the delivery of Products and the provision of Services.

8. Export controls

- 8.1. Supplier represents warrants and undertakes that it has obtained all necessary export approvals, licences, permits and authorisations for the supply of Products and/or Services to OTM, including (without limitation) in respect of:
- a) the Export Administration Regulations of the US Department of Commerce; and
 - b) the International Traffic in Arms Regulations (including, without limitation, the requirement to obtain, where applicable, the written authorisation of the US Office of Defence Trade Control); and any other applicable regulations, legislation or other export controls, (together, "Export Approvals").
- 8.2. It shall be the responsibility of Supplier to identify the need to obtain (and, where applicable, maintain) any Export Approvals and to comply on an ongoing basis with the requirements and obligations imposed by any regulatory authority administering and/or enforcing the same.



Terms and Conditions of Purchase

- 8.3. Supplier represents warrants and undertakes that OTM may export or re-export the Products and/or Services supplied by Supplier and that no export restrictions exist in respect of any US or other export regulations.

9. Risk and Title

- 9.1. Risk of loss of or damage to Products will pass to OTM upon delivery in accordance with the terms of the relevant Contract.
- 9.2. Title to Products will pass to OTM upon delivery unless payment for those Products is made prior to delivery, in which case title to those Products will pass to OTM at the time payment is made.

10. Obligations

- 10.1. Supplier must ensure that each Product it supplies to OTM:
- is of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended); fit for any purpose held out by Supplier or made known to Supplier by OTM prior to or at the time the Contract is made; and free from defects in design, material and workmanship;
 - is (unless agreed otherwise by OTM in writing) new and, where appropriate, carries the "CE" marking;
 - corresponds with OTM's purchase order and any relevant samples or Specifications or descriptions of such Products.
- 10.2. In providing any Services to OTM, Supplier shall:
- perform the Services using reasonable care, skill and diligence and in accordance with good industry practice;
 - use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Supplier's obligations are fulfilled in accordance with these terms and conditions;
 - ensure that the Services conform with all descriptions and specifications set out in the purchase order and any other applicable documentation;
 - provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - observe all health and safety rules and regulations (including (without limitation) the Health and Safety at Work Act 1974), and any applicable environmental laws and/or regulations;
 - comply with (i) the reasonable instructions of OTM, its employees and officers; (ii) OTM's health, safety and environmental rules and/or policies, and (iii) any security requirements that apply at any of OTM's premises;
 - not do or omit to do anything which may cause OTM to lose any licence, authority, permit, consent or permission on which it relies for the purposes of conducting its business, and Supplier acknowledges that OTM may rely or act on the Services; and
 - provide Services in accordance with any requirements expressly stated in the purchase order.
- 10.3. Supplier shall ensure that:
- it obtains and at all times maintains all necessary licences, permits, authorities and consents;
 - each Contract is performed in accordance with all applicable laws and regulations (including, without limitation, any applicable EU enactments) and the directions and requirements of any competent authority(ies);



Terms and Conditions of Purchase

- c) it has the legal right to sell the Products and supply the Services to OTM; and
- d) neither the Products and/or Services Supplier supplies to OTM, nor any person's use of the same, infringes any third party right.

11. Quality Control

- 11.1. Supplier must comply with all applicable legal requirements concerning the manufacture, packaging, packing, delivery and sale of the Products and Services. Supplier must provide all Services in accordance with goods industry practice and using reasonable care and skill.
- 11.2. Supplier acknowledges that, in addition to the obligations set forth in this clause 11, it will comply with the material traceability requirements set out in clause 13.
- 11.3. Where expressly specified by OTM on the purchase order and/or in any Specification, Supplier shall:
 - a) comply with OTM's specified quality assurance (QA) procedures (as notified by OTM to Supplier from time to time); and
 - b) ensure that each Contract is performed (at Supplier's expense) in conformity with the quality requirements of BS EN ISO 9001:2015.
- 11.4. Supplier shall ensure that its obligations under each Contract are carried out in accordance with OTM's quality requirements. Without prejudice to any other terms herein, Supplier shall ensure that any Products and/or Services to be supplied shall be subjected to those quality assurance conditions specified in the purchase order. Such quality assurance conditions shall be specified as letters taken from the following list (as may be updated by OTM from time to time):
 - B. Batch segregation of items to ensure traceability to source
 - C. Certificate of Conformity required
 - E. EASA Form 1 required
 - F. First Article Inspection required consistent with aerospace standard EN 9102C
 - M. Material Certificate of Analysis / Full Test Certificate required
 - O. Original Manufacture Certificate or Copies required
 - S. Statistical Process Control Report required for KC features
 - T. Test / Calibration Certificate required
- 11.5. Unless otherwise agreed in writing by OTM, Supplier shall ensure that all materials, component parts, sub-assemblies and assemblies used in the provision of Products and/or Services are of new manufacture and are in accordance with the Specifications and meet OTM's required standards of design, material, workmanship and quality.
- 11.6. Without prejudice to any other terms herein, OTM may reject any Products that do not comply with the requirements of clause 11.5. Supplier shall collect such rejected Products at Supplier's expense and risk and Supplier shall, at OTM's option, repay to OTM any monies paid to Supplier for such Products or supply replacement Products without charge and within a reasonable time.

