

## Avery Weigh-Tronix Terms of Service - UK

### 1. INTERPRETATION

1.1. In this Agreement, unless the context otherwise requires, the following expressions shall have the following meaning:

*'Additional Services'* – means any additional maintenance services for the Equipment or supply of parts that are not included in the Schedule of Cover which the Company shall supply to the Customer at the Customer's written request and the Customer shall pay the Additional Services Fees.

*'Additional Services Fees'* – the fees payable in consideration of the provision of any Additional Services, which shall be calculated in accordance with the Company's standard scale of charges in force for the time being.

*'Agreement'* – means the Customer's signed Schedule of Cover for the provision of the Scheduled Maintenance Services incorporating the Service Level Options Agreement, Schedule of Equipment, these Conditions, an Extended Hours Agreement and any documents referred to therein.

*'Commencement Date'* – means the date of the Agreement.

*'Company'* – means ITW Limited, trading as Avery Weigh-Tronix whose principal place of business for correspondence is Foundry Lane, Smethwick, West Midlands, B66 2LP, England and registered office is at Saxon House, 2-4 Victoria Street, Windsor, England, SL4 1EN. Brecknell, Central Weighing, Exactrak, GSE and Railweight are all divisions of Avery Weigh-Tronix. ITW Limited is registered in England and Wales under number 00559693.

*'Conditions'* – means these service agreement terms and conditions and any documents referred to herein.

*'Confidential Information'* – means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Scheduled Maintenance Services, who need to know the confidential information in question (Representatives) to the other party and that party's Representatives in connection with the Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

*'Corrective Maintenance Services'* – has the meaning set out in clause 2.3 of these Conditions.

*'Customer'* – means the person, body or company who contracted for the provision of the Scheduled Maintenance Services.

*'Equipment'* – means the equipment specified in the Schedule of Equipment and such additions and changes thereto as shall from time to time be agreed in writing between the parties.

*'Force Majeure Event'* – means any circumstance not within a party's reasonable control including, without limitation, acts of God, flood, drought, earthquake, adverse weather conditions or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and interruption or failure of utility service but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay.

*'Initial Term'* – means a period of 12 months (unless otherwise specified in the Schedule of Cover) commencing on the Commencement Date.

*'Location'* – means the location where the Company shall provide the Scheduled Maintenance Services as set out in the Schedule of Cover or any other location as may be agreed by the parties in writing from time to time.

*'Maintenance Hours'* – means the hours of Scheduled Maintenance Services provided at the Location as set out in the Schedule of Cover which may be increased by an extended hours agreement between the parties.

*'Renewal Period'* – means each successive 12 month period (or other period specified in the Schedule of Cover) after the Initial Term for which the Agreement is renewed in accordance with clause 7.1 of these Conditions.

*'Response Time'* – has the meaning set out in clause 2.4 of these Conditions.

*'Routine Maintenance Services'* – has the meaning set out in clause 2.2 of these Conditions.

*'Schedule of Cover'* – means the Company's service agreement schedule of cover as signed by the Customer.

*'Schedule of Equipment'* – means the schedule of equipment attached to the Schedule of Cover.

*'Scheduled Maintenance Services'* – means the Routine Maintenance Services, Corrective Maintenance Services, Additional Services of the Equipment and any other services set out in the Schedule of Cover to be provided by the Company to the Customer in accordance with the Agreement and these Conditions.

*'Software'* – means the software or computer programs comprised in the Equipment.

*'Term'* – means the Initial Term together with all Renewal Periods.

*'Total Annual Premium'* – means the Company's fees for the Scheduled Maintenance Services as set out in the Schedule of Cover.

1.2. Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.

1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. Any schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any

reference to these Conditions includes the schedules.

- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. A reference to writing or written includes faxes and e-mail.
- 1.11. Any words following the terms 'including', 'include', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. SCHEDULED MAINTENANCE SERVICES**

- 2.1. During the Term, the Company shall provide the Customer with the Scheduled Maintenance Services for the Equipment set out in the Schedule of Equipment in accordance with the Agreement and these Conditions.
- 2.2. The Company shall attend at the Location during the Maintenance Hours to test, lubricate and/or calibrate the functions of the Equipment and make such adjustments as shall be necessary to keep the Equipment in good working order ("Routine Maintenance Services"). If it is expedient in the opinion of the Company, the Company may perform the Routine Maintenance Services at the time of Corrective Maintenance Services.
- 2.3. Upon receipt of notification from the Customer that the Equipment has failed or is malfunctioning, the Company shall use all reasonable endeavours to attend at the Location during the Maintenance Hours to make such repairs and adjustments and replace such parts of the Equipment to restore the Equipment to its proper operating condition subject to available resources ("Corrective Maintenance Services"). The type of cover set out in the Schedule of Cover shall determine whether the Company's performance of Corrective Maintenance Services includes emergency visits to the Location and the costs for any repairs.
- 2.4. On receipt of a request for Corrective Maintenance Services and, where in the opinion of the Company attendance at the Location is required, the Company shall use its reasonable endeavours to deliver the Corrective Maintenance Services in accordance with the service levels and timeframes specified in the Schedule of Cover ("Response Time").
- 2.5. In performing the Scheduled Maintenance Services, the Company may attempt to rectify failure or malfunctioning of the Equipment without the need for a site visit if practical or it shall use all reasonable endeavours to restore any malfunctioning or failed Equipment while in attendance at the Location. Where this is not reasonably practicable, the Company may remove the Equipment or part of the Equipment for repair away from the Location and the Customer shall support any remote corrective action the Company's advises with diligence.
- 2.6. If the Customer cancels a site visit on the day of the scheduled visit or if it fails to comply with the corrective action provided by the Company and the Company is required to attend the Location, the Company reserves the right to charge the Customer for Additional Services Fees in respect of its reasonable costs and travel expenses for each of the Company's personnel required to attend the Location. Any Additional Services Fees shall be calculated from when such personnel arrive at the Location until they leave the Location.
- 2.7. With regard to site visits cancelled by the Customer, any rescheduled date is subject to the Company's availability and the Company cannot guarantee that the visit shall be rescheduled to an alternative date in the same month that the original site visit was scheduled for.
- 2.8. The Company reserves the right at all times to vary the Conditions and to suspend or withdraw Scheduled Maintenance Services or amend the terms on which the Scheduled Maintenance Services are offered if any part of the Equipment is moved to another location or there is any major change in use of any part of the Equipment or if the Equipment is misused, or used in an unsafe manner or used in a manner which makes the maintenance of the Equipment hazardous.

## **3. CHARGES**

- 3.1. For the performance of the Scheduled Maintenance Services, the Customer shall pay to the Company the Total Annual Premium and any Additional Service Fees.
- 3.2. The Total Annual Premium shall be due and payable in full to the Company on the payment dates and by the payment methods set out in the Schedule of Cover. The Customer's obligation to pay for the Total Annual Premium shall continue to apply in the event that the Customer cancels their direct debit (if this is the payment method agreed). If the Customer's bank account or payment card details have changed, the Customer shall notify the Company as soon as possible.
- 3.3. The Company shall issue an invoice to the Customer for the Additional Services at its option either in advance or on completion of the Additional Services. Any Additional Service Fees shall be due and payable in full to the Company within 30 days of the invoice date sent by the Company to the Customer.
- 3.4. The Company may at any time after the first anniversary of the Commencement Date, increase the Total Annual Premium and the Additional Service Fees by giving to the Customer not less than six months' written notice.
- 3.5. The inclusion of any particular item of Equipment in the Schedule of Equipment is subject to such item being found to be satisfactory on first inspection by the Company. By giving notice in writing to the Customer within 30 days after the first inspection/ service visit of any such item, the Company may exclude such item of Equipment from the Agreement. In such event, that part of any Total Annual Premium paid in respect of the excluded Equipment will be refundable to the Customer.
- 3.6. The Total Annual Premium and the Additional Service Fees shall be exclusive of VAT, which shall be paid by the Customer at the rates in force at the date of invoice and in the manner for the time being prescribed by law.
- 3.7. In the event that the Customer fails to make any payment due to the Company by the due date:
  - 3.7.1. the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and
  - 3.7.2. the Company reserves the right to suspend performance of the Scheduled Maintenance Services until actual payment of the overdue amount is paid in full.

