

1. INTERPRETATION

1.1 In these terms and conditions the following words shall have the following meanings:

"Agreement" means the contract formed between the Company and the Supplier in accordance with these Conditions;

"Company" means either: (i) Emtelle UK Limited (UK Company Number SC079486) of Haughhead, Hawick, Scotland, TD9 8LF; or (ii) the member of Emtelle UK Limited's corporate group which is named in the Order;

"Company Materials" has the meaning given to it in Clause 4.4.4;

"Conditions" means: (i) the Company's standard terms and conditions of purchase as set out in this document; and (ii) includes any special conditions agreed in writing between the Company and the Supplier (whether documented in the Order or otherwise);

"Deliverables" all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

"Goods" means any goods (including any part of them) described in the Order;

"Good Industry Practice" means the degree of skill, care and diligence which would be used by a properly qualified and competent supplier engaged in performing services which are the same as, or similar to, the Services;

"Intellectual Property Rights" means patents, trade marks, service marks, copyright and related rights, design rights, rights to use, and protect the confidentiality of, confidential information, moral rights and all other intellectual property rights together with any or all goodwill relating or attached thereto;

"Services" means any services and Deliverables to be provided to the Company by the Supplier under the Contract and as described in the Order, the Specification or as otherwise documented in writing between the parties;

"Specification" means any written specification, standards, requirements, data, plans, drawings, models or other information relating to the Goods or Services which is agreed between the parties;

"Supplier" means the person, firm or company from whom the Company purchases the Goods and/or Services;

"Order" means any purchase order made in writing by the Company for the Goods and/or Services; and

"writing" or **"written"** shall include facsimile transmissions and electronic communications (including emails and comparable means of written communication).

2. BASIS OF AGREEMENT

2.1 The Order shall be deemed to be an offer by the Company to purchase the Goods and/or acquire the Services in accordance with these Conditions.

2.2 These Conditions apply to the Agreement to the exclusion of any other terms and/or conditions (including

any terms or conditions written on or attached to any quotation, acknowledgment on acceptance of order, specification, sales invoice, delivery note, form, document or correspondence) sought to be imposed by the Supplier, or which are implied by trade, custom, course of dealing or practice.

2.3 The Supplier shall be deemed to have accepted the Order on the earlier of:

2.3.1 subject to the Clause 2.4, the Supplier expressly accepting the Order in writing; or

2.3.2 doing any act which is consistent with fulfilling the Order,

at which point the Agreement shall come into existence.

2.4 The Supplier shall confirm its acceptance or rejection of the Order no later than:

2.4.1 14 days from the date of the Order if the Supplier is located in the UK; or

2.4.2 21 days from the date of the Order if the Supplier is located elsewhere.

If the Supplier fails to meet the response times set out above, the Company shall not be liable to pay for any Goods supplied unless the Supplier has sought written confirmation from the Company that the Company wishes to proceed with the Order.

2.5 Any variation in the Order or these terms and conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. Any variation in price, quantity, delivery or other terms or conditions agreed orally shall be confirmed in writing by both the Company and the Supplier within 7 days from the date of such oral agreement, otherwise it shall not be binding on either party.

3. SUPPLY OF GOODS

3.1 The Supplier warrants and undertakes that the Goods shall:

3.1.1 correspond with their description and the Specification;

3.1.2 be of satisfactory quality and fit for any purpose help out by the Supplier, or made known to the Supplier by the Company, expressly or by implication (and in this respect the Company relies on the Supplier's skill and judgment); and

3.1.3 comply with all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing, labeling and delivery of the Goods.

3.2 The Company shall have the right to inspect and test the Goods at any times and the Supplier shall not unreasonably refuse any request by the Company (or its appointed representative) to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to delivery and the Supplier shall provide the Company with all facilities and cooperation reasonably required for such inspection and testing.

3.3 If as the result of such inspection or testing the Company is not satisfied that the Goods will comply in all respects

with the Agreement, the Company shall inform the Supplier and the Supplier shall take all necessary remedial steps to ensure that the Goods comply with the Agreement.

- 3.4 The Supplier shall remain fully responsible for the Goods and any such inspection or testing by the Company (or its appointed representative) shall not diminish or otherwise affect the Supplier's obligations under the Agreement.