12. REACH

- 12.1. The parties acknowledge that Regulation 1907/2006/EC on the Registration, Evaluation, Authorisation and Restriction of Chemical substances legislation ("REACH") may apply to Products and/or Services supplied by Supplier under or in connection with these terms and conditions. Where REACH applies in respect of any Products and/or Services supplied by Supplier under or in connection with these terms and conditions, Supplier shall ensure that such Products and/or Services comply with the requirements of REACH.
- 12.2. Supplier warrants, represents and undertakes that:
- any substance or chemical forming part of or used in the manufacture or supply of the Products and/or Services that Supplier is obliged to register pursuant to REACH has been duly registered;
 - it has made all reasonable enquiries of its suppliers to ensure that they have complied with the applicable requirements of the REACH regime; and
 - Supplier and its suppliers have identified and obtained (and continue to maintain on an ongoing basis) the required authorisations in respect of any substances of very high concern (as defined in REACH) used in or in connection with the supply of Products and/or Services by Supplier (or its suppliers).

13. Material Traceability

- 13.1. Supplier acknowledges that OTM is often required to:
- verify that the Products and Services it provides are genuine and conform with the required specification, and
 - document the source, quality and authenticity of such Products and Services. Supplier acknowledges that, in addition to the obligations set forth in this clause 13, it will comply with the quality control requirements set out in clause 11.
- 13.2. Supplier represents, warrants and undertakes to OTM that the Products and/or Services (and any components and/or materials incorporated therein) that it supplies and/or provides to OTM:
- comply with the requirements of clauses 10.1(a), 10.1(b), 10.1(d) and 10.2(c) of these terms and conditions;
 - are authentic and genuine and are manufactured by Supplier, the manufacturer specified by OTM on the purchase order or any Specification, or the manufacturer made known by Supplier to OTM (as applicable); and the Country of Origin (COO) is clearly detailed for each part/material;
 - comply with all applicable conformity, quality testing and assurance procedures (including any such procedures expressly specified by OTM to Supplier).
- 13.3. In respect of each Contract for Products and/or Services incorporating a purchase order that specifies a letter listed in clauses 11.4, Supplier shall (i) deliver (maintaining a copy for itself) to OTM copies of the manufacturer's certificate of conformity or compliance, any quality or acceptance testing results, and/or any chemical analyses results in respect of the Products and/or Services supplied, and the raw materials and/or components incorporated therein; and (ii) maintain copies of all purchase orders, receipts and other documentation that it holds in respect of any Products and/or Services it supplies and the raw materials and/or components incorporated therein, (each such document mentioned in this clause 13.3 being a "Traceability Document").



Terms and Conditions of Purchase

- 13.4. Notwithstanding the termination of any Contract, or the fact that Supplier ceases to work with OTM (for any reason), Supplier shall maintain copies of all Traceability Documents (and upon request promptly provide copies of the same to OTM) until OTM notifies Supplier that it is no longer required to maintain a copy of such Traceability Documents.

