



## Terms and Conditions

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**CONTENTS**

| Section | Item                        | Page |
|---------|-----------------------------|------|
| 1       | Interpreation               | 3    |
| 2       | Basis of Sale               | 4    |
| 3       | Quotations                  | 5    |
| 4       | Specifications              | 5    |
| 5       | Delivery & Risk             | 5    |
| 6       | Prices and Payment          | 6    |
| 7       | Title                       | 6    |
| 8       | Improvements                | 7    |
| 9       | Customers Responsibilities: | 7    |
| 10      | Intellectual Property       | 8    |
| 11      | Assistance                  | 8    |
| 12      | Warranties And Liability    | 9    |
| 13      | Confidentiality             | 10   |
| 14      | Force Majeure               | 10   |
| 15      | Assignment                  | 11   |
| 16      | Notices                     | 11   |
| 17      | Law And Jurisdiction        | 11   |
| 18      | Disputes                    | 11   |
| 19      | General                     | 12   |

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## 1 Interpretation

1.1 These Conditions comprise the terms and conditions under which the Supplier is willing to supply Products to the Customer. Unless otherwise agreed in writing between the authorised representative of each of the Supplier and the Customer, the Contract is entered into on the basis of these Conditions to the exclusion of any other terms and conditions set out or referred to in any document or other communication used by either party in concluding the Contract, including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar documents. In the event of any conflict between these Conditions and any other document or communication, the former shall prevail. By placing an Order for the Products the Customer shall be deemed to have accepted these Conditions.

### 1.2 In these Conditions:

|                            |   |
|----------------------------|---|
| "Assistance"               | means any installation, support or other ancillary work or services which the Supplier has agreed to supply to the Customer in connection with the Products;  |
| "Associated Company"       | means, in relation to either party, any entity which controls, is directly or indirectly controlled by, or is in common control with such party;  |
| "Conditions"               | means the standard terms and conditions set out in this document and including any special terms and conditions agreed in writing between the Supplier and the Customer;  |
| "Confidential Information" | means, in relation to either party, information belonging or relating to that party, its business, business plans, affairs or activities, which information is confidential and proprietary to that party;  |
| "Contract"                 | means a contract for the sale and purchase of Products between the Customer and the Supplier;   |
| "Control"                  | means, in relation to either party, the right of a person or persons acting together, whether in law or in fact, to secure whether by means of the holding of shares bearing 50% or more of the voting rights attaching to all of the shares in that party or by having the power to control the composition of the Board of Directors of that party, that all or a proportion of the affairs of that party are conducted in accordance with the wishes of that person or persons, and "Controlled" shall be construed accordingly; |
| "Customer"                 | means the person, firm or company whose order is accepted by the Supplier;  |

|                         |  |
|-------------------------|--|
| <b>"Delivery"</b>       | means, in relation to any Contract, transfer of physical possession of the Products to the Customer or its agent, such transfer being deemed to take place at the moment the Products leave the Supplier's premises; |
| <b>"Improvements"</b>   | means all improvements to, or modifications, adaptations or developments of, any of the Products during the term of the Contract;  |
| <b>"Order"</b>          | means an order, in a form acceptable to the Supplier, placed by the Customer for the supply of Products specifying the Products ordered;   |
| <b>"Price"</b>          | means the price payable by the Customer for the Products;  |
| <b>"Products"</b>       | means all products that the Supplier has agreed to supply to the Customer under a Contract;  |
| <b>"Specifications"</b> | means the Product design and specification.  |
| <b>"Supplier"</b>       | means <b>HOIST UK LIMITED</b> , a company registered in England (No 5999459) and having its registered office is at 30 Bromborough Village Road, Bromborough, Wirral CH62 7ES.                                       |

- 1.3 Any purported amendment, variation of or addition to these Conditions, shall be inapplicable unless expressly and specifically accepted in writing by the authorised representative of each of the Supplier and the Customer in respect of the particular order in question
- 1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.5 Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.6 References to each party include its permitted assigns and successors by operation of law.