4. SUPPLY OF SERVICES

- 4.1 The Supplier shall commence provision of the Services from the date set out in the Order (or as otherwise agreed between the parties) and for the duration agreed between the parties provide the Services to the Company in accordance with the terms of the Agreement. If no date is specified in the Order (or otherwise agreed between the parties) then the Services shall be performed within 28 days of the Order. Time for performance of the Services shall be of the essence of the Agreement.

- 4.2 The Services shall be performed at the location specified in the Order or Specification or as otherwise agreed between the parties in writing.

- 4.3 In performing the Services, the Supplier shall co-operate with the Company in all matters relating to the Services, and comply with all reasonable instructions of the Company.

- 4.4 The Supplier warrants and undertakes that it shall:

4.4.1 perform the Services in accordance with Good Industry Practice and all applicable laws and regulations;

4.4.2 use personnel who are suitably skilled and experienced to perform tasks assigned to them;

4.4.3 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order, Specification, or as otherwise agreed between the parties in writing, and that any Deliverables are suitable for any purpose held out by the Supplier, or made known to the Supplier by the Company, expressly or by implication; and

4.4.4 hold all materials, equipment and tools, drawings, specifications and data supplied by the Company to the Supplier ("**Company Materials**") in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose or use the Company Materials other than in accordance with the Company's instructions.

5. DELIVERY AND ACCEPTANCE OF GOODS

- 5.1 The Supplier shall deliver the Goods:

5.1.1 to the location specified in the Order or, if no such location is specified or otherwise agreed between the parties in writing, to the Company's premises at Haughhead, Hawick, Scotland;

5.1.2 on the date specified in the Order, or if no such date is specified or otherwise agreed between the parties in writing, within 28 days of the date of the Order; and

5.1.3 during the Company's normal hours of business, unless otherwise instructed by the Company.

- 5.2 The Supplier shall unload the Goods at its own risk and as directed by the Company. Delivery of the Goods shall be completed upon completion of the unloading of the Goods at the delivery location.

- 5.3 The date of delivery of the Goods shall be of the essence of the Agreement.

- 5.4 The Supplier shall ensure that:

5.4.1 subject to Clause 3.1.3, the Goods shall be packaged and marked in accordance with the Company's reasonable instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition in the ordinary course; and

5.4.2 each delivery is accompanied by a delivery note which is prominently displayed and which shows order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

6. LATE DELIVERY OF GOODS OR PERFORMANCE OF SERVICES

- 6.1 If the Goods are not delivered, or the Services are not performed, on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:

6.1.1 cancel the Agreement in whole or in part without being liable to: (i) compensate the Supplier for any losses arising as a result of such cancellation; or (ii) to make any payment to the Supplier other than in respect of Goods actually delivered or Services actually rendered to the Company prior to the date of such cancellation;

6.1.2 refuse to accept any subsequent delivery of the Goods or provision of the Services which the Supplier attempts to make;

6.1.3 recover from the Supplier any expenditure reasonably incurred by the Company in obtaining goods or services in substitution from another supplier; and

6.1.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods or provide the Services on the due date.

- 6.2 The Company shall not be deemed to have accepted the Goods or Services until the Company has had 14 days to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

- 6.3 The Supplier shall supply the Company on delivery of the Goods with all operating and safety instructions, warning notices and other information as may be necessary for their proper use, maintenance and repair.

- 6.4 Unless the Company expressly agrees otherwise in writing, containers and packing must be supplied free of charge but will be returned, if required, at the Supplier's risk and expense.

6.5 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are to be delivered in instalments, a failure by the Supplier to deliver any one instalment on time (or at all) or any defect in an instalment shall entitle the Company to exercise the remedies set in Clauses 6 and 7 (as applicable).

6.6 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess will be held by the Company at the Supplier's risk and shall be returnable to the Company at the Supplier's risk and expense.

7. NON-COMPLIANT GOODS

7.1 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3.1, then, without limiting its other rights or remedies, the Company shall have one or more of the following rights, whether or not it has accepted the Goods:

7.1.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

7.1.2 to terminate the Agreement with immediate effect by giving written notice to the Supplier;

7.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

7.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

7.1.5 to recover from the Supplier any expenditure incurred by the Company in obtaining substitute goods from a third party; and

7.1.6 to claim damages for any additional costs, loss or expenses incurred by the Company arising from the Supplier's failure to supply the Goods in accordance with Clause 3.1.