14. Audit and Records

- 14.1. OTM and its agents and representatives (including any quality manager, inspector or customer of OTM) and any governmental authority, body or agency shall be entitled to visit Supplier's premises (and Supplier shall ensure that such persons shall be entitled to visit the premises of its subcontractors) without notice at any reasonable time to:
- a) inspect the premises and inspect and test the Products and/or Services; and/or
 - b) review and take copies of (and take such copies away) any records held by Supplier in connection with the provision of any Products and/or Services (including, without limitation, any Traceability Documents), and Supplier will provide OTM, its agents and representatives and any such governmental authority, body and/or agency with all co-operation and facilities reasonably required for such activities and access to such records.
- 14.2. Supplier must maintain all appropriate records about the manufacture and testing of Products and Services in accordance with good industry practice and make such records available to OTM and its authorised nominees on request.

15. Advice and Release Certificates

- 15.1. In respect of each Contract, Supplier shall ensure that on the day of delivery of each consignment of Products, such consignment shall include such Certificates of Conformance and/or such other documents as may be required by clause 11.4. Supplier shall ensure that each such certificate is signed by the executive of Supplier responsible for Product quality (or approved signatory).

16. Invoices

- 16.1. In respect of each Contract, Supplier may submit its invoice for the Products and/or Services no later than the 5th day of the month following the month in which all the Products have been delivered or all of the Services have been completed (as the case may be), and those Products and Services have been accepted in accordance with these terms and conditions. OTM will pay all undisputed sums set out in an invoice within 60 days of the date of receipt of each such invoice.
- 16.2. Each invoice must quote the purchase order number, and details of all Products and Services supplied including reasonable details of the manner in which the invoice is calculated and be accompanied by such supporting receipts and documents as OTM may reasonably require. Failure by Supplier to comply with these requirements shall render the invoice invalid, and OTM shall be entitled to treat the invoice and the sums demanded therein as being disputed until Supplier re-submits a valid invoice to OTM that is in compliance with these terms and conditions.
- 16.3. Supplier may charge, and OTM shall pay, interest on any undisputed and overdue invoices at the rate of 3 per cent. per annum above the base rate of the Bank of England for the time being in force. The interest shall accrue from day to day and be compounded monthly from the due date until the date of actual payment (after as well as before judgment).



Terms and Conditions of Purchase

17. Termination

- 17.1. OTM may terminate any Contract by giving notice to Supplier on or at any time after the occurrence of any of the following events:
- a) Supplier makes any arrangement or composition with its creditors; Supplier commits an act of bankruptcy; a receiving order is made against Supplier; insolvency or winding-up proceedings are instituted by or against Supplier; a receiver, liquidator or administrator is appointed for Supplier; any of Supplier's assets is the object of attachment, sequestration or other type of comparable proceeding; Supplier is unable or admits in writing Supplier's inability to pay Supplier's debts as they fall due; Supplier ceases or threatens to cease to carry on business; or Supplier suffers or takes any similar or analogous action in any jurisdiction in consequence of debt;
 - b) there is a change of control, as defined in Sections 450 and 451 of the Corporation Tax Act 2010, in Supplier;
 - c) OTM reasonably believes that any of the events mentioned in clause 17.1(a) or 17.1(b) is about to occur; or
 - d) Supplier commits a material breach of the Contract and either that breach cannot be remedied or, in respect of a breach that is capable of remedy, Supplier fails to remedy that breach within 10 days of being requested to remedy that breach.
- 17.2. OTM may terminate any Contract without cause in accordance with clause 4.5.
- 17.3. OTM may terminate a Contract in accordance with provisions of clauses 7.8, 7.9 or 29.
- 17.4. On termination of a Contract:
- a) Supplier will, if required by OTM, fulfil any part of the Contract that is unfulfilled at the date of termination.
 - b) Supplier must return to OTM all property belonging to OTM (including any OTM Items) then in Supplier's possession, including all materials supplied or made available by OTM in connection with the Contract; and
 - c) clauses 3.1, 4.2, 5, 6.2, 6.3, 7.5, 7.8, 7.9, 8, 9, 10, 11, 12, 13, 14, 16, 17.4, 17.5, 18, 19, 20, 23, 26, 27, 28 and 30 of these terms and conditions will survive the termination of the Contract, as will any other clause which by its nature is intended to survive termination.
 - d) Upon the termination of the Contract (for any reason) OTM shall, within 30 days of the date of termination of the Contract:
 - e) In respect of any Products delivered and/or Services performed (or part thereof) prior to the date of termination of the Contract, pay a fair and reasonable price for all Products and/or Services delivered and/or performed (as applicable) prior to the date of termination; and/or (in respect of any Products delivered prior to the date of termination), reject such Products and upon any such rejection by OTM, OTM shall make the rejected Products available for collection by Supplier (notifying Supplier of the location, date and time upon which the rejected Products will be ready for collection), and Supplier shall at its own expense promptly collect such Products from OTM.
 - f) Any such payment (as referred to in clause 17.4(d)) together with any sums paid or due or becoming due to Supplier under the relevant Contract shall not exceed the total price for the Products and/or Services set out in the purchase order.
- 17.5. Any termination of a Contract shall not prejudice any rights which may have accrued to either party prior to the point of termination.