## 2 Basis of Sale

- 2.1 The Supplier shall supply and the Customer shall purchase the Products in accordance with an Order which is accepted by the Supplier. By placing an Order for Products the Customer shall be deemed to have accepted these Conditions. The Supplier shall be under no obligation to accept any Order from the Customer and reserves its complete discretion in this regard.
- 1.1 No Contract shall be deemed concluded unless and until the Supplier has accepted the Customer's Order either by (i) issuing an order confirmation in writing or in another agreed form; or (ii) commencing to manufacture or develop the Products specified in the Order.
- 1.2 Any Order accepted by the Supplier cannot be cancelled by the Customer except with the written consent of the Supplier and on the condition that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of the cancellation.

### 3 Quotations

- 1.3 A quotation by the Supplier does not constitute an offer and the Supplier reserves the right to withdraw or revise any quotation at any time.
- 1.4 The prices, quantities and delivery times stated in quotations are not binding on the Supplier unless otherwise expressly agreed by the Supplier.

### 4 Specifications

- 4.1 The Customer warrants that the Specifications comply with all applicable laws and regulations existing from time to time and relating to the Products.
- 4.2 The parties may agree in writing to vary the Specifications from time to time. The additional costs incurred by the Supplier in conforming to such varied Specifications shall be added to the amount payable by the Customer under the Contract.
- 4.3 The Supplier may incorporate Improvements to the Products to be supplied under a Contract which affect the form, fit, function or safety of the Products subject to the prior consent of the Customer (which shall not be unreasonably withheld or delayed). To the extent that any such changes necessitate amendments to the terms of the Contract (including without limitation as to prices or Delivery date(s)), the parties shall agree on such amendments, such agreement not to be unreasonably withheld or delayed.
- 4.4 Any drawings, dimensions, weights or performance data or any other technical information or particulars which are supplied by the Supplier to the Customer in the course of the performance of a Contract are given by the Supplier in the belief that they are as accurate as reasonably possible and the Customer acknowledges that it shall not treat such information as binding or as forming part of the Contract.

### 5 Delivery & Risk

- 5.1 The date for delivery in relation to any Order (the "Delivery Date") shall be the date specified in the Order and accepted by the Supplier in accordance with these Conditions, unless otherwise agreed in writing between the authorised representatives of the parties.
- 5.2 Although the Supplier shall use all reasonable efforts to deliver the Products on or before the Delivery Date, any delay in delivering the Products shall not give rise to a right by the Customer to treat the Contract as repudiated or to reject the Products. The Supplier shall not be liable for, nor be required to indemnify the Customer from or against, any loss, damage, actions, claims or expenses suffered or incurred, whether direct, indirect or consequential, as a result of such delay in delivery or despatch for any reason whatsoever.
- 5.3 If delivery or despatch is delayed due to an act or omission of the Customer, delivery to the Customer will be deemed to occur as soon as the Customer is notified that the Products are ready for despatch and the Products may be held thereafter by the Supplier for the Customer's account and at his expense and risk. Any additional costs incurred on actual delivery to the Customer shall be charged to the Customer.
- 5.4 The Supplier may alter or reschedule the Delivery Date under any Contract in the event that the Customer requests any Improvements to be made to the Products or requests any additional Products to be supplied, or otherwise causes a change or delay to Delivery Date and appropriate amendments shall be made to the Contract to reflect the rescheduled date.
- 5.5 The risk of loss, breakage or other damage to the Products whatsoever, shall pass to the Customer and the Supplier's performance of the Contract shall be considered completed, on Delivery, unless the Products are to be collected by the Customer when the risk of loss, breakage or other damage to the Products shall pass to the Customer upon the Supplier

notifying the Customer that the Products are ready for collection. The Supplier shall not be required to insure the Products whilst in the course of transportation to the Customer against fire, theft or loss or any other damage whatsoever in transit.