7.2 These Conditions shall extend to any substituted or repaired or replacement Goods supplied by the Supplier.

7.3 The Company's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

8. RISK AND PROPERTY

8.1 Title in the Goods shall pass to the Company upon the earlier of: (i) delivery; or (ii) payment. Risk in the Goods shall pass to the Company when delivery is completed in accordance with Clause 5.

8.2 In respect of the Goods, and any goods that are transferred to the Company as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has, or shall have, full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Company it will have full and unrestricted rights to sell and transfer all such items to the Company.

9. CHANGES TO THE SPECIFICATION

9.1 Any Specification, drawings or equipment supplied by

the Company to the Supplier, or produced by the Supplier specifically for the Company in connection with the Agreement shall be the deemed to be Company Materials for the purposes of this Agreement. The Supplier shall not disclose to any third party any such Specification except as required for the purpose of the Agreement and shall return such Specification, drawings or equipment to the Company upon satisfactory completion of the Agreement.

9.2 The Company may at any time make changes in writing to the Order including changes in the drawings or Specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increased cost to the Supplier the parties shall, acting reasonably and in good faith, seek to agree an equitable adjustment to the price or delivery schedule or both. Any change to the Order by the Supplier must be approved by the Company in writing before the Supplier proceeds with such changes.

10. WORK ON THE COMPANY'S PREMISES

10.1 The Supplier and its servants agents and sub-contractors shall at all times whilst on the Company's premises;

10.1.1 comply with any rules or regulations issued by the Company and obey any reasonable instructions of the Company; and

10.1.2 at all times comply with the provisions of all applicable health and safety laws and regulations.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Supplier assigns to the Company, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

11.2 The Supplier shall obtain waivers of all moral rights in the outputs of the Services (including for the avoidance of doubt the Deliverables) to which any individual is now or may be at any future time entitled in any jurisdiction.

11.3 All Company Materials are and shall remain the exclusive property of the Company.

11.4 The Supplier shall, promptly at the Company's request, do (or procure to be done) all such further acts and things (including the execution of all such other documents) as the Company may from time to time reasonably require for the purpose of securing for the Company the full benefit of the Agreement (including all right, title and interest in and to the Intellectual Property Rights assigned to the Company in accordance with Clause 11.1).

12. INDEMNITY

12.1 The Supplier shall indemnify and keep the Company indemnified in full from and against all liability, loss, damages, costs and expenses (including legal expenses) whether direct or indirect which are awarded against or incurred or paid by the Company as a result of or in connection with:

12.1.1 any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods (except to the extent that such

defect was caused by the negligence or wilful misconduct of the Company);

12.1.2 any breach of any warranty given by the Supplier in relation to the Goods or Services;

12.1.3 any claim that the Goods, or their use, resale or importation infringes any Intellectual Property Rights of any other third party except to the extent that the claim arises from any specifications, drawings, samples or descriptions provided by the Company; and

12.1.4 any negligence, act or omission of the Supplier, its employees, agents or sub-contractors in: (i) supplying, delivering and installing the Goods; or (ii) in connection with the performance of the Services.

12.2 This Clause 12 shall survive termination of the Contract.

13. INSURANCE

During the term of the Contract and for a period of 5 years thereafter the Supplier shall maintain in force with a reputable insurance company: (i) professional indemnity insurance; (ii) employer's liability insurance; (iii) product liability insurance; and (iv) public liability insurance to cover the liabilities that may arise under or in connection with the Agreement, and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

14. PRICES AND PAYMENT

14.1 The price payable for the Goods and the Services shall be that stated in the Order and unless otherwise stated shall be:

14.1.1 inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage insurance, delivery of the Goods to the delivery address and any duties, imports, levies or taxes other than value added tax (or equivalent sales tax); and

14.1.2 fixed for the duration of the Agreement.

14.2 No variation in the price nor extra charges shall be made by the Supplier (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior written consent of the Company.

14.3 Unless otherwise agreed by the Company in writing, the Supplier shall invoice the Company after: (i) delivery of the Goods; or (ii) performance of the Services.