#### **4. EXCEPTIONS**

4.1. The Scheduled Maintenance Services exclude any maintenance of the Equipment in the following circumstances:

- 4.1.1. failure or fluctuation of electric power, air conditioning and humidity control, vibration or other environment conditions required for the normal operation of the Equipment, or an error or omission in the correct use of that electric power, air conditioning and humidity control, vibration or other environment conditions by the Customer;
- 4.1.2. any maintenance, alteration, modification or adjustment, of the Equipment or neglect or fault by persons other than the Company or its employees or agents unless the Company has approved such maintenance, alteration, modification or adjustments of the Equipment in writing;
- 4.1.3. any fault in or maintenance of any attachments or associated equipment (whether or not supplied by the Company) which do not form part of the Equipment including any equipment belonging to a third party;
- 4.1.4. failure or malfunctioning of the Equipment caused by a Force Majeure Event;
- 4.1.5. repair or renewal of tapes, disk packs, printing ribbons, thermal print heads, slicer blades (knives), sharpening stones or other consumable supplies;
- 4.1.6. repair or renewal of structural steelwork, foundations, concrete, grouting, deck plates, cover plates castings, housings, fabrications, goods fittings, charts, graticules, lenses, screens, glass, perspex safety guards, slicer blade (knife) remover and spanner, fasteners and fittings greater than the size M12 or equivalent;
- 4.1.7. electrical or other environmental work external to the Equipment;
- 4.1.8. Software modifications;
- 4.1.9. use of the Equipment with computer equipment or material not supplied or approved in writing by the Company; and
- 4.1.10. all other circumstances set out in the Schedule of Cover.

4.2. Where the Company is performing or has performed the Scheduled Maintenance Services in circumstances where it is established that the Equipment was not in good working order due to any of the causes listed in clauses 4.1.1 to 4.1.9 above, the Company may, at its discretion, issue a quotation setting out the Additional Services Fees in respect of that work. The Company shall only perform such Additional Services once it receives written acceptance of the quotation from the Customer.

4.3. The Company has no obligation to maintain stocks of replacement parts for the Equipment. The Customer shall be responsible for obtaining and holding stock of replacement parts for the Equipment.

#### **5. REPLACEMENT PARTS**

5.1. All spare parts and/or replacements provided by the Company to the Customer shall become the property of the Customer. All parts and components removed from the Equipment by the Company in the course of performing the Scheduled Maintenance Services shall become the property of the Company.

5.2. All spare parts or replacements provided by the Company to the Customer shall become part of the Equipment and the terms of these Conditions shall apply to such parts.

5.3. In the event that the Company, using its reasonable endeavours, is unable to procure a necessary replacement part, the Company shall not be held liable and the Equipment affected shall immediately be removed from the Schedule of Equipment.

5.4. The Company may in its sole discretion utilise replacement parts that are new, used, or refurbished in order to provide the Scheduled Maintenance Services which may delay the onset of obsolescence of the Equipment.

#### **6. WARRANTIES**

6.1. The Company warrants to the Customer that the Scheduled Maintenance Services shall be performed using all reasonable skill and care and in accordance with all applicable laws and regulations in force from time to time.

6.2. The Customer's sole remedy, and the Company's sole liability, for a breach of the foregoing warranty is for the Company to, at its option, re-perform the applicable Scheduled Maintenance Services or credit the Customer's account or issue a refund on a pro-rata basis for the price paid for the applicable Scheduled Maintenance Services.

6.3. Except as expressly stated in these Conditions, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.

6.4. Any liquidated damages or service rebates payable in case of delay shall be the full satisfaction of the Company's liability arising directly or indirectly from the delay.

#### **7. DURATION**

7.1. The Agreement shall commence on the Commencement Date.

7.2. Unless terminated earlier in accordance with clause 7.3 or clause 11 and provided that the Total Annual Premium and any Additional Services Fees have been paid to date by the Customer, the Agreement shall continue for the Initial Term or Renewal Period and shall automatically extend for a Renewal Period at the end of the Initial Term or Renewal Period.

