

GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

The Customer's attention is particularly drawn to the provisions of Condition 13 (Limitation of liability)

1. Definitions and Interpretation

1.1 In these Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:

**Additional Charges:** the fees and charges payable for any Additional Services that IGD agrees to provide to the Customer from time to time (charged at IGD's standard rates from time to time on a time and materials basis);

**Additional Services:** any additional services, outside the scope of the Contracted Services, which IGD agrees to provide from time to time, including any Emergency Maintenance or Excluded Maintenance;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

**Business Hours Charges:** the period from 9.00 am to 5.00 pm on any

**Charges:** all and any fees and charges payable by the Customer to IGD under or in connection with the Contract, including any Inspection Fee, Additional Charges and the cost of any Consumables and Spare Parts;

**Commencement Date:** has the meaning given in Condition 2.2;

**Commissioning Services Condition:** commissioning services provided in accordance with paragraph 1 of Schedule 2;

**Condition:** a condition of these General Terms and Conditions for the Supply of Goods and Services and the term **Conditions** shall be construed accordingly;

**Confidential Information:** all information of whatever nature disclosed directly or indirectly by a Party to the other Party, including any information relating to its business affairs, customers, clients, suppliers, operations, plans or intentions, products and services and Intellectual Property Rights, which is designated in writing to be confidential or proprietary or which would, under the circumstances, appear to a reasonable person to be confidential and proprietary;

**Consultancy Services:** gas hazard consultancy services as more particularly described in Schedule 3;

**Consumable:** non-durable items used in the operation of the Equipment;

**Contract:** the contract between IGD and the Customer for the supply of Goods or Goods and Services in accordance with these Conditions;

**Contracted Services:** the services, including the Deliverables, supplied by IGD to the Customer, which include (as applicable):

- (a) the Equipment Maintenance Services;
- (b) the Equipment Installation Services; and
- (c) the Consultancy Services;

each as identified in the relevant Order Confirmation;

**Contract Year:** a period of 12 months commencing on the Commencement Date or the anniversary thereof (as applicable);

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly;

**Corrective Maintenance:** includes:

- (a) making any adjustments to the Equipment; or
- (b) replacing any parts or components of the Equipment, in each case, as is required to restore the Equipment to Good Working Order, in accordance with paragraph 3 of 0;

**Customer:** the person or firm who purchases the Goods or Goods and Services from IGD;

**Customer Default:** has the meaning given in Condition 7.2;

**Delay:** has the meaning given in Condition 6.6;

**Deliverables:** the drawings, logs, records, documents or reports produced by IGD for the Customer as part of the Services;

**Delivery Site:** has the meaning given in Condition 3.2;

**Emergency Maintenance:** any Maintenance that the Customer requires to be provided by IGD outside of Business Hours or the Maintenance Window;

**Equipment:** the equipment (if any) specified in the Order Confirmation in respect of which the Equipment Installation Services and/or Equipment Maintenance Services will be provided;

**Equipment Installation Services:** services which include the Commissioning Services, Installation Services and Termination Services (as applicable), as more particularly described in Schedule 2;

**Equipment Maintenance Services:** maintenance services which include Routine Maintenance and Corrective Maintenance (as applicable), as more particularly described in 0;

Excluded Clauses:

- (a) a defect in the manufacturer's design of any Third Party Goods;
- (b) faulty materials or workmanship in the manufacture of any Third Party Goods;
- (c) the use of the Equipment with other equipment or materials not supplied or approved in writing by IGD or the manufacturer of the

Equipment;

(d) any maintenance, alteration, modification or adjustment performed by persons other than IGD or its employees or agents unless approved in writing by IGD;

(e) the Customer or third party moving the Equipment unless approved in writing by IGD;

(f) the use of the Equipment in breach of any of the provisions of the agreement under which the Equipment was supplied;

(g) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Equipment;

(h) a failure or malfunctioning of the air conditioning or other environmental controls required for the normal operation of the Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or

(i) the Customer's neglect or misuse of the Equipment;

**Excluded Maintenance:** any Maintenance required where the issue, defect, malfunction or failure of the Equipment arises from or in connection with any of the Excluded Causes;

**Fix Time:** the fix times agreed in writing by the Parties following a request for Equipment Maintenance Services from the Customer to IGD;

**Force Majeure Event:** any cause preventing IGD from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of IGD including strikes, lockouts or other industrial disputes (whether involving the workforce of IGD or otherwise), acts of God, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, floor, storm or default of suppliers or sub-contractors;

**Good Working Order:** means that the Equipment is operating in accordance with the relevant Goods Specification or Third Party Specification for the Equipment;

**Goods:** the goods (or any part of them) to be supplied by IGD to the Customer, the details of which are set out in the Order Confirmation, including the Equipment, together with any Spare Parts or Consumables supplied by IGD in connection with Maintenance of the Equipment;

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is set out or referred to in the Order Confirmation or otherwise agreed in writing by the Customer and IGD;

**IGD:** Oliver IGD Limited registered in England and Wales with company number 01044944;

**IGD Materials:** has the meaning given in Condition 7.1.7;

**Inspection Fee:** the sum for IGD's initial inspection of the Equipment in relation to the Equipment Maintenance Services, Commissioning Services or Termination Services (as applicable);

**Installation Services:** installation services provided in accordance with paragraph 3 of Schedule 2;

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

**Liability Event:** has the meaning set out in Condition 13.1;

**Maintenance:** the provision of services in respect of keeping the Equipment in, or restoring the Equipment to, Good Working Order, and the supply of associated Consumable and Spare Parts;

**Maintenance Window:** IGD's standard response periods within which IGD arranges a representative to attend the Site to undertake Maintenance, such periods varying according to the nature of the issue giving rise to the requirement for Maintenance and the Equipment concerned;

**Managed Service Basis:** where IGD provides the Equipment Maintenance Services on a fixed term basis to the Customer, as indicated in the Order Confirmation – typically the fixed term of such arrangement will be a minimum of 12 months;

**Order:** the Customer's written acceptance of IGD's quotation (including IGD's price lists issued from time to time) for the supply of Goods or Goods and Services;

**Order Confirmation:** has the meaning given in Condition 2.2;

**Party Pay-As-You-Go Basis:** where IGD provides the Equipment Maintenance Services to the Customer at the Customer's request and charges the Customer per Service rendered without a fixed term commitment, as indicated in the Order Confirmation;

**RGN:** has the meaning given in Condition 10.2;

**Routine Maintenance:** includes:

- (a) testing that the Equipment is functional;
- (b) making any adjustments as may be required to ensure the Equipment remains in Good Working Order; and
- (c) replacing any Consumables which require replacing;

in accordance with paragraph 2 of 0;

**Service Credits:** the sums attributable to a Service Failure as specified in 0;

**Service Failure:** a failure by IGD to deliver any part of the Equipment Maintenance Services in accordance with the Service Levels;