## 6 Prices and Payment

- 6.1 The Price shall be the price stated in the Contract or, where no price is stated, the price listed in the Supplier's price list current at the date of delivery.
- 6.2 The Supplier reserves the right to increase the cost payable by the Customer under the Contract if the cost to the Supplier of performing the Contract increases as a result of any change to the law or any other factor occurring which is beyond the reasonable control of the Supplier (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs).
- 6.3 If, as a consequence of any breach of these Conditions by the Customer or the supply of incorrect or inadequate information from the Customer, the cost to the Supplier in performing the Contract is increased, the Supplier may charge the Customer an extra amount to cover such additional costs and expenses.
- 6.4 If the Customer requests, and the Supplier agrees to supply any additional products, carry out any Improvements, or perform any additional work then the cost of such Products, Improvements or additional work shall be added to the amount payable under the Contract.
- 6.5 All prices payable for Products supplied under these Conditions are exclusive of Value Added Tax, sales taxes and any other applicable taxes, freight charges, duties and expenses which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 6.6 Invoices from the Supplier shall be paid in full by the Customer within thirty (30) days of the date of invoice (*unless pro-forma payment terms have been agreed*), without any deferment or right of set off on account of disputes, cross claims or for any other reason whatsoever. The Supplier may present invoices in advance of contractual performance. Payment of any amounts due to the Supplier under this Contract shall be made in [UK pounds sterling] and effected by direct bank transfer to the Supplier's nominated bank account, or by such other means as may be directed by the Supplier from time to time.
- 6.7 In the event payment is not made in full on or before the due date, the Supplier may, without prejudice to its other rights and remedies, charge interest at the rate of two percent (2%) per annum above the Supplier's principal bankers' base rate in force from time to time on the outstanding balance, which interest shall accrue on a daily basis from the date payment became due until the Supplier has received payment of the overdue amount together with the interest that has accrued. The Supplier may also, at its sole option, cancel the Contract or any uncompleted part of it, if payment is not made on or before the due date.

## 7 Title

- 7.1 Except as otherwise provided below, title to the Products shall remain in the Supplier until the Supplier has received payment in full of the price for all of the Products supplied to the Customer under any and all contracts between them and any other sums due from the Customer whatsoever, together with any interest payable on all overdue amounts.
- 7.2 Until such payment as required in Condition 7.1 above has been received, the Customer shall be responsible for storing the Products and maintaining records of the Products in such a way that they are clearly identifiable as the property of the Supplier. The Customer shall keep the Products separate from those of the Customer and third parties and shall keep the Products properly protected and insured. Should the Customer fail or refuse to keep the Products so separated and identified then all Products supplied by the Supplier shall be

deemed to belong to the Supplier to the extent of all sums owing to it. If the Customer shall sell or otherwise dispose of or make any insurance claim in respect of any of the Products prior to acquiring title to them he shall do so as principal and not as agent for the Supplier and shall not give any warranties or incur any liability on behalf of the Supplier. The Supplier shall be legally and beneficially entitled to the proceeds of any sale of Products owned by the Supplier and any insurance proceeds received in respect of Products owned by the Supplier. Such proceeds shall be paid into a separate bank account and shall be held by the Customer on trust for the Supplier to the extent of all sums due to the Supplier.

- 7.3 If the Customer shall (i) fail to make any payment when due; or (ii) become insolvent, have a receiver, administrative receiver, administrator or manager appointed over all or any part of its assets or business, make any composition or arrangement with its creditors, take or suffer any similar action in consequence of debt or an order for resolution is made for its dissolution or liquidation (other than for the purposes of solvent amalgamation or reconstruction); or (iii) exceed the credit limit, if any, specified by the Supplier from time to time; the Supplier shall have the following rights at its option without incurring any liability, which rights shall be cumulative and shall not prevent the Supplier from also claiming damages and pursuing any other rights and remedies available to it:
- 7.3.1 to terminate the Contract;
  - 7.3.2 to cancel any undelivered or uncompleted portion of the Contract and stop any Products in transit;
  - 7.3.3 to cancel any other contract with the Customer;
  - 7.3.4 to demand immediate payment of any outstanding amounts which shall thereupon become due and payable;
  - 7.3.5 to pass title to the Products or any of them to the Customer by service of notice in writing on the Customer; and
  - 7.3.6 to enter any premises owned, occupied or controlled by the Customer without prior notice and to repossess the Products or any of them, and in order to do so, to sever them from anything to which they are attaching without incurring any liability for any loss or damage caused in doing so.
- 7.4 Any Products repossessed by the Supplier hereunder may be resold by the Supplier on such terms as it may determine and the Customer shall remain liable to the Supplier for the difference between the net proceeds of such resale and all outstanding sums due to the Supplier hereunder and for all costs and expenses incurred by the Supplier in repossessing, storing and reselling such Products.
- 7.5 The Supplier may sue the Customer for the price when due notwithstanding that property in the Products may not have passed to the Customer.
- 7.6 Nothing in this Condition 7 shall give the Customer any right to return Products sold hereunder.