7.3. The Company will review the Total Annual Premium, Scheduled Maintenance Services and these Conditions and the Company shall provide the Customer with six months' notice in writing of any changes that shall apply for the Renewal Period. The Customer may provide written notice to the Company to terminate the Agreement not less than three months (unless otherwise agreed in writing between the parties) prior to the end of the Initial Term or relevant Renewal Period.

#### **8. CUSTOMER OBLIGATIONS**

8.1. During the Term of the Agreement the Customer shall:

8.1.1. Ensure that the Equipment, the cables and fittings associated with the Equipment and the electrical supply to the Equipment is kept in suitable premises and under suitable conditions.

8.1.2. Not make or allow any third party to make any modification to the Equipment without the Company's prior written consent.

8.1.3. Ensure that at all times the Equipment is used in a normal and proper manner and that the Equipment is only used by trained and competent personnel and follow any operating instructions as the Company may give from time to time.

8.1.4. Follow the Company's telephone based checks of the Equipment to avoid unnecessary attendance of the Company's personnel at the Location and/or disruption of the use of the Equipment.

8.1.5. Be responsible for cleanliness of the Equipment and take any necessary action to prevent damage by water or other materials which may adversely affect the condition and performance of the Equipment.

8.1.6. Ensure that in no circumstances will the Equipment or any Software be interfered with, or repaired, adjusted or maintained by its own employees, agents, contractors or any third party unless the Company has provided written consent.

8.1.7. Only use supplies or materials supplied or approved by the Company on the Equipment.

8.1.8. Provide or pay the cost of transport to and from the Company's premises of Equipment needing repair and/or adjustment which cannot readily be carried in the Company's normal service vehicle.

8.1.9. Provide the Company with full and safe access to the Equipment for the purpose of the Agreement including adequate working space around the Equipment.

8.1.10. Provide suitable lifting equipment together with unskilled assistance for lifting or moving test weights and heavy parts and where the Equipment has been removed take all steps necessary to safeguard the Location.

8.1.11. Make available to the Company such programs, operating manuals and information as may be necessary to enable the Company to perform its obligations hereunder and if requested by the Company provide staff familiar with the Customer's programs and operations to co-operate with the Company's personnel in the diagnosis of any malfunction of the Equipment.

8.1.12. At all reasonable times permit full and free access to the Location and to the Equipment (including any spare parts delivered or held by the Customer) to the Company, its employees, contractors and agents and provide them with adequate and safe working space, and any telecommunications facilities and other facilities reasonably required by the Company to perform the Scheduled Maintenance Services at the Customer's expense.

8.1.13. Notify the Company if any or all of the Equipment is moved to another location or site or if there are major changes in the use of the Equipment.

8.1.14. Notify the Company promptly if the Equipment is discovered to be operating incorrectly.

8.1.15. Provide the Company with any information that is reasonably requested or required in the performance of the Scheduled Maintenance Services.

## **9. CALIBRATION AND VERIFICATION**

9.1. Unless otherwise agreed with the customer, calibration methods used will be carried out in accordance with the Company's documented procedures.

9.2. In the case of ISO17025, calibration is supplied within the scope of the Company's accreditation and unless otherwise agreed with the Customer, will include linearity, repeatability, and off-centre loading tests in accordance with the Company's ISO17025 documented procedures.

9.3. Whenever verification or re-verification of the equipment is necessary, the Company will attend with one of the Company's Verification Officers or (if so required by the Customer), arrange for the attendance of a Trading Standards Officer.

9.4. Verification or re-verification testing will be carried out in accordance with the Company's documented procedures.

9.5. The Verification Officer's fees and expenses and any charge for the transport and use of the Verification Officer's test weights and/or equipment shall be payable by the Customer and such costs will be additional to the Total Annual Premium and charged under the Additional Services Fees unless they have been included in the calculation of the Total Annual Premium as set out in the Schedule of Cover. For this purpose, the Customer will allow the Company's use of all appropriate test weights on a free of charge basis or the Company will loan, free of charge, test weights (subject to availability and suitability) provided that the Customer shall pay the Company the cost of the Company's transport for collection and return of such weights.