**Service Levels:** the service levels to which the Equipment Maintenance Services are to be provided, as set out in 0;

**Services:** the Contracted Services together with any Additional Services, as supplied by IGD to the Customer;

**Specification:** Installation Services or Consultancy Services provided by IGD to the Customer either via quotation or via the data sheets and specifications published on IGD's Website;

**Site:** the location to which the Goods are to be delivered, or where any Services are to be provided;

**Spare Parts:** all spare components and subassemblies of the Equipment to be supplied for installation in the Equipment as part of the provision of the Services;

**Termination Services:** termination services provided in accordance with paragraph 2 of Schedule 2;

**Third Party Goods:** any proprietary electrical or other equipment made by other manufacturers, and supplied with IGD's products, as identified in the Order Confirmation or on the Website;

**Third Party Specification:** the specification of any Third Party Goods, as published by the relevant third party manufacturer;

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

**VAT:** value added tax chargeable under the Value Added Tax Act 1994;

**Warranty Period:** has the meaning given in Condition 4.1;

**Website:** IGD's website as notified to the Customer from time to time in writing.

1.2 A reference to:

- 1.2.1 a person includes an individual, company, LLP, corporate, partnership, joint venture, association, trusts, unincorporated bodies and associations and that person's personal representatives, successors and permitted assigns;
- 1.2.2 the singular includes the plural and vice versa, and to the masculine shall include the feminine and neuter and vice versa;
- 1.2.3 a Condition is a reference to a condition of this Contract and its sub-conditions and a paragraph is to the paragraph of the relevant Schedule and its sub-paragraphs;
- 1.2.4 a Schedule is to a schedule of this Contract and the Schedules form part of and are incorporated into this Contract. If there is any inconsistency between any of the Conditions and the Schedules, the Schedules shall prevail;
- 1.2.5 a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and such statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.6 writing or written excludes fax but includes email;
- 1.2.7 an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction;
- 1.2.8 include, including and in particular or anything similar are illustrative only and none of them shall limit the sense of the words preceding or following them and each of them shall be deemed to incorporate the expression without limitation.

1.3 The headings in this Contract are included for convenience only and shall not affect its interpretation or construction.

## 2. Order Process and Contract Formation

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when IGD issues written acceptance of the Order or commences performance of the Services (**Order Confirmation**) at which point, and on which

date, the Contract shall come into existence (**Commencement Date**).

- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 Any quotation given by IGD shall not constitute an offer and is only valid for the period stated on the quotation. Quotations are subject to revision at any time prior to Order Confirmation to reflect changes in the state of the raw material market or other circumstances which might make this necessary.
- 2.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## 3. Goods and Delivery of Goods

- 3.1 The Goods are as described on the Website or, where applicable, in the relevant Goods Specification or Third Party Specification.
  - 3.2 **Completion of Delivery:** Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Site.
  - 3.3 **Late Delivery:** IGD shall deliver the Goods to the Site within a reasonable period of the Goods becoming available for delivery, or in accordance with any scheduled dates for delivery specified in the Order Confirmation, provided always that any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. IGD shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, or the Customer's failure to provide IGD with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or the Customer's failure to perform any obligation under this Contract, including any obligation in respect of preparation of the Site.
  - 3.4 **Non-Delivery:** Without prejudice to Condition 3.3, if IGD fails entirely to deliver the Goods within a reasonable time of the scheduled date for delivery, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. IGD shall have no liability for any non-delivery of the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide IGD with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
  - 3.5 **Non-Acceptance of Delivery:** If the Customer fails to accept delivery of the Goods when IGD attempts to make delivery, then, except where such failure or delay is caused by a Force Majeure Event or by IGD's failure to comply with its obligations under the Contract in respect of the Goods, delivery of the Goods shall be deemed to have been completed on the day on which IGD attempted, and IGD shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance). If 10 Business Days after the day on which IGD attempted delivery the Customer has not accepted actual delivery of them, IGD may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.
- ## 4. Quality of Goods
- 4.1 IGD warrants that on delivery, and for the relevant warranty period (as listed on the Website) from the date of delivery by IGD (**Warranty Period**), the Goods shall:
    - 4.1.1 conform in all material respects with their description;
    - 4.1.2 be free from material defects in design, material and workmanship;
    - 4.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
    - 4.1.4 be fit for any purpose held out by IGD; provided always that the provisions of this Condition 4.1 shall not apply to any Third Party Goods, in respect of which the provisions of Condition 4.7 shall apply.
  - 4.2 Subject to Condition 4.4, if:
    - 4.2.1 the Customer gives notice in writing to IGD during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Condition 4.1;
    - 4.2.2 IGD is given a reasonable opportunity of examining such Goods; and
    - 4.2.3 the Customer (if asked to do so by IGD) returns such Goods to IGD's place of business at the Customer's cost; IGD shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 4.3 Where IGD carries out repair work to defective Goods at the Site, the Customer shall be liable for IGD's representative's costs on a time and materials basis and any travelling expenses.
- 4.4 IGD shall not be liable for the Goods' failure to comply with the warranty set out in Condition 4.1 if:
- 4.4.1 the Customer makes any further use of such Goods after giving notice in accordance with Condition 4.2;
- 4.4.2 the defect arises because the Customer failed to follow IGD's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 4.4.3 the defect arises as a result of IGD following any drawing, design or specification supplied by the Customer;
- 4.4.4 the Customer or a third party on behalf of the Customer alters or repairs such Goods without the written consent of IGD;
- 4.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 4.4.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements,
- and return of the Goods to IGD's place of business in such circumstance shall be at the Customer's cost.
- 4.5 Except as provided in this Condition 4, IGD shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 4.1.
- 4.6 These Conditions shall apply to any repaired or replacement Goods supplied by IGD.
- 4.7 **Third Party Goods:** IGD gives no guarantee in respect of any Third Party Goods, but will, so far as possible, transfer the benefit of such guarantee, if any, given by the relevant third party manufacturer.
- 5. Title and risk**
- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 5.2.1 IGD receives payment in full (in cash or cleared funds) for the Goods and any other goods that IGD has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 5.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Condition 5.4.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as IGD's property;
- 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on IGD's behalf from the date of delivery;
- 5.3.4 notify IGD immediately if it becomes subject to any of the events listed in Condition 14.2.3 to Condition 14.2.5; and
- 5.3.5 give IGD such information as IGD may reasonably require from time to time relating to:
- (a) the Goods; and
- (b) the ongoing financial position of the Customer.
- 5.4 Subject to Condition 5.5, the Customer may resell the Goods before IGD receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 5.4.1 it does so as principal and not as IGD's agent; and
- 5.4.2 title to the Goods shall pass from IGD to the Customer immediately before the time at which resale by the Customer occurs.
- 5.5 At any time before title to the Goods passes to the Customer, IGD may:
- 5.5.1 by notice in writing, terminate the Customer's right under Condition 5.4 to resell the Goods or use them in the ordinary course of its business; and
- 5.5.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6. Supply of Services**
- 6.1 IGD shall supply the Services to the Customer in accordance with the Contract in all material respects and in accordance with any applicable Service Specification.
- 6.2 Where the Contract relates to:
- 6.2.1 the supply of Equipment Maintenance Services, the conditions contained within 0 shall apply;
- 6.2.2 the supply of Equipment Installation Services, the conditions contained within Schedule 2 shall apply; and/or
- 6.2.3 the supply of Consultancy Services, the conditions contained within Schedule 3 shall apply;
- and IGD and the Customer shall comply with their respective obligations contained therein.
- 6.3 IGD warrants to the Customer that the Services will be provided using reasonable care and skill and all Spare Parts, Consumables and equipment supplied or used in the course of the provision of the Services shall operate materially in accordance with their technical specifications.
- 6.4 IGD shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Confirmation or otherwise agreed by the Parties but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.5 If, at any time, a Party becomes aware of any cause, matter or circumstance that it considers may or is likely to cause a delay or impact on the Services, it shall as soon as reasonably practicable notify the other of such fact and each Party shall take reasonable steps to eliminate or mitigate any delays.
- 6.6 In the event of any delay in the Customer's performance of its obligations under the Contract (a **Delay**), IGD may (without prejudice to its other rights or remedies) amend the Services and adjust the timescales for delivery of the Services as IGD deems reasonably necessary to take account of such Delay and shall not be in breach of the Contract as a result of a failure to meet a particular delivery date where such failure is as a result of or arises in connection with a Delay.
- 6.7 To the extent that IGD incurs (or expects to incur) any additional costs or expenses as a consequence of a Delay, IGD shall be entitled to adjust the Charges or charge Additional Charges to take account of such additional costs or expenses.
- 7. Customer's obligations**
- 7.1 The Customer shall:
- 7.1.1 ensure that the terms of the Order are complete and accurate;
- 7.1.2 co-operate with IGD in all matters relating to the Services;
- 7.1.3 prepare the Site for the supply of the Services or delivery of the Goods (as applicable);
- 7.1.4 obtain all materials and equipment for the supply of the Services or delivery of the Goods (as applicable);
- 7.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Goods or Services before the date on which the Goods are to be delivered or the performance of the Services are to start;
- 7.1.6 comply with all applicable laws, including health and safety laws;
- 7.1.7 keep all materials, equipment, documents and other property of IGD (IGD Materials) at the Customer's premises in safe custody at its own risk, maintain IGD Materials in good condition until returned to IGD, and not dispose of or use IGD Materials other than in accordance with IGD's written instructions or authorisation; and
- 7.1.8 provide IGD, its employees, agents, consultants and subcontractors, with:
- (a) access to the Site, the Customer's premises, office accommodation and other facilities; and
- (b) such information and materials as IGD may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- as reasonably required by IGD in order to perform its obligations under the Contract.
- 7.2 If IGD's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 7.2.1 without limiting or affecting any other right or remedy available to it, IGD shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays IGD's performance of any of its obligations;
- 7.2.2 IGD shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from