## 8 Improvements

If the Supplier makes any Improvements which it is legally entitled to exploit, it may, at its option, offer the use of those Improvements to the Customer at a fee to be agreed between the parties. If any Improvement is proposed by the Customer, then the Supplier shall develop and supply such Improvements subject to agreement between the parties on specifications, timescales and other relevant matters including pricing.

## 9 Customers Responsibilities:

- 9.1 The Customer shall promptly provide the Supplier with all information which the Supplier requires from time to time to facilitate the proper and timely discharge of its obligations under the Contract.
- 9.2 The Customer shall permit the Supplier's employees, agents and contractors, upon reasonable prior notice to the Customer from time to time, to visit, at such times and for such duration as the parties may agree (such agreement not to be unreasonably withheld or delayed), the Customer's premises to the extent that this is contemplated by or otherwise appropriate in the context of the Supplier's performance of any Contract.
- 9.3 The Customer shall be responsible for ensuring that all Products are kept and operated in a suitable environment and that they are installed and operated in a proper manner by trained competent staff.

## 10 Intellectual Property

- 9.4 The specifications and designs of the Products including without limitation the copyright, design right or any other intellectual property rights whatsoever arising under the Contract shall as between the parties vest in and be and remain the absolute and exclusive property of the Supplier and the Customer shall acquire no right, title or interest save in respect of any specifications and designs of the Products (other than those which concern a means of manufacture) which have been provided by the Customer, in which case the copyright, design right or other intellectual property rights in the specifications and designs so provided shall remain the property of the Customer.
- 9.5 Where any designs or specifications have been supplied by the Customer for use in the manufacture of the Product by the Supplier then the Customer warrants that the use of those designs and specifications by the Supplier for the manufacture, processing, assembly or supply of the Products shall not infringe the rights of any third party and the Customer shall indemnify the Supplier from and against any and all losses, damages, liabilities and expenses (including legal expenses) suffered or incurred by the Supplier arising out of or in connection with any action, demand or claim alleging that the use of or dealing with any of the Products or any item or material comprised in them, or any information provided by the Customer pursuant to this Agreement or any Contract, infringes any intellectual property right belonging to a third party.

## 11 Assistance

The Supplier may, at the request of the Customer, provide Assistance to the Customer in respect of the Contract on the terms and conditions set out below. The cost of such Assistance shall be added to the amount due from the Customer under the Contract.

- 11.1 The Supplier may use persons other than its employees to provide the Assistance.
- 11.2 Where the Assistance involves the secondment of the Supplier's designated personnel to the Customer, they shall be subject to the direction, management, and control of the Customer. The Customer shall be responsible for all tasks performed by such personnel and the Supplier shall not be liable to the Customer for any work which is performed negligently or otherwise unsatisfactorily by them. Nonetheless, if at any time during the Contract the performance or conduct of such personnel proves unsatisfactory, the Supplier shall take all reasonable steps to provide replacement personnel acceptable to the Customer as soon as is reasonably practicable.
- 11.3 The Customer shall ensure compliance with all applicable laws, regulations and regulatory requirements as regards business permits, licences or consents that may be required in relation to the Assistance.
- 11.4 The Customer shall take all precautions to safeguard the health and safety of the Supplier's designated personnel whilst working at the Customer's premises, and shall ensure that all

equipment of the Customer shall at all times comply with all applicable laws, regulations, regulatory requirements and codes of practice.

- 11.5 Any equipment which belongs to the Customer and which is used by the Supplier's designated personnel, whether at the Customer's premises or elsewhere, shall remain at the Customer's risk and the Supplier shall not assume any responsibility or liability for the safety or security of such equipment.
- 11.6 The Supplier's designated personnel are not authorised to make any representations regarding the Products or the Assistance and such representations shall not be binding unless confirmed in writing by an authorised representative of the Supplier and added to the terms of the Contract. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representation which is not so confirmed in writing and added to the Contract.