Terms and Conditions of Purchase

18. Intellectual Property

- 18.1. OTM will own all intellectual property rights (including all rights in designs and drawings) that are created during the design, manufacture and supply to OTM of Bespoke Products and/or during the supply of Services. Supplier will, at OTM's cost, provide OTM with all the assistance OTM requests (including signing documentation) to fully and effectively vest in OTM the rights referred to in this clause and in order for OTM to apply for, and obtain, registrations in respect of those rights.
- 18.2. If Supplier decides to manufacture or supply or ask someone else to manufacture or supply any products and/or services that are the same as or similar to any of the Bespoke Products and/or Services other than under or in connection with a Contract, it shall only do so with the prior written consent of OTM and, in these circumstances, Supplier shall ensure that those products and services do not infringe OTM's intellectual property rights and do not use any of OTM's trademarks, logos or get up or any trade mark, logo or get up that so resembles any of OTM's trademarks, logos or get up as to be likely to cause confusion.
- 18.3. Supplier shall indemnify OTM against all costs, damages, losses and expenses OTM incurs as a result of Supplier's failure to comply with its obligations under clause 18.2.

19. Indemnity

- 19.1. Supplier shall indemnify OTM against all costs, damages, losses and expenses OTM incurs in connection with:
 - a) Supplier's breach of these terms and conditions or any Contract;
 - b) any claim or allegation actual or threatened that any Products and/or Services Supplier supplies to OTM infringes, or their importation, use, resale and/or disposal infringes, any third party right; or
 - c) any claim or allegation (whether actual or threatened) that any Product Supplier supplies to OTM does not comply with applicable Product safety legislation (including the Consumer Protection Act 1987).
- 19.2. If any claim is made or threatened for infringement or alleged infringement of any intellectual property right which may affect the use, resale and/or disposal of any of the Products and/or Services, then Supplier must promptly notify OTM of this fact and, upon OTM's request, provide OTM with full details of the claim.
- 19.3. Supplier must, at OTM's request and at Supplier's cost, provide OTM with all reasonable assistance for the purpose of contesting any claim made against OTM to which clause 19.1 may apply.
- 19.4. If Supplier is located in the United Kingdom, then it shall be responsible for financing the costs of collection, treatment, recovery and environmentally sound disposal of all waste electrical and electronic equipment from users arising from any standard Products that Supplier sells to OTM in accordance with Supplier's obligations as a "producer" of those Products under the Waste Electrical and Electronic Equipment Regulations 2006 (Regulations). Supplier shall indemnify OTM against all costs, damages, losses and expenses OTM incurs as a result of Supplier's failure to comply with its obligations under the Regulations and/or this clause.



Terms and Conditions of Purchase

20. Insurance

- 20.1. Supplier shall maintain, and Supplier shall ensure that its sub-contractors maintain, adequate public liability, professional indemnity and Product liability insurance cover with a reputable insurer to cover Supplier's potential liability to OTM under these terms and conditions and each Contract and shall provide OTM with copies of the relevant insurance policies upon OTM's request.
- 20.2. In respect of each Contract, prior to providing OTM with any Products or Services, Supplier shall carry out, and Supplier shall ensure that its sub-contractors carry out, appropriate risk assessments in connection with such provision and document the assessments undertaken and the results. At OTM's request Supplier shall provide OTM with copies of the risk assessments undertaken and the results.

21. Supplier's Documentation

- 21.1. Supplier shall at all times provide OTM with all instructions relating to the use of Products and/or Services and in particular draw attention to any dangers which may be met with in relation to the handling or application of the Products and/or Services or in the use or processing of the Products and/or Services.