IGD's failure or delay to perform any of its obligations as set out in this Condition 7.2; and

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

## 8. Charges and payment

8.1 The price for Goods:

8.1.1 shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in IGD's published price list as at the date of the Order Confirmation, subject always to Condition 8.6; and

8.1.2 shall be exclusive of VAT, all costs and charges of packaging, insurance, transport of the Goods, for which the Customer shall be invoiced.

8.2 In respect of Goods, IGD shall invoice the Customer in accordance with the payment schedule set out in the Order Confirmation on or, where no payment schedule is stated at any time after the Commencement Date. In respect of Services, IGD shall invoice the Customer on completion of the Services or at such other periods as IGD determines.

8.3 If the Customer requests any services that are outside the scope of the Services, IGD shall not be obliged to provide the same but where IGD agrees to provide the same, such services shall be an Additional Service and subject to the Customer paying the Additional Charges. IGD shall be entitled to raise its invoice for the Additional Charges on completion of the Additional Services or at such other periods as IGD determines.

8.4 All amounts payable by the Customer under the Contract:

8.4.1 are exclusive of VAT or any similar tax, which shall be payable at the rate and in the manner prescribed by law from time to time;

8.4.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law);

8.4.3 shall be payable on receipt of the relevant invoice, save where the Customer has a credit account with IGD, in which case amounts shall be paid on the 25th day of the month immediately following the date of IGD's invoice for the same, or as otherwise agreed in writing by the Parties, in each case to a bank account nominated in writing by IGD from time to time; and

8.4.4 shall be non-refundable.

8.5 If the Customer fails to make a payment due to IGD under the Contract by the due date, then, without limiting IGD's remedies under Condition 14, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition 8.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.6 IGD may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

8.6.1 any factor beyond IGD's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

8.6.2 any request by the Customer to change the delivery date, quantity, type of Good ordered or Goods Specification; or

8.6.3 any delay caused by the instructions of the Customer or the failure of the Customer to give IGD adequate or accurate information or instructions.

8.7 IGD reserves the right to increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding Contract Year and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

8.8 In addition to the provisions set out in this Condition 9, where the Contract relates to:

8.8.1 the supply of Equipment Maintenance Services, 0 shall apply;

8.8.2 the supply of Equipment Installation Services, Schedule 2 shall apply; and/or

8.8.3 the supply of Consultancy Services, Schedule 3 shall apply;

and IGD and the Customer shall comply with their obligations contained therein.

## 9. Cancellations

9.1 If at any time following the Commencement Date, the Customer wishes to cancel its Order for Goods, it shall notify IGD of the same as soon as possible. IGD shall not be obliged to accept such cancellation and where IGD does not accept the cancellation, or the cancellation relates to only part of the Goods

in the Order Confirmation, the Customer shall remain liable to pay the full price of the Goods and/or those Goods not forming part of the Customer's cancellation request. If IGD accepts the cancellation the Customer shall incur a cancellation fee of up to 50% of the total value of the Goods being cancelled. Where the Goods forming the Order are bespoke (including calibration gas supplied to a non-standard IGD mixture at the Customer's request), the Order for such Goods may not be cancelled.

9.2 If at any time following the Commencement Date but prior to the commencement of the provision of the relevant Services, the Customer wishes to cancel all or any part of the Services, it shall notify IGD of the same as soon as possible. IGD shall not be obliged to accept cancellation of the Services. Where IGD accepts the cancellation and it relates to only part of the Services the Customer shall remain liable to pay the full price of the Services not forming part of the Customer's cancellation request. If IGD accepts the cancellation the Customer shall incur a cancellation fee of up to 100% of the total value of Charges payable for such Services, which IGD may reduce where it is able to redeploy any personnel resource that was allocated to the provision of the cancelled Services. The Customer has no right to cancel its Order for the provision of Equipment Maintenance Services if IGD is providing such Services on a Managed Service Basis.