## 12 Warranties And Liability

- 12.1 Subject to the conditions set out below, the Supplier warrants the Products shall at the time of Delivery substantially correspond to the Specifications and shall be fit for their normal purpose, within normal limits of industrial quality, and free from defects in materials and workmanship.
- 12.2 The Supplier shall not be under any liability to the Customer under the Contract or any collateral contract for any indirect loss and/or expenses, including loss of income, profits or contracts or for any incidental, indirect, special or consequential loss or damage of any kind whatsoever arising and whether caused by negligence, breach of contract or otherwise.
- 12.3 The Supplier shall not be liable to the Customer in respect of:
- (i) damage to or loss of the Products or any part thereof in transit, save that the Supplier shall remain liable only if such damage occurs as a result of the Products being packed negligently by the Supplier, the Supplier's employees or agents AND PROVIDED THAT (i) the Customer shall notify the Supplier immediately by telephone or facsimile of any such claim if possible whilst the vehicle is in attendance to allow an insurance survey; (ii) the Customer shall confirm such notification in writing within three (3) days of Delivery or the scheduled Delivery Date (whichever shall be the earlier); and (iii) having received such written notice from the Customer the Supplier confirms that the damage is due to the negligence of the Supplier's employees or agents in the packing of the Products. If the Supplier is so liable pursuant to this Condition, the Supplier shall at its sole option repair or replace free of charge such of the Products as have been damaged due to such negligence.
  - (ii) any error in Delivery other than as specified in sub-clause (i) hereof;
  - (iii) any defects in the Products caused by the neglect or default of the Customer or any third party; or
  - (iv) any other defects in the Products except where the Supplier is liable under Condition 12.4 below.
- 12.4 The Supplier shall use reasonable endeavours to remedy, free of charge, any material defect in any Products PROVIDED THAT:
- 12.4.1 the Customer notifies the Supplier of any defect in writing within 28 days of Delivery;
  - 12.4.2 the Supplier is permitted to make full examination of the alleged defective Product or workmanship;

- 12.4.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel;
  - 12.4.4 the defect did not result from the Customer's failure to comply with the Supplier's instructions relating to the Products;
  - 12.4.5 the defect did not arise out of any information, design or any other assistance supplied or furnished on the Customer's behalf or any failure by the Customer promptly to provide the Supplier with any information requested by the Supplier for the performance of its obligations;
  - 12.4.6 the defect is directly attributable to the Supplier's use of defective material, workmanship or design.
- 12.5 The Supplier's maximum aggregate liability to the Customer or any third party, in respect of any Contract, whether arising under any indemnity, for any breach of its obligations under this Agreement, negligence or otherwise, shall in no circumstances exceed the price payable pursuant to such Contract.]
- 12.6 These Conditions set forth the full extent of the Supplier's obligations and liabilities arising out of or in connection with the Contract, and there are no conditions, warranties, representations or terms of any kind whatsoever, express or implied, relating to the supply of Products or any Assistance, that are binding on the Supplier except as specifically stated in these Conditions. Any condition, warranty or other term concerning the supply of Products or Assistance which might otherwise be implied into or incorporated in any Contract, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded.
- 12.7 Nothing in these Conditions or in any Contract shall exclude or in any way limit either party's liability for fraud or for death or personal injury caused by its negligence, or any other liability to the extent that such liability may not be excluded or limited as a matter of law.

### 13 Confidentiality

- 13.1 Each party shall preserve the secrecy of all confidential information of the other which it receives, keep such information secure and protected against theft, damage, loss or unauthorised access, and not use such information for any purpose except as contemplated by the Contract.
- 13.2 The obligations imposed by this Condition 13 shall survive the expiry or termination of the Contract but shall not apply to any confidential information which is already in or subsequently comes into the public domain through no fault of the recipient, its employees, agents or contractors; is lawfully received by the recipient from a third party on an unrestricted basis; is already known to the recipient before receipt from the discloser; is independently developed by the recipient or its employees, agents or contractors; or is required to be disclosed by law, regulation or pursuant to an order of a competent authority, or to a professional adviser, provided the recipient provides the discloser with reasonable written notice prior to any such disclosure.