22. Product Warranty

- 22.1. Supplier warrants that each Product supplied by it is free of defects (including defects in design, workmanship and materials) for a period of twelve (12) calendar months commencing from the date that each Product is delivered by Supplier to OTM or an OTM Subsidiary ("Warranty Period") and Supplier undertakes at its sole expense to make good whether by repair or replacement all defects in any Products (or any part thereof) which OTM determines to be defective and which appear within the Warranty Period (whether notified by OTM to Supplier within the Warranty Period or not) ("Warranty").
- 22.2. Where OTM notifies Supplier of a defect in a Product (or any part thereof), Supplier shall promptly (at OTM's discretion) repair or replace the defective Product:
 - a) (where OTM requires Supplier to repair the defective Product) Supplier shall at its own expense and risk collect the defective Product from OTM's premises and repair the defective Product and, following such repair, return the repaired Product to OTM. Where Supplier determines that it is not possible to repair the defective Product to the standard of a new, non-defective Product as required by the relevant Contract, or Supplier fails to repair and deliver the repaired Product to OTM within seven (7) days of its collection from OTM, Supplier shall replace the defective Product with a replacement Product; or
 - b) (where OTM requires Supplier to replace the defective Product, or where Supplier cannot, or fails to repair a defective Product in accordance with Clause 22.2(a)) Supplier shall deliver the replacement Product to OTM (at a location of OTM's choosing) and collect and dispose (in accordance with all applicable laws and regulations) of the defective Product. Replacement Products shall correspond to the specification of the defective Product being replaced, and where Supplier has discontinued or cannot supply a replacement Product that corresponds to the defective Product being replaced, Supplier shall (at OTM's election):
 - c) supply a Product that is materially similar to the defective Product being replaced, which has a specification and functionality equal to or greater than that of the defective Product being replaced; or refund to OTM a sum equivalent to the original purchase price paid by OTM in respect of the defective Product.



Terms and Conditions of Purchase

- 22.3. Where OTM requires Supplier to repair a defective Product pursuant to Clause 22.2(a), the balance of the Warranty Period of the original Warranty shall continue to apply in respect of that repaired Product and all the representations, warranties and undertakings set forth in these terms and conditions shall continue to apply in respect of each such repaired Product. Where Supplier is required to replace a defective Product pursuant to Clause 22.2(b), each replacement Product shall include a new Warranty (which, for clarity, shall be upon the terms and conditions set forth in this Clause 22) which shall apply for the full duration of a new Warranty Period.

23. Support

- 23.1. In respect of each Contract, Supplier shall comply with OTM's reasonable requests and instructions relating to Product support, including the free of charge supply of technical data, publications, updates, modifications and spares data and the requirement to provide warranties in favour of and for the benefit of OTM and its customers to whom the Products and/or Services are supplied.

24. Confidentiality

- 24.1. The details of these terms and conditions, each order submitted by OTM, together with all other information or material of a confidential nature supplied or made available to Supplier by OTM in connection with any order, are strictly confidential. Supplier:
- a) may use such information only for the purpose of carrying out obligations under these terms and conditions and any Contract;
 - b) must not disclose such information to any third party and shall use all reasonable efforts to prevent any such disclosure except as permitted under clause 24.1(c); and
 - c) may disclose such information to employees, agents and sub-contractors who need to know the same for the purpose of carrying out the obligations under these terms and conditions and any Contract, provided that before such disclosure the relevant employee, agent or sub-contractor is made aware of the confidentiality obligations and Supplier ensures compliance with those obligations.
- 24.2. Supplier must treat any information or material supplied or made available by OTM as confidential unless such information or material is public knowledge.
- 24.3. No media releases, public announcements or public disclosures by Supplier, its employees, agents or sub-contractors relating to these terms and conditions, Supplier's relationship with OTM or any order may be made without the prior written approval of OTM.