## 10. Returns

10.1 Should the Customer wish to return Goods, IGD shall not be obliged to accept such return and Goods shall only be returned with the prior written agreement of IGD. All returns shall be subject to the payment of a return Charge of up to 50% of the total Charges payable for the relevant Goods. Where the Goods forming the Order are bespoke (including calibration gas supplied to a non-standard IGD mixture at the Customer's request), such Goods may not be returned.

10.2 The Customer must contact IGD by post at IGD's registered office address (as published on its Website or as notified to the Customer from time to time in writing) and provide the reason why it is seeking to return the Goods and which Goods it wishes to return. IGD shall provide a return goods number (**RGN**) if IGD accepts that the Customer may return such Goods.

10.3 Where IGD agrees to a return, the Customer shall be responsible for:

10.3.1 delivering the Goods in their original packaging to IGD and all costs and expenses in relation to such delivery;

10.3.2 delivering the Goods within the relevant window for returns in accordance with Condition 10.4; and

10.3.3 ensuring that all Goods being returned are clearly labelled with the applicable RGN.

10.4 All Goods being returned must be returned to IGD within 60 days of the date of delivery by IGD, save for disposable gas calibration cylinders which must be returned to IGD within 10 days of the delivery date, provided always that any shipping seals remain unbroken.

10.5 IGD reserves the right to:

10.5.1 charge the Customer for the cost of providing adequate packaging materials to return the relevant Goods to IGD, in the event that the Customer has disposed of the original packaging material or requested that IGD dispose of such packaging upon delivery of the Goods;

10.5.2 reject the return of any Goods not in their original or suitable packaging or that have been damaged or had their shipping seals broken, and charge the Customer the full price of such Goods; and

10.5.3 reject the return of any Goods not labelled clearly with the applicable RGN, redeliver the same to the Customer and charge the Customer the full price for such Goods.

## 11. Intellectual property rights

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

11.2 IGD grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.

11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by Condition 11.2.

11.4 The Customer grants IGD a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to IGD for the term of the Contract for the purpose of providing the Services to the Customer.

## 12. Confidentiality and Data Protection

- 12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of 2 years after termination or expiry of the Contract, disclose to any person any Confidential Information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Condition 12.2.
- 12.2 Each party may disclose the other party's Confidential Information:
- 12.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Condition 12; and
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 12.4 Each party will comply with all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party, and act in such a way as to allow the other party to comply with its respective obligations in respect of the protection of personal data.

## 13. Limitation of liability

- 13.1 The following provisions set out the entire liability of IGD (including any liability for the acts and omissions of its employees, agents, representatives and sub-contractors) in respect of:
- 13.1.1 any breach of its contractual obligations arising under or in connection with the Contract;
- 13.1.2 any use made by the Customer of the Goods, Services or Deliverables or any part of them;
- 13.1.3 any mis-representation, mis-statement or tortious act or omission including negligence but excluding any of the same made fraudulently arising under or in connection with this Contract;
- 13.1.4 any other provision of this Contract;
- (each a **Liability Event**).
- 13.2 Nothing in this Contract shall limit or exclude the liability of either Party:
- 13.2.1 for death or personal injury resulting from its own negligence or that of its representatives;
- 13.2.2 for fraud or fraudulent misrepresentation;
- 13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- 13.2.4 to the extent that such liability or exclusion is not permitted by law.
- 13.3 Subject to 13.2, IGD's total liability to the Customer shall not exceed:
- 13.3.1 £1 million in respect of damage or loss to physical property arising out of or in connection with any Liability Event or series of related Liability Events;
- and for all other damage or loss not falling within Condition 13.3.1:
- 13.3.2 in respect of any Liability Event(s) arising in relation to Goods, 100% of the Charges paid or payable for the relevant Goods;
- 13.3.3 in respect of any Liability Event(s) arising in relation to any of the Contracted Services or any Additional Services, 100% of the Charges paid for the relevant Contracted Services or the relevant Additional Services in the Contract Year during which such Liability Event(s) occurred;
- 13.3.4 in respect of any other Liability Event(s) arising under or in connection with the Contract, 100% of the Charges paid for the Good and Services in the Contract Year during which such Liability Event(s) occurred, less any amounts recovered in respect of loss or damage falling within Conditions 13.3.1 to 13.3.3.
- 13.4 Subject to Condition 13.2, IGD shall not be liable to the Customer in respect of any Liability Events for any loss or damage which may be suffered by the Customer (or any person claiming through

or under the Customer) whether the same are suffered directly or indirectly and whether the same arise in contract tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- 13.4.1 loss of profits;
- 13.4.2 loss of turnover;
- 13.4.3 loss of business opportunity;
- 13.4.4 loss of agreements or contracts;
- 13.4.5 loss of anticipated savings;
- 13.4.6 loss of goodwill;
- 13.4.7 loss or corruption of data;
- 13.4.8 damage to reputation;
- 13.4.9 any special, indirect or consequential loss, provided that this Condition 13.4 shall not prevent claims for loss of or damage to the Customer's tangible property that are not excluded by Conditions 13.4.1 to 13.4.9.
- 13.5 IGD shall not be liable for any damage or losses to the extent they arise result of or in connection with:
- 13.5.1 any failure of the Customer to observe and perform its obligations under this Contract;
- 13.5.2 any unauthorised or incorrect access or use of the Goods or Services or use other than in accordance with the terms of this Contract or IGD's instructions;
- 13.5.3 any modification or alteration of the Goods or Services by any party other than IGD;
- 13.5.4 errors or omissions in any Goods or Services to the extent they are based on or relate to the information or instructions provided by the Customer or its employees, agents or representatives to IGD; or
- 13.5.5 any actions taken by IGD at the Customer's discretion.
- 13.6 If a number of Liability Events give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under this Contract.
- 13.7 IGD shall have no liability to the Customer in respect of any Liability Event unless the Customer has served notice of the same upon IGD within 3 months of the date the Customer became aware or ought to have become aware of the consequences of the Liability Event.
- 13.8 The Customer declares and acknowledges that it has considered the provisions of this Condition 13 in detail and considers them reasonable in the circumstances having taken into account among other factors the subject matter of this Contract and having obtained or had the opportunity to obtain independent legal advice on the same.
- 13.9 This Condition 13 shall survive termination or expiry of the Contract.