### 14 Force Majeure

All orders are accepted subject to delays or failure in delivery resulting from force majeure, including without limitation: war, demands or requests of Government Authorities, National Defence, civil commotion, strikes, labour trouble, acts of terrorism, fire, flood, epidemics, quarantine restrictions, acts of God, late or defective performance or non-performance by suppliers, sudden or substantial depletion of the Supplier's staff, shortage of fuel, power, raw materials, transportation disruptions,

freight embargoes, inability to ship or other causes beyond the Supplier's reasonable control. The Supplier shall not be liable for any loss or damage suffered or incurred by the Customer arising from a delay or failure in delivery due to force majeure. Performance by the Supplier shall be deemed to be suspended during and extended for such time as any such circumstances or causes delay execution. Whenever such circumstances or causes cease to exist the Supplier will perform and the Customer shall accept such performance of its obligations under the Contract.

## 15 Assignment

The Supplier may assign the Contract or sub-contract or sub-license all or any of its rights and obligations thereunder. All Contracts are personal to the Customer and no Contract nor any benefit nor obligation under any Contract may, without the prior consent in writing of the Supplier be assigned, mortgaged, charged, sub-contracted or otherwise disposed of by the Customer.

## 16 Notices

- 16.1 All notices and other communications required or permitted to be served or given shall be in writing and sent by first class registered mail, postage prepaid, courier, telex or facsimile or personal delivery to the intended recipient's address as notified to the other party from time to time.
- 16.2 Any notice shall be deemed to have been served: if delivered by hand or by courier, at the time of delivery; or if posted at 10am on the second business day after the date of the registered delivery receipt; or if sent by facsimile and acknowledged by the current answer-back process at the expiration of 2 hours after the time of despatch if despatched before 3pm on any business day, and in any other case at 10am on the business day following the date of despatch.

## 17 Law And Jurisdiction

The construction, validity and performance of the Contract shall be governed by English law and, subject to Condition 18 below, the English courts shall have exclusive jurisdiction to settle any disputes which may arise in connection with the Contract, save for the right of the Supplier, at its option, to bring proceedings in competent courts where the Customer is incorporated, resident or carrying on business.

## 18 Disputes

- 18.1 All disputes between the parties arising out of or relating to the Contract shall be referred, firstly, to the parties' respective Directors for resolution.
- 18.2 If, having been referred under Condition 18.1, the dispute is not resolved within a maximum of thirty (30) days, and is of a technical nature relating to the interpretation of the Specifications, and/or whether the Products are defective or any similar or related matter, such dispute may be referred, with the written agreement of the parties, to an expert (the "Expert"), who shall be deemed to act as expert and not as arbitrator.
- 18.3 The Expert shall be selected by mutual agreement between the parties or, failing such agreement within fourteen (14) days of a request by one party to the other, shall be chosen, at the request of either party, by the President for the time being of the relevant professional body. Neither party shall unreasonably withhold or delay its agreement to select a particular Expert proposed by the other party. Decisions of the Expert shall be final and binding and, except in the case of manifest error, not subject to appeal. The fees of the Expert shall be borne by the parties in such proportion as may be determined by the Expert.
- 18.4 If either party does not agree with the dispute being referred for determination in accordance with Condition 18.2, or the parties are otherwise unable to agree the terms of the mechanism of dispute resolution under this Condition, then the dispute shall be determined by the English courts under Condition 17.

## 19 General

- 19.1 The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise expressly stated in these Conditions, nothing shall constitute the parties as partners, joint venturers or co-owners, constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other party.
- 19.2 The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by these Conditions.
- 19.3 The failure of either party to enforce any term of or right arising under these Conditions does not constitute a waiver of such term or right and shall in no way affect that party's right later to enforce or exercise the term or right.
- 19.4 The invalidity or unenforceability of any term of or right arising pursuant to these Conditions shall not adversely affect the validity or enforceability of the remaining terms and rights.
- 19.5 Provisions of these Conditions which either are expressed to survive expiry or termination of the Contract from their nature or context it is contemplated that they are to survive such expiry or termination, shall remain in full force and effect notwithstanding such expiry or termination.
- 19.6 Except as otherwise expressly provided in the Contract or otherwise agreed in writing between the parties, each party shall be responsible for its own costs incurred in performing its obligations under the Contract.