25. Data Protection

In relation to any personal information provided or made available to Supplier by OTM, Supplier must:

- 25.1. process the information only in accordance with OTM's lawful instructions;
- 25.2. take appropriate technical and organisational measures against unauthorised or unlawful processing of the information and against accidental loss or destruction of or damage to the information;
- 25.3. not disclose such personal data to any party who carries on business outside the European Economic Area;



Terms and Conditions of Purchase

- 25.4. co-operate fully with OTM to enable OTM to adequately discharge its responsibility as a data controller under the Data Protection Act 1998 (and any subsequent amendments thereto or re-enactments thereof) including assisting with data subject access requests; and
- 25.5. on a request by OTM allow OTM to audit Supplier's compliance with this clause, and the Products and/or Services provided by Supplier under or in connection with these terms and conditions and/or any Contract.

26. Anti-bribery

- 26.1. Supplier shall:
 - a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("Relevant Requirements");
 - b) 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 United Kingdom;
 - c) comply with OTM's ethics, anti-bribery and anti-corruption policies (as notified by OTM to Supplier, and as updated by OTM, from time to time) ("Relevant Policies");
 - d) have and shall maintain in place its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 26.1(b), and will enforce them where appropriate;
 - e) promptly report to OTM any request or demand for any undue financial or other advantage of any kind received by Supplier in connection with the performance of a Contract or these terms and conditions;
 - f) upon reasonable request by OTM certify to OTM in writing signed by an officer of Supplier, compliance with this clause 26 by Supplier and all persons associated with it under clause 26.2. Supplier shall provide such supporting evidence of compliance as OTM may reasonably request.
- 26.2. Supplier shall ensure that any person associated with Supplier who is performing services and/or providing goods in connection with a Contract or these terms and conditions does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on Supplier in this clause 26 ("Relevant Terms"). Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to OTM for any breach by such persons of any of the Relevant Terms.
- 26.3. Breach of this clause 26 shall be deemed a material breach of these terms and conditions and the relevant Contract under clause 17.1(d).
- 26.4. For the purpose of this clause 26, the meaning of "adequate procedures" and "foreign public official" and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 26 a person associated with Supplier includes any subcontractor or supplier of Supplier.



Terms and Conditions of Purchase

27. Assignment

- 27.1. Supplier must not assign, sub-contract or dispose of any of its rights or obligations under these terms and conditions or any Contract without prior written consent from OTM.
- 27.2. Supplier shall in all cases act as principal in respect of each Contract and will be responsible and liable to OTM for the acts and omissions of any employees, agents and sub-contractors of Supplier. An obligation on Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon Supplier to procure that its employees, staff, agents and sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing. Where applicable, sub-contractors shall be subject to the same terms and conditions as those contained in the order. Evidence of this shall be made available to OTM's representatives on request.

28. Notices

- 28.1. All notices and communications between the parties shall be in writing (which shall include, subject to clause 28.4, email).
- 28.2. Subject to clauses 28.4 and 28.5, any notice or other communication sent to Supplier shall be sufficient if sent to a postal or email address or fax number notified to OTM for the purpose or to the postal or email address or fax number of Supplier last known to OTM.
- 28.3. Subject to clauses 28.4 and 28.5, notices or other communications sent by Supplier to OTM shall be sent to the postal or email address or fax number given for OTM on the face of the order for the attention of the OTM representative named on the order
- 28.4. Supplier may not use email as a valid means of serving any notice to terminate any Contract and neither party may use email to serve on the other any legal and/or court document (including, without limitation, the service, delivery or notification of any without prejudice communications, claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with any Contract or these terms and conditions).
- 28.5. Any notice shall be deemed to have been served:
 - a) if delivered personally, at the time of delivery; or
 - b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post; or
 - c) if sent by fax, on the date of transmission if transmitted before 3.00 p.m. on any Business Day, and in any other case on the Business Day following the date of transmission; or
 - d) if sent by e-mail, upon the generation of a receipt notice by the recipient's server or, if no receipt notice is generated, upon delivery to the recipient's server.
- 28.6. In proving service of a notice it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid first class post or by prepaid airmail, that the facsimile was properly addressed and transmitted or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.



Terms and Conditions of Purchase

29. Waiver

- 29.1. No delay or failure by OTM in exercising or enforcing any right or remedy under these terms and conditions or any Contract will be deemed to be a waiver of any such right or remedy, nor will that failure operate to bar the exercise or enforcement of such right or remedy at any future time.