## 14. Term and Termination

- 14.1 The Contract shall commence on the Commencement Date and shall:
- 14.1.1 where the Contract relates to the supply of Goods only, terminate on delivery of the Goods to the Delivery Site;
- 14.1.2 where the Contract relates to the supply of Goods and Services (save for the Services specified at 14.1.3), terminate on delivery of the Goods to the Site or completion of the Services (whichever is the later);
- 14.1.3 where the Contract relates to the supply of Equipment Maintenance Services on a Managed Service Basis, continue for a term of 3 or 5 years (as specified on the Order Confirmation) from the date which IGD commences the provision of the Equipment Maintenance Services, and shall continue thereafter for further Contract Years unless or until terminated by either Party giving to the other not less than 3 months' notice of termination, such notice to expire on the expiry of the Contract Year.
- 14.2 Without affecting any other right or remedy available to it, IGD may terminate the Contract at any time with immediate effect by giving written notice to the Customer if:
- 14.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 14.2.2 the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- 14.2.3 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

- 14.2.4 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- 14.2.5 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or
- 14.2.6 there is a change of Control of the Customer.
- 14.3 Without affecting any other right or remedy available to it, IGD may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and IGD if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Condition 14.2.3 to Condition 14.2.5, or IGD reasonably believes that the Customer is about to become subject to any of them.
- 14.4 For the avoidance of doubt, where the Contract relates to the supply of Goods and Services, and the Contract is terminated by IGD in accordance with this Condition 14, IGD shall be entitled to terminate the Contract in whole, or only in relation to the affected part.
- 15. Consequences of termination**
- 15.1 On termination of the Contract:
- 15.1.1 the Customer shall immediately pay to IGD all of IGD's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, IGD shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 15.1.2 the Customer shall return all of the IGD Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then IGD may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 16. Force majeure**
- IGD shall not be in breach of the Contract or otherwise liable to the Customer in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to a Force Majeure Event. In such circumstances the time for performance of such obligations by IGD shall be extended accordingly by such amount of time as IGD deems reasonable, taking into account of the circumstances of the Force Majeure Event. If the period of delay or non-performance continues for 3 months, IGD may terminate the Contract by giving 30 days' written notice to the Customer.
- 17. General**
- 17.1 Assignment.**
- 17.1.1 IGD may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 17.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of IGD.
- 17.2 Notices.**
- 17.2.1 Any notice given to a Party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the email addresses set out in the Order Confirmation (or such other email address as substituted and notified by a Party to the other Party).
- 17.2.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 17.2.3 This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.3 Entire Contract.**
- 17.3.1 The Contract constitutes the entire Contract between the Parties in relation to its subject matter and supersedes all (if any) subsisting Contracts, arrangements, understandings, negotiations, discussions or correspondence (written or oral, express or implied) relating to the same.
- 17.3.2 Each Party acknowledges that in entering into the Contract it has not relied on any warranty, representation, statement or undertaking (whether made innocently or negligently) which is not contained in or specifically incorporated into the Contract. Each Party agrees and acknowledges that its only remedy in respect of those representations, statements, assurances or warranties set out in the Contract will be for breach of contract, in accordance with the terms of the Contract, provided always that nothing in this Condition 17.3 shall exclude or limit the liability of a Party to the other Party for any fraudulent misrepresentation or warranty fraudulently given and upon which the other Party can prove it has placed reliance.
- 17.4 **Variation.** No variation of the Contract shall be effective unless it is in writing and is signed by an authorised representative of each Party.
- 17.5 **Third Party Rights.** No person other than a Party to the Contract may enforce any of its terms. A person who is not a Party to the Contract shall not have any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any terms of the Contract.
- 17.6 **Waiver.** A failure, delay or neglect by either Party to exercise any right or remedy or enforce any of the provisions of the Contract shall not be construed or deemed to be a waiver or continuing waiver of that Party's rights or remedies, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17.7 **No Partnership.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.
- 17.8 **Severance.** If any of the provisions of the Contract shall be declared invalid or unenforceable in whole or in part by any competent court or other authority whose decisions shall have the force of law binding on the Parties, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions shall not be affected.
- 18. Governing Law and Jurisdiction**
- 18.1 This Contract and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 18.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

## Schedule 1 Equipment Maintenance Services

### 1 Inspection of the Equipment

- 1.1 On or shortly after the Commencement Date and upon payment by the Customer of the Inspection Fee, IGD shall carry out an inspection of the Equipment to determine whether it is in Good Working Order.
- 1.2 If IGD finds the Equipment to be in Good Working Order, it shall promptly issue a certificate to the Customer confirming this.
- 1.3 If IGD finds the Equipment not to be in Good Working Order, it shall issue a quotation to the Customer for the work and parts required to restore the Equipment to Good Working Order.
- 1.4 If the Customer accepts the quotation referred to in paragraph 1.3, IGD shall carry out the work in accordance with the quotation. Upon completion of the work, it shall submit its invoice for the work and upon payment of such invoice it shall issue a certificate to the Customer confirming that the Equipment is in Good Working Order.
- 1.5 If the Customer refuses the quotation, the Contract shall terminate automatically and without notice and without liability to either Party, save that IGD shall be entitled to retain the Inspection Fee.

### 2 Routine Maintenance

- 2.1 A representative of IGD shall attend the Site:

- 2.1.1 where the Equipment Maintenance Services are to be provided on a Managed Service Basis, at such frequency as is reasonably determined by IGD; or
- 2.1.2 where the Equipment Maintenance Services are to be provided on a Pay-As-You-Go Basis, as required by the Customer;

to perform the Routine Maintenance.

- 2.2 IGD's representative shall perform the Routine Maintenance during Business Hours at such times as may be agreed in advance between the Customer and IGD from time to time.
- 2.3 If IGD's representative discovers that the Equipment is defective or malfunctioning or has failed or is not otherwise in Good Working Order during the course of the Routine Maintenance, the representative will use all reasonable endeavours to repair it during that visit at the Site. If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours) IGD's representative shall arrange for a further visit to the Site within Business Hours to complete the repair or (where applicable) arrange for the removal of the Equipment (or part of the Equipment, if applicable) for repair off-site.
- 2.4 The Customer acknowledges that any Routine Maintenance to or calibration of the Equipment or certification of the Equipment being in Good Working Order is correct at the time the Routine Maintenance was carried out. If there are any environmental or topographical changes to the Site which may affect the Equipment (such as damage to the Equipment or other equipment being installed on or next to the Equipment) the Customer should contact IGD and request IGD carry out an inspection of the Equipment and such Equipment Maintenance Services as may be required.

### 3 Corrective Maintenance

- 3.1 On the Customer informing IGD that the Equipment is defective or malfunctioning, has failed or is not otherwise in Good Working Order, IGD shall use all reasonable endeavours to ensure that one of its representatives shall:
  - 3.1.1 attend the Site within the Maintenance Window to perform Corrective Maintenance; and
  - 3.1.2 complete the Corrective Maintenance within the relevant Fix Time.