9.6. Where the services of the Company's Calibration Test Unit are required, the cost of such services will be additional to the Total Annual Premium and charged under the Additional Services Fees unless such services have been included in the calculation of the Total Annual Premium.

## **10. SPARES**

10.1. The Customer shall be entitled to purchase from the Company during the Term of the Agreement at 20% discount off the Company's list price for the time being in force, any spare part or peripheral attachment set out in the Company's price list the supply of which is not covered by the Agreement.

10.2. If the Company has recommended to the Customer that particular spare parts or peripheral attachments should be held in stock by the Customer and such parts or attachments are not available when required (otherwise than due to the fault of the Company), the Company shall be entitled to charge the Customer for all additional expenses and costs incurred by the Company as a consequence of such non-availability.

## **11. TERMINATION**

11.1. Without prejudice to any rights that have accrued under the Agreement or any of its rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

11.1.1. the other party commits a material breach of any term of the Agreement (other than failure to pay any amounts due under the Agreement) and (if that breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;

11.1.2. the other party:

11.1.2.1. suspends, or threatens to suspend, payment of its debts;

11.1.2.2. is unable to pay its debts as they fall due or admits inability to pay its debts;

11.1.2.3. (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

11.1.2.4. (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986;

11.1.2.5. (being a partnership) has any partner to whom any of clause 11.1.2.1 to clause 11.1.2.4 apply;

11.1.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

11.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

11.1.5. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over that other party (being a company);

11.1.6. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

11.1.7. a person becomes entitled to appoint a receiver over the assets of that other party or a receiver is appointed over the assets of that other party;

11.1.8. a creditor or encumbrancer of that other party attaches or takes possession of, or a distress, execution, sequestration or



other similar process is levied or enforced on or sued against, the whole or any part of that other party's assets and that attachment or process is not discharged within 14 days;

11.1.9. any event occurs or proceeding is taken with respect to that other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.2 to clause 11.1.8 (inclusive);

11.1.10. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

11.1.11. there is a change of control of that other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

11.2. The Company may terminate the Agreement:

11.2.1. if the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 7 days after being notified to make that payment; or

11.2.2. by providing written notice to the Customer not less than three months (unless otherwise agreed in writing between the parties) prior to the end of the Initial Term or relevant Renewal Period.

11.3. The Customer may terminate the Agreement by providing notice in writing to the Company if all Equipment is lost, stolen or destroyed beyond economic repair provided that the Company is given the opportunity to repair or replace such Equipment at the Customer's expense.

11.4. The Customer may terminate the Agreement before the expiry of the Initial Term or Renewal Term however the Customer will not be entitled to a refund of, or to terminate their obligation to pay for, the Total Annual Premium and any Additional Services Fees remaining from the date of termination by the Customer until the expiry of the Initial Term or Renewal Term. The parties confirm that these sums represent a genuine pre-estimate of the Company's loss.

11.5. Any provision of the Agreement or these Conditions that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.

11.6. Termination of the Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

11.6.1. On termination of the Agreement for any reason, each party shall as soon as reasonably practicable:

11.6.2. return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information provided to it by the other party or data for the purposes of the Agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

11.6.3. delete (to the extent possible) any proprietary software belonging to the other party and all the other party's Confidential Information from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party;

11.6.4. return all of the other party's equipment and materials, failing which the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping;

11.6.5. the Company shall provide all reasonable assistance to the Customer and/or any third party engaged by the Customer in connection with the maintenance and support of the Equipment;

11.6.6. the Customer shall immediately pay any outstanding amounts owed to the Company pursuant to the Agreement.

11.7. Regardless of its obligations in this clause 11, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under clause 11.6, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. Clause 13 shall continue to apply to any retained documents and materials, subject to this clause 11.

## **12. LIABILITY**

12.1.1. Subject always to clause 12.4, the Company's total aggregate liability in contract, tort (including negligence), misrepresentation, restitution or otherwise, arising in connection with the performance of the Agreement shall be limited to the Total Annual Premium and any Additional Services Fees paid by the Customer to the Company during the 12-month period immediately preceding the date on which the cause of action first arose.

