

**GENERAL TERMS AND CONDITIONS  
PIPELINES 2 DATA (P2D) LIMITED**

Part A: General Terms and Conditions for the supply of Goods and Services

Part B: Additional Terms and Conditions for the Purchase of Goods by P2D.

Part C: Additional Terms and Conditions for the Hire of Goods by P2D to customers

**PART A: General Terms and Conditions for the supply of goods and services.**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in the Contract.

**1.1 Definitions**

**Conditions:** means the terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and P2D;

**Contract:** means the contract for the sale of the Goods or Services pursuant to any Quotation or Order and governed by these Conditions;

**Customer:** means the person who accepts a Quotation or whose Order is accepted by P2D;

**Deliverables:** all documents, products and materials developed by P2D or its agents, subcontractors, consultants and employees in relation to the Services in any form.

**Goods:** means the goods (including any instalment of the goods or any parts for them) which P2D is to sell or supply in accordance with the Contract;

**Order:** means the Customer's order for Goods or Services subsequently accepted by P2D;

**P2D:** means Pipelines 2 Data (P2D) Limited, registered in Scotland under number SC295863 with its registered office at 3 Minto Place, Aberdeen, AB12 3SN, and/or such other affiliated company that carries out the services, purchases the goods or hires the equipment;

**Parties:** means the Customer and P2D;

**Price:** means the price, exclusive of VAT, payable to P2D by the Customer and as detailed in the Order or Quotation;

**Quotation:** means P2D's quotation for Goods or Services subsequently accepted by the Customer;

**Service(s):** means any service to be provided by P2D for the Customer detailed in any Order or Quotation together with any other services which P2D provides or agrees to provide to the Customer;

**VAT:** value added tax chargeable under Scots law for the time being and any similar additional tax.

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

**1.3** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.4** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

**2. BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services from P2D in accordance with these Conditions.
- 2.2 P2D shall sell or supply and the Customer shall purchase the Goods or Services in accordance with the Contract subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any Quotation is accepted or purported to be accepted, or any Order is made or purported to be made, by the Customer.
- 2.3 No variation to these Conditions or the Contract shall be binding unless agreed in writing between the authorised representatives of P2D and the Customer.
- 2.4 P2D's employees or agents are not authorised to make any representations concerning the Goods or Service unless confirmed by P2D in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

**3. P2D'S OBLIGATIONS**

- 3.1 P2D shall use reasonable endeavours to manage and complete the Services, and to deliver the Deliverables to the Customer, in accordance with the agreed project plan.
- 3.2 P2D shall use reasonable endeavours to meet any performance dates specified in the agreed project plan but any such dates shall be estimates only and time for performance by P2D shall not be of the essence of these Conditions.

**4. CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
- (a) co-operate with P2D in all matters relating to the Services;
  - (b) provide, for P2D, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by P2D;
  - (c) provide, in a timely manner, such material and other information as P2D may reasonably require, and ensure that it is accurate in all material respects;
  - (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services; and
  - (e) inform P2D of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises.
- 4.2 If P2D's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, P2D shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 4.3 The Customer shall be liable to pay to P2D, on demand, all reasonable costs, charges or losses sustained or incurred by P2D (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to P2D confirming such costs, charges and losses to the Customer in writing.

## **5. CHANGE CONTROL**

- 5.1 The parties' authorised representatives shall meet regularly to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 5.2 If either party requests a change to the scope or execution of the Services, P2D shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
  - (b) any necessary variations to P2D's charges arising from the change;
  - (c) the likely effect of the change on the agreed project plan; and
  - (d) any other impact of the change on the Contract.
- 5.3 If the Customer wishes P2D to proceed with the change, P2D has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of the Contract to take account of the change and the Contract has been varied in accordance with clause 13.

## **6. CHARGES AND PAYMENT**

- 6.1 In consideration of the provision of the Services by P2D, the Customer shall pay the charges as set out in the Quotation or Order.
- 6.2 All charges quoted to the Customer shall be exclusive of VAT, which P2D shall add to its invoices at the appropriate rate.
- 6.3 P2D shall invoice the Customer monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned.
- 6.4 The Customer shall pay each invoice submitted to it by P2D, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by P2D.
- 6.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay P2D on the due date:
- (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above The Royal Bank of Scotland 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. The Customer shall pay the interest together with the overdue amount; and
  - (b) P2D may suspend all Services until payment has been made in full.
- 6.6 All amounts due under the Contract 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).

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 As between the Customer and P2D, all intellectual property rights (including copyright and rights of inventions) and all other rights in the Deliverables shall be owned by P2D.

## **8. CONFIDENTIALITY AND P2D'S PROPERTY**

- 8.1 The Customer undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by P2D, its employees, agents, consultants or subcontractors or of any member of the group of companies to which P2D belongs and any other confidential information concerning P2D's business or its products which the Customer may obtain, except as permitted by clause 8.2.
- 8.2 The Customer may disclose P2D's confidential information:

- (a) to its employees, officers, representatives 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 clause 8; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 The Customer shall not use P2D's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

8.4 All materials, equipment and tools