- 3.2 The Customer acknowledges that the Maintenance Window is determined by IGD and IGD is entitled to change the Maintenance Window from time to time. The Maintenance Window is an approximate timescale only and IGD shall not be in breach of its obligations under the Contract where it does not meet such Maintenance Window.

#### **4 Emergency Maintenance**

- 4.1 On the Customer informing IGD that the Equipment is defective or malfunctioning, has failed or is not otherwise in Good Working Order, and requires repair outside of Business Hours, IGD shall use all reasonable endeavours to ensure that one of its representatives shall:

4.1.1 attend the Site within the Maintenance Window to perform Emergency Maintenance;  
and

4.1.2 complete the Emergency Maintenance within the relevant Fix Time.

- 4.2 Where it is not reasonably practicable for IGD's representative to complete Corrective Maintenance or Emergency Maintenance at the Site on their first visit IGD's representative shall either arrange for a further visit to the Site within Business Hours to complete the repair, or (where applicable) remove the Equipment (or part of the Equipment, if applicable) for repair off-site.

- 4.3 IGD shall not be liable for any delay in providing the Corrective Maintenance or Emergency Maintenance if in IGD's reasonable opinion it needs to remove the Equipment (or part of the Equipment, if applicable) for repair off-site and the Customer unreasonably refuses this request.

#### **5 Excluded Maintenance**

- 5.1 IGD is not obliged to perform any Excluded Maintenance.

- 5.2 Where the Customer requires any Equipment Maintenance Services to be provided in circumstances where it is established by IGD that the Equipment was not in Good Working Order due to any of the Excluded Causes, and IGD agrees to provide the same, such services shall be provided as an Additional Service and shall be subject to the Customer paying the Additional Charges to IGD for the Additional Services.

- 5.3 If on investigation IGD reasonably determines that any defect in or malfunctioning of the Equipment is the result of an Excluded Cause, the Customer shall pay Additional Charges in respect of the time incurred by IGD in making the investigation and determining the cause of the defect in or malfunctioning of the Equipment.

#### **6 IGD's obligations**

- 6.1 During the Term, IGD shall supply the Services to the Customer.

- 6.2 IGD shall:

6.2.1 prior to a representative attending a Site to carry out an Equipment Maintenance Service or Additional Service (as applicable), provide to the Customer in writing:

(a) a method statement detailing the work to be done by IGD's representative;  
and

(b) a risk assessment detailing the anticipated state of the Site and Equipment and any proposed safety measures (including any measures which the Customer will be required to implement);

6.2.2 provide to the Customer from time in writing with such up to date and accurate information as to the application and use of the Equipment as may be available to IGD and as IGD may reasonably determine to be necessary or desirable to be provided;  
and



- 6.2.3 without prejudice to paragraph 7, use all reasonable endeavours to respond promptly and during the relevant Maintenance Window, during Business Hours, by telephone or in writing, as appropriate, to any request from the Customer for information concerning the application and use of the Equipment, or the repair of any defect in or malfunctioning of the Equipment;
- 6.2.4 shall procure that its representatives shall, while on site at the Site, comply with the Customer's reasonable health and safety and security policies provided that these have been brought to the attention of its representatives; and
- 6.2.5 shall appoint a manager for the Services, who shall have authority to contractually bind IGD on all matters relating to the Services. IGD may replace that person from time to time where reasonably necessary in the interests of IGD's business.

## **7 Service levels**

- 7.1 IGD shall ensure that the Services meet or exceed the Service Levels at all times from the Commencement Date.
- 7.2 IGD shall provide the Customer with a report detailing its performance in respect of each of the Service Levels.
- 7.3 If there is a Service Failure, IGD shall:
  - 7.3.1 notify the Customer immediately of the Service Failure;
  - 7.3.2 arrange all additional resources necessary to perform the Services in accordance with the Service Levels as soon as possible and at no additional charge to the Customer; and
  - 7.3.3 credit the Customer with the Service Credits, which shall take effect as an adjustment to the Charges for the Equipment Maintenance Services.
- 7.4 IGD shall notify the Customer promptly of any prospective failure to meet the Service Levels and the parties' respective managers shall meet as soon as practicable to discuss how to remedy this.

## **8 Spare Parts and Consumables**

- 8.1 IGD shall supply and fit at the Customer's cost such Spare Parts and Consumables as are required to maintain the Equipment in Good Working Order or to restore the Equipment to Good Working Order.
- 8.2 All Spare Parts shall be either new, or reconditioned or reassembled Spare Parts which are equivalent to new Spare Parts in performance. All Consumables shall be new. IGD will transfer to the Customer, with full title guarantee and free from all third party rights, all the Spare Parts and Consumables that it provides to the Customer, and the Spare Parts and Consumables shall become part of the Equipment upon their installation in the Equipment.
- 8.3 All Spare Parts which are replaced during the provision of the Equipment Maintenance Services shall be left on the Site for disposal by the Customer, unless otherwise agreed in writing by the Parties.

## **9 Training and general maintenance**

- 9.1 Following the provision of the Equipment Maintenance Services, IGD may advise that the Customer must undertake general maintenance activities on a regular basis in order to maintain the upkeep and operation of the Equipment. In the event such general maintenance activities are required, IGD shall provide reasonable initial owner operator training to the Customer and any such general maintenance activities must be logged by the Customer for the purposes of future Equipment Maintenance Services. The Customer's failure to carry out such general maintenance activities if advised to do so could result in a compromised system which requires Corrective Maintenance from IGD and failure to record such general maintenance activities carried out on the Equipment from time to time by the Customer may result in a Delay in respect of future Equipment Maintenance Services and may lead to corresponding additional costs.

## 10 Customer's obligations

### 10.1 The Customer shall at all times:

- 10.1.1 use the Equipment only in accordance with the instructions and recommendations of the manufacturer of the Equipment or as may be advised in writing from time to time by IGD;
- 10.1.2 immediately stop using the Equipment where IGD has recommended that the Equipment be shut down including where IGD deems the Equipment to no longer be fit and/or safe to use;
- 10.1.3 permit only trained and competent personnel to use the Equipment;
- 10.1.4 notify IGD promptly if the Equipment is discovered to be defective or malfunctioning or has failed or is otherwise not in Good Working Order, such notification to be either in writing or by telephone, or in such manner as IGD may reasonably require from time to time;
- 10.1.5 keep the Equipment in the environmental conditions recommended by the manufacturer of the Equipment or as may be advised in writing from time to time by IGD;
- 10.1.6 not allow any other person than IGD's representatives to adjust, maintain, repair, replace or remove the Equipment or any part of it, unless otherwise agreed in writing by IGD; and
- 10.1.7 not move the Equipment from the Site without the prior written consent of IGD (such consent not to be unreasonably withheld or delayed).