12.2. Subject always to clause 12.4, the Company shall not be liable whether in contract, tort, misrepresentation, restitution or otherwise, for:

12.2.1. any loss (whether direct or indirect) of profits, business, revenue or goodwill;

12.2.2. loss of corruption (whether direct or indirect) of data or information;

12.2.3. any special, consequential or indirect loss, costs, damages, charges or expenses however arising under the Agreement.

12.3. The Customer shall indemnify the Company against any liability, loss, damage, costs, fees or expenses suffered by the Company as a result of any claim or action brought by any third party in respect of any damage or injury caused whether direct or indirect as a result of or in connection with the performance or non-performance of the Company's obligations under the Agreement.

12.4. Nothing in these Conditions shall limit or exclude liability to a party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 or for any liability that may not be limited in law.

## **13. CONFIDENTIALITY**

13.1. The term Confidential Information does not include any information that:

13.1.1. is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

13.1.2. was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

13.1.3. was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

13.1.4. was known to the receiving party before the information was disclosed to it by the disclosing party;

13.1.5. the parties agree in writing is not confidential or may be disclosed; or

13.1.6. is developed by or for the receiving party independently of the information disclosed by the disclosing party.

13.2. Each party shall keep the other party's Confidential Information confidential and shall not:

13.2.1. use any Confidential Information except for the purpose of exercising or performing its rights and obligations under the Agreement (Permitted Purpose); or

13.2.2. disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

13.3. A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:

13.3.1. it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and

13.3.2. at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause.

13.4. A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.

13.5. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in the Agreement, are granted to the other party, or are to be implied from the Agreement.

13.6. The above provisions of this clause shall continue to apply after termination of the Agreement.

#### **14. LEGAL CONSTRUCTION**

14.1. The construction validity and performance of the Agreement shall be governed by the laws of England and Wales and any claim or dispute arising therefrom shall be subject to the exclusive jurisdiction of and be determined by the English Courts. Nothing in this clause shall limit the Company's right to take proceedings against the Customer in any other Court of competent jurisdiction.

#### **15. DISPUTE RESOLUTION**

15.1. If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it then the parties shall follow the procedure set out in this clause:

15.1.1. either party shall give to the other written notice of the dispute, setting out its nature together with relevant supporting documents. On service of the notice, the senior representatives of the parties shall attempt in good faith to resolve the dispute;

15.1.2. if the senior representatives of the parties are for any reason unable to resolve the dispute within 30 days of service of the notice, the dispute shall be referred to the managing directors of the parties who shall attempt in good faith to resolve it; and

15.1.3. if the managing directors of the parties are for any reason unable to resolve the dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing to the other party requesting mediation. A copy of the notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the notice unless otherwise agreed in writing between the parties.

15.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the dispute.

15.3. If the dispute is not resolved within 28 days after service of the notice, or either party fails to participate or to continue to participate in the mediation before the expiration of 28 days, or the mediation terminates before the expiration of the 28 days, the dispute shall be finally resolved by the courts of England and Wales in accordance with clause 14.1.

#### **16. STATUTORY AND OTHER REGULATIONS**

16.1. If the cost to the Company of performing its obligations under the Agreement with the Customer shall be increased by reason of any new or amended legislation, regulation, order or bye-law that comes in force after the date of the Agreement, the amount of such increase in the Company's costs shall be notified to the Customer and added to the Total Annual Premium.

#### **17. EXTRA COST**

17.1. Should the Company incur extra cost owing to variation or suspension of the supply of the Equipment by the Customer's instructions or lack of instructions, delays, over time, unusual hours, mistakes, or work, for which the Company is not responsible, a reasonable sum in respect of such extra cost including a reasonable element in respect of profit shall be added to the Total Annual Premium.