30. Force Majeure

- 30.1. A "Force Majeure Event" shall mean an event beyond the reasonable control of Supplier. A Force Majeure Event includes acts of God, expropriation or confiscation of facilities, any form of Government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots, and floods, fires, explosions or other catastrophes. A Force Majeure Event does not include:
- a) strikes, lock-outs or other industrial action by employees of Supplier or its sub-contractors, agents or other third parties working for and/or with Supplier, and
 - b) Supplier's (or its supplier or sub-contractor's) inability to source, stock or otherwise obtain products, parts, goods and/or other items related to the supply of Products and/or Services, together with any delays associated with the same.
- 30.2. Where Supplier is subject to a Force Majeure Event pursuant to clause 30.1 it shall not be in breach of these terms and conditions provided that:
- a) it notifies OTM as soon as is reasonably possible in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - c) it has used its best endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under these terms and conditions in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 30.3. For clarity and notwithstanding the occurrence of a Force Majeure Event, where the occurrence of the Force Majeure Event gives rise to a delay in the delivery of Products to OTM, Supplier shall continue to be liable to pay to OTM the liquidated damages pursuant to clause 7.8(a).
- 30.4. If the Force Majeure Event prevails for a continuous period of more than 28 days OTM may terminate the Contract by giving seven (7) days' written notice to Supplier. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of these terms and conditions occurring prior to such termination.

31. Obsolescence

- 31.1. Supplier is responsible for the managing of obsolescence for ten (10) years from the date of the purchase order for the specific Products identified in the purchase order (including in respect of any components, assemblies, sub-assemblies, piece parts and materials relating thereto) ("OM Products"). Notwithstanding any obsolescence issues or problems, Supplier shall remain responsible for meeting all performance and other requirements of the OM Products.
- 31.2. Supplier shall implement a proactive approach to obsolescence management strategy in accordance with the International Electrotechnical Commission's standard IEC 62402:2007, which shall as a minimum include:



Terms and Conditions of Purchase

- a) the ongoing identification and review of obsolescence concerns and issues for ten (10) years from the date of this Agreement;
 - b) the identification of mitigation action of obsolescence concerns for ten (10) years from the date of this Agreement; and
 - c) the identification of resolution action of obsolescence issues, and
 - d) Supplier shall promptly notify OTM of any concerns or issues arising under sub-Clauses 31.2(a), 31.2(b) and/or 31.2(c) in respect of the OM Products supplied by Supplier to OTM.
- 31.3. As part of Supplier's obsolescent management strategy in respect of the OM Products, Supplier shall as soon as Supplier becomes aware that an OM Product is likely to, or is about to, become obsolete, notify OTM of this fact and Supplier shall work in consultation with OTM to (at OTM's discretion):
- a) source and/or procure a suitable substitute or replacement for that OM Product that is of a comparable technical specification; and/or
 - b) (upon OTM's written instruction) source a reserve stock of that OM Product(s) for OTM in a quantity (specified by OTM) so as to meet OTM's ongoing supply obligations to OTM's customers.

32. General

- 32.1. No third party shall have any rights under or in connection with these terms and conditions or any Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 32.2. If at any time any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of these terms and conditions, or the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of these terms and conditions.
- 32.3. Nothing in these terms and conditions shall prejudice any condition or warranty, (express or implied) or any other right or remedy to which OTM is entitled in relation to Supplier by virtue of statute law, common law or otherwise.
- 32.4. These terms and conditions, orders and each Contract and any non-contractual obligations in connection with the same are governed by and will be construed in accordance with English law and, except as set out in clause 32.6, OTM and Supplier hereby submit to the exclusive jurisdiction of the English courts in respect of the same.
- 32.5. If Supplier breaches any of these terms and conditions, and/or any term of this Agreement and/or any Contract, then Supplier acknowledges and agree that OTM may bring a claim against Supplier for the breach in any jurisdiction in which Supplier or its assets are located.
- 32.6. Notwithstanding the provisions of Clauses 32.4 and 32.5, if any dispute or difference of any kind whatsoever ("Dispute") arises between the Parties in connection with, or arising out of, this Agreement or the performance of this Agreement, either Party may serve on the other a notice of Dispute. Service may be couriered to the head office, with service effective immediately. The Parties shall attempt to settle that Dispute amicably and agree to enter into good faith negotiations to do so in the first instance within fourteen (14) days of the service of the notice of Dispute, by discussion between authorised representatives of the Parties. If the Dispute cannot be settled within a further fourteen (14) day period from the date of service of the notice or such longer period as the Parties may agree in writing, the



Terms and Conditions of Purchase

Dispute may be referred to mediation (in accordance with Clause 32.8) and/or to an Expert (in accordance with Clause 32.7).