### 10.2 The Customer shall ensure that IGD's representatives have:

- 10.2.1 full and free access to the Site and to the Equipment and the Customer shall take all such steps as may be necessary to ensure the safety of IGD's representatives when attending the Site;
- 10.2.2 full and free access to any records of its use kept by the Customer; and
- 10.2.3 adequate and safe working space and facilities,

in each case as reasonably required to enable IGD to perform its obligations under the Contract.

### 10.3 The Customer shall:

- 10.3.1 provide IGD with such information concerning the Equipment, its application, use, Site and environment as IGD may reasonably request to enable it to perform its obligations under this Contract;
- 10.3.2 take all such steps as may be necessary to ensure the safety of any of IGD's representatives when attending the Site;
- 10.3.3 report that the Equipment is defective or malfunctioning or has failed or is otherwise not in Good Working Order either in writing or by telephone, or in such manner as IGD may reasonably require from time to time;
- 10.3.4 notify IGD and arrange a site visit in the event of a topographical or environmental change to the Site or Equipment which may require Equipment Maintenance Services; and
- 10.3.5 appoint a manager for the Services. That person shall have authority to contractually bind the Customer on all matters relating to the Services. The Customer may replace

that person from time to time where reasonably necessary in the interests of the Customer's business.

10.4 If IGD's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, IGD shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

## **11 Charges and payment**

11.1 Where IGD provides Routine Maintenance and Corrective Maintenance, the Customer shall pay to IGD the Charges on completion of the Services, save where the Parties have agreed in writing to alternative payment arrangements.

11.2 Where IGD provides Emergency Maintenance or Excluded Maintenance, the Customer shall pay the Additional Charges for the same, and IGD shall be entitled to raise its invoice for the Additional Charges on completion of the Additional Services, save where the Parties have agreed in writing to alternative payment arrangements.

11.3 The Customer agrees and acknowledges that the Charges are exclusive of any costs for Consumables or Spare Parts which the Customer shall be additionally liable to pay. IGD shall be entitled to raise its invoice in respect of the Charges due for any Consumables or Spare Parts at any time following IGD (or its representative) becoming aware that the Customer requires such items. Where:

11.3.1 the Equipment Maintenance Services are to be provided on a Managed Service Basis, the Spare Parts or Consumables shall be charged at a discounted rate which IGD shall notify to the Customer in the Order Confirmation; and

11.3.2 the Equipment Maintenance Services are to be provided on a Pay-As-You-Go Basis, the Spare Parts or Consumables shall be charged at IGD's standard rates.

## **Schedule 2 Equipment Installation Services**

### **1 Commissioning Services**

- 1.1 Where the Customer has instructed a third party to install the Equipment at the Site, IGD may offer the Commissioning Services.
- 1.2 On or shortly after the Commencement Date and upon payment by the Customer of the Inspection Fee, IGD shall carry out an inspection of the Equipment to determine whether it is in Good Working Order and whether the installation (which has not been carried out by IGD) is correct.
- 1.3 If IGD finds the Equipment to be in Good Working Order and that the installation of the Equipment at the Site is correct, it shall promptly issue a certificate to the Customer confirming this.
- 1.4 If IGD finds the Equipment to not be in Good Working Order and/or that the installation of the Equipment at the Site was incorrect, it shall not perform Corrective Maintenance as part of the Commissioning Services. In these circumstances, IGD shall issue a quotation to the Customer for additional services at additional charge which shall include the Corrective Maintenance required to restore the Equipment to Good Working Order and/or install the Equipment correctly at the Site.
- 1.5 Written acceptance of the quotation referred to in paragraph 1.4 shall constitute an Order and IGD shall carry out the Corrective Maintenance in accordance with the Order and with paragraph 3 of 0. Upon completion of the Corrective Maintenance, it shall submit its invoice and upon payment of such invoice it shall issue a certificate to the Customer confirming that the Equipment is in Good Working Order and has been installed correctly.
- 1.6 If the Customer refuses the quotation or does not respond to the quotation within 30 days, the Contract shall terminate automatically and without notice and without liability to either Party, save that IGD shall be entitled to retain the Inspection Fee.
- 1.7 Where a third party has installed the Equipment, IGD is not liable to the Customer in respect of all loss or damage which the Customer (or any person claiming through the Customer) suffers directly or indirectly arising from unsafe installation or incorrect operation of the Equipment.

### **2 Termination Services**

- 2.1 Where the Customer has instructed a third party to install the Equipment at the Site or has installed the Equipment at the Site, IGD may offer the Termination Services.
- 2.2 On or shortly after the Commencement Date and upon payment by the Customer of the Inspection Fee, IGD shall carry out the final electrical termination of the Equipment and the Commissioning Services.
- 2.3 If IGD finds the Equipment to be in Good Working Order and that the installation of the Equipment at the Site is correct, it shall perform the final electrical termination of the Equipment and shall promptly issue a certificate to the Customer confirming this.
- 2.4 If IGD finds the Equipment to not be in Good Working Order and/or that the installation of the Equipment at the Site was incorrect, it shall not perform Corrective Maintenance as part of the Termination Services. In these circumstances, IGD shall issue a quotation to the Customer for additional services at additional charge which shall include the Corrective Maintenance required to restore the Equipment to Good Working Order and/or install or complete termination of the Equipment correctly at the Site.
- 2.5 Written acceptance of the quotation referred to in paragraph 2.4 shall constitute an Order and IGD shall carry out the Corrective Maintenance in accordance with the Order and with paragraph 3 of 0. Upon completion of the Corrective Maintenance, it shall submit its invoice and upon payment of such invoice it shall issue a certificate to the Customer confirming that the Equipment is in Good Working Order and has been installed correctly.
- 2.6 If the Customer refuses the quotation or does not respond to the quotation within 30 days, the Contract shall terminate automatically and without notice and without liability to either Party, save that IGD shall be entitled to retain the Inspection Fee.

### **3 Installation Services**

- 3.1 Where the Customer has purchased Goods under a Contract with IGD, IGD may offer the Installation Services.
- 3.2 Following delivery of the Goods, IGD's representative shall attend the Site and shall carry out the installation and commissioning (as applicable) of the Goods which the Parties have agreed in writing IGD shall provide in a separate statement of works.
- 3.3 Following completion of the installation and commissioning (as applicable) of the Goods, IGD shall promptly issue a certificate to the Customer confirming the Goods have been correctly installed and are in Good Working Order.