14.4 The Company shall pay the price of the Goods or Services in the currency stipulated in the Order not later than 45 days following: (i) the date of invoice; or (ii) satisfactory completion of the Order, whichever is the later, unless different payment terms have been agreed in writing by the Company.

14.5 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any sums payable by the Company to the Supplier under the Agreement.

14.6 All invoices (which shall be valid for VAT purposes),

advice notes, delivery notes, packing notes, bills of lading, certificates of insurance and other documents shall quote the Company's Official Purchase Order Number and the Company's Bulk Purchase Order Release Number when appropriate and be cross referenced to each other.

14.7 If the Company fails to make any payment by the due, then Supplier may charge interest on the overdue amount at the rate of 2% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. This clause shall not apply to payments that the defaulting party disputes in good faith.

15. CONFIDENTIALITY

The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to those of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company. The Supplier shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as those which bind the Supplier. This Clause 15 shall survive termination of the Agreement.

16. SERVICING

Unless otherwise agreed between the parties in writing, the Supplier will in all cases where machinery or equipment is supplied maintain, for at least the normal life of the machinery or equipment, an adequate stock of spare and replacement parts and components and an adequate number of trained personnel so as to ensure that all necessary maintenance, adjustments or repairs to the machinery or equipment can be carried out with the minimum delay (subject to the parties agreeing a reasonable price if maintenance, adjustments and repair is not part of the Services provided under the Agreement).

17. CUSTODY OF COMPANY MATERIALS

17.1 If the Order relates to the application by the Supplier of Services (including any process) to Company Materials supplied by the Company to the Supplier for that purpose, the following additional conditions shall apply to the Agreement whether the Company Materials belong to the Company or to any third party:

17.1.1 the Supplier shall be a bailee of the Company Materials and shall only hold them for the purpose of applying the Services only; and

17.1.2 the Supplier shall at times, while the Company Materials are in his care and control (or the care and control of any agent or contractor to the Supplier) insure the same with a reputable insurer (to the full replacement value) against loss, damage or destruction and shall inform the Company forthwith if the Company Materials are lost, damaged or destroyed. The Supplier shall pay to the Company the full replacement value of such Company Materials and shall indemnify the Company against any expenses, liability, loss,

claim or proceedings by reasons of, or in consequence of, such loss, damage or destruction.

18. ANTI-BRIBERY

18.1 The Supplier shall:

18.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010;

18.1.2 comply with any ethics, anti-bribery and anti-corruption policies which the Company may have in force from time to time and which are made available to the Supplier; and

18.1.3 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement.

19. TERMINATION

19.1 Without prejudice to clause 13.2, the Company shall be entitled to cancel any Order in whole or in part by giving notice to the Seller at any time prior to delivery of the Goods or performance of the Services in which event the Company's sole liability shall be to pay to the Supplier fair and reasonable compensation for work in progress at the time of cancellation but such compensation shall not include loss of anticipated profits or any consequential loss.

19.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Agreement immediately if:

19.2.1 the Supplier commits a material breach of the terms of this Agreement;

19.2.2 the Supplier repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;

19.2.3 any distress, execution or other legal process is levied upon any of the assets of the Supplier;

19.2.4 the Supplier enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the Supplier's undertaking or assets;

19.2.5 the Supplier ceases or threatens to cease to carry on its business;

19.2.6 the financial position of the Supplier deteriorates to such an extent that in the reasonable opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

19.2.7 the Company reasonably apprehends that any of the events mentioned above is about to occur in

relation to the Supplier.

19.3 The termination of the contract, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

20. ASSIGNMENT

20.1 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of the Company.

20.2 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

21. GENERAL

21.1 **Language.** These Conditions are drafted in the English language. If these Conditions are translated into any other language, the English language version shall take precedence.

21.2 **Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

21.3 **Waiver.** Failure of the Company to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

21.4 **Third parties.** A person who is not a party to the Agreement shall not have any rights to enforce its terms.

21.5 **Notices.** Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

21.6 **Governing law.** The formation, construction, performance, validity and all aspects of the Contract are governed by English law and the parties submit to the non-exclusive jurisdiction of the English Courts. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this agreement.