#### **18. FORCE MAJEURE**

18.1. Provided the Company has complied with clause 18.2, if the Company is prevented, hindered or delayed in or from performing any of its obligations under the Agreement (including for the avoidance of doubt obligations arising under these Conditions and the documents referred to in these Conditions) by a Force Majeure Event, the Company shall not be in breach of the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

18.2. The Company shall:

18.2.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the Customer of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

18.2.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18.3. If the Force Majeure Event prevents, hinders or delays the Company's performance of its obligations for a continuous period or periods of suspension aggregating to six months, the parties may terminate the Agreement by giving 30 days' written notice to the other party.

18.4. If the Agreement is terminated pursuant to clause 18.3, the Customer shall pay to the Company for the Scheduled Maintenance Services that have been performed by the Company up until the date of the Force Majeure Event on a pro-rata basis.

#### **19. SET-OFF**

19.1. The Customer shall not be entitled to withhold payment of any sums after they have become due by reason of any right of set off or counter claim which the Customer may have or alleged or for any reason whatsoever.

#### **20. GENERAL**

20.1.1. The Customer shall not, without the Company's prior written consent, assign or sub-let any of its rights or duties under the Agreement and shall furnish copies of any such assignments or sub contracts to the Company. The Company shall have the right, without prior notice or penalty, and the Customer hereby consents to and shall do all acts and execute all documents necessary to

enable the Company to assign the benefit of and/or by novation or otherwise transfer the obligations arising from the Agreement or any part thereof without restriction. The Company shall give to the Customer notice of any such assignment novation or transfer within 14 days of its occurrence.

20.1.2. The failure or delay of a party to exercise or enforce any right or remedy conferred under the Agreement or by law shall not be deemed to be a waiver of any such rights or remedies nor shall it prevent or restrict the further exercise of that or any other right or remedy.

20.1.3. Any notice required to be given under the Agreement shall be given in writing and shall be deemed to have been duly given if hand delivered or sent by prepaid post first class or email or facsimile addressed to the other party at its principal place of business or the last known address. Any notice shall be deemed delivered to have been received, if sent by prepaid post, 48 hours after posting (if a party's address for service is in Europe, seven 7 days after posting), or if by email or facsimile, 1 day after transmission, or if by hand, at the time the notice was left at the proper address.

20.1.4. In the event that any one or more of the provisions contained in these Conditions shall be invalid, illegal or unenforceable in any respect, 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 legality and enforceability of the rest of the Agreement.

20.1.5. The Customer warrants to the Company that:

20.1.5.1. it has the power to engage in the transactions contemplated by and/or contained in the Agreement;

20.1.5.2. it has full power, authority and legal right to execute and deliver the Agreement and to comply with the provisions hereof;

20.1.5.3. the obligations expressed and or assumed constitute valid and binding obligations of the Customer;

20.1.5.4. all acts, conditions and things to be done and performed and to have happened prior to the execution and delivery of the Agreement in order to constitute all of the obligations of the Customer hereunder as valid and binding have been done and performed and have happened in due and strict compliance with all applicable laws.

20.1.6. The Customer warrants and undertakes that during the performance, and for a period of nine (9) months following the completion of the Agreement, it will not without the Company's prior written agreement, employ or offer to employ or to introduce to any third party any person employed by the Company during the Term of the Agreement and not directly or indirectly induce any such person to leave the Company as aforesaid.

20.1.7. The Customer may advertise and make known it is undertaking work for the Customer. The Customer shall not make any public statements regarding the Company which could in any manner bring the Company or its services or products into disrepute.

20.1.8. The Customer acknowledges that the Company is subject to and must comply with UK, EU and US law in respect of sanctions, other trade restrictions, export licencing requirements, bribery and corruption. Accordingly, it is a condition of the Agreement that the Customer shall comply with all such laws in respect of goods and services supplied directly or indirectly by the Company or other members of the Company's group of companies. All Customers buying goods or services for resale shall also comply with the Company's code of conduct as amended from time to time. This code of conduct is available at <http://www.itw.com/about-itw/suppliers/page/en/supplier-code-of-conduct/> or alternatively available upon request from the Company. Breach of this clause shall be grounds for termination and shall not be considered a breach capable of remedy.

20.1.9. Save as otherwise expressly stated, a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

20.1.10. No variation of the Agreement shall be effective unless it is in writing and signed by the parties.

20.1.11. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.