### **4 IGD Obligations**

- 4.1 During the Term, IGD shall:
  - 4.1.1 prior to a representative attending a Site to carry out an Equipment Installation Service, provide to the Customer in writing:
    - (a) a method statement detailing the work to be done by IGD's representative; and
    - (b) a risk assessment detailing the anticipated state of the Site and Equipment and any proposed safety measures;
  - 4.1.2 use all reasonable endeavours to respond promptly and during Business Hours, by telephone or in writing, as appropriate, to any request from the Customer for information concerning the installation, commissioning, termination or use of the Equipment;
  - 4.1.3 shall procure that its representatives shall, while on site at the Site, comply with the Customer's reasonable health and safety and security policies provided that these have been brought the attention of its representatives; and
  - 4.1.4 shall appoint a manager for the Services, who shall have authority to contractually bind IGD on all matters relating to the Services. IGD may replace that person from time to time where reasonably necessary in the interests of IGD's business.

### **5 Customer Obligations**

- 5.1 The Customer shall at all times during the Term:
  - 5.1.1 prepare the Site and Equipment prior to each visit by IGD's representative to provide the Services;
  - 5.1.2 provide all information concerning the Site, Goods or Equipment as reasonably required by IGD and any materials, supplies or services reasonably required for the Equipment Installation Services, as set out in the specifications for each product available on the Website or otherwise provided to the Customer;
  - 5.1.3 ensure full and free access to the Site and Equipment for IGD's representatives;
  - 5.1.4 ensure adequate and safe working space and facilities for IGD's representatives;
  - 5.1.5 take all such steps as may be necessary to ensure the safety of any of IGD's representatives attending the Site;
  - 5.1.6 ensure any Equipment installed by the Customer or a third party is installed to nationally recognised standards for safe and correct operation of such Equipment; and

- 5.1.7 appoint a manager for the Services. That person shall have authority to contractually bind the Customer on all matters relating to the Services. The Customer may replace that person from time to time where reasonably necessary in the interests of the Customer's business.
- 5.2 IGD's representative shall carry out a site risk assessment upon arrival at the Site. If the Site or Equipment is assessed to pose a risk to personnel or IGD Materials, then:
  - 5.2.1 IGD is entitled to charge Additional Charges for any additional time incurred to rectify the Site or Equipment in order to provide the Installation Services; and
  - 5.2.2 if the risk cannot be rectified within the time allocated for the site visit, then IGD's representative may withdraw from the Site and shall arrange an additional visit with the Customer. Each visit shall be at the Customer's cost.
- 5.3 IGD shall not be liable for any delay in its performance of the Equipment Installation Services caused by a failure by the Customer to fulfil its obligations under this Contract. IGD shall be entitled to charge Additional Charges for any Additional Services performed due to delays or additional visits arising from the Customer's failure to fulfil its obligations under this Contract.

## **6 Price and Payment**

- 6.1 Where IGD provides the Equipment Installation Services, the Customer shall pay to IGD the Charges on completion of the Services, save where the Parties have agreed in writing to alternative payment arrangements.
- 6.2 Where IGD provides Corrective Maintenance as part of the Commissioning Services or Termination Services, the Corrective Maintenance provided shall be deemed an Additional Service. The Customer shall pay the Additional Charges for the same, and IGD shall be entitled to raise its invoice for the Additional Charges on completion of the Additional Services, save where the Parties have agreed in writing to alternative payment arrangements.
- 6.3 The Customer agrees and acknowledges that the Charges are exclusive of any costs for Consumables or Spare Parts which the Customer shall be additionally liable to pay for. IGD shall be entitled to raise its invoice in respect of the Charges due for any Consumables or Spare Parts at any time following IGD (or its representative) becoming aware that the Customer requires such items.

## **Schedule 3 Consultancy Services**

### **1 Appointment**

- 1.1 The Customer appoints IGD to carry out the Consultancy Services in accordance with the Contract and any reasonable instructions given by the Customer.

### **2 IGD's obligations**

- 2.1 IGD shall attend the Site during Business Hours at such times as may be agreed in advance between the Parties in writing.
- 2.2 Where IGD's representative is unable on their first visit to collect the necessary information required to complete its report, IGD shall arrange for a further visit to the Site within Business Hours to gather the requisite information. Each visit shall be at the Customer's cost.
- 2.3 IGD shall, within 30 days of its attendance on the Site, provide a report to the Customer which shall set out IGD's findings, costings, conclusions and recommendations (as applicable).
- 2.4 During the Term, IGD shall:
- 2.4.1 prior to a representative attending a Site to carry out the Consultancy Services, provide to the Customer in writing:
    - (a) a method statement detailing the work to be done by IGD's representative; and
    - (b) a risk assessment detailing the anticipated state of the Site and Equipment and any proposed safety measures;
  - 2.4.2 use all reasonable endeavours to respond promptly and during Business Hours, by telephone or in writing, as appropriate, to any request from the Customer for information concerning the installation, commissioning, termination or use of the Equipment;
  - 2.4.3 shall procure that its representatives shall, while on site at the Site, comply with the Customer's reasonable health and safety and security policies provided that these have been brought the attention of its representatives; and
  - 2.4.4 shall appoint a manager for the Services, who shall have authority to contractually bind IGD on all matters relating to the Services. IGD may replace that person from time to time where reasonably necessary in the interests of IGD's business.

### **3 Customer Obligations**

- 3.1 The Customer shall at all times during the Term:
- 3.1.1 prepare the Site and Equipment prior to each visit by IGD's representative to provide the Services;
  - 3.1.2 provide all information concerning the Site and Equipment as reasonably required by IGD;
  - 3.1.3 ensure full and free access to the Site and Equipment for IGD's representatives;
  - 3.1.4 ensure adequate and safe working space and facilities for IGD's representatives;
  - 3.1.5 take all such steps as may be necessary to ensure the safety of any of IGD's representatives attending the Site; and

- 3.1.6 appoint a manager for the Services. That person shall have authority to contractually bind the Customer on all matters relating to the Services. The Customer may replace that person from time to time where reasonably necessary in the interests of the Customer's business.
- 3.2 IGD's representative shall carry out a site risk assessment upon arrival at the Site. If the Site or Equipment is assessed to pose a risk to personnel or IGD Materials, then:
  - 3.2.1 IGD is entitled to charge Additional Charges for any additional time incurred to rectify the Site or Equipment in order to provide the Consultancy Services; and
  - 3.2.2 if the risk cannot be rectified within the time allocated for the site visit, then IGD's representative may withdraw from the Site and shall arrange an additional visit with the Customer. Each visit shall be at the Customer's cost.
- 3.3 IGD shall not be liable for any delay in its performance of the Services caused by a failure by the Customer to fulfil its obligations under this Contract. IGD shall be entitled to charge Additional Charges for any Additional Services performed due to delays or additional visits arising from the Customer's failure to fulfil its obligations under this Contract.

#### **4 Fees**

- 4.1 The Customer shall pay IGD the fees set out on the Order Confirmation, following the Customer's receipt of IGD's invoice and the Deliverable(s) produced on completion of the Consultancy Services.