32.7. Expert Decision

- a) Technical Disputes are defined as any issue in dispute between the Parties which is of a sufficiently technical nature that it is suitable for review by a technical expert.
- b) In the event that any Technical Dispute has not been resolved pursuant to the procedure for amicable settlement outlined above, the Technical Dispute shall be referred to an expert ("Expert"). For clarity, the Expert is to be concerned only with any Technical Dispute, and not with any other issue in dispute, unless the Parties agree otherwise.
- c) If the Parties are unable within fourteen (14) days to agree upon the identity of the Expert to be appointed then either Party may request the Institution of Mechanical Engineers through its chief executive officer or other appropriate representative to appoint an Expert.
- d) The Parties shall attempt to agree the terms of the Technical Dispute to be referred to the Expert but if the Parties are unable within fourteen (14) days to agree upon the terms of the Technical Dispute, the Expert shall determine the extent of the Technical Dispute to be resolved.
- e) Unless the Parties agree or the Expert determines that no hearing is necessary, within seven (7) days of the appointment of the Expert, the Expert shall nominate a time and place in England for a hearing of the Parties on the Dispute which time shall not be more than twenty-one (21) days after the Expert's appointment.
- f) At the time nominated for the hearing, each Party must appear before the Expert and present its case.
- g) The Expert must render her/his final decision on the Dispute as soon as possible after completion of the hearing and not later than forty-nine (49) days from the date of her/his appointment and must forthwith advise the Parties in writing of her/his decision and her/his reasons for such decision, and state that her/his decision is final.
- h) The proceedings shall not be regarded as an arbitration and the procedural laws relating to commercial arbitration shall not apply. The Expert shall act as an expert and not an arbitrator.
- i) The costs of the referral to the Expert shall be borne equally by the Parties. However, each Party shall be responsible for its own costs associated with the referral.
- j) If any Party is dissatisfied with the Expert's final decision, then that Party may within twenty eight (28) days after receiving notice of such final decision, or within twenty eight (28) days after the expiration of the period within which the Expert had to render its decision, as the case may be, provide the other Party with a notice of intent to seek resolution by court proceedings.
- k) If the Expert has given written notice of her/his final decision to the Parties and no notice of intent to seek resolution by court proceedings has been communicated by one Party to the other within a period of twenty-eight (28) days from receipt of that notice, the said decision shall remain final and binding upon the Parties except in the case of fraud.

32.8. Mediation

If, following the amicable procedure outlined in Clause 32.6 above, there remains any issue in dispute between the Parties which is not a Technical Dispute, the Parties will attempt to settle it by mediation in accordance with the CEDR (Centre for Effective Dispute Resolution) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by the CEDR. To initiate the mediation a Party must give notice in writing ("ADR Notice") to the other Party to the Dispute requesting a mediation. A copy of the request should be sent to the CEDR. The Parties may agree that the mediation should not take place until after the



Terms and Conditions of Purchase

outcome of any reference to an expert of Technical Disputes. In any event, the mediation will start not later than twenty-eight (28) days after the date of the ADR Notice or the receipt of the Expert's final decision, whichever is the latest.

32.9. Legal Rights

- a) Neither Party may commence any court proceedings in relation to any Dispute arising out of this Agreement until it has attempted to settle the Dispute through all the applicable dispute resolution procedures outlined in this Agreement, save that a Party may commence court proceedings for (i) the purposes of obtaining interim relief or (ii) to avoid material prejudice which would be caused by a delay if court proceedings were not issued forthwith.
- b) The performance of the respective Parties' obligations under this Agreement shall not cease or be delayed by the dispute resolution procedure or the initiation of mediation and each Party shall continue to fulfil their respective obligations under this Agreement.

32.10. The existence of a Dispute and all negotiations connected with that Dispute shall at all times be and remain confidential.

32.11. This Clause 32 is without prejudice to either Party's right to seek interim relief against the other Party (such as an injunction) through the courts to protect its rights and interests, or to enforce the obligations of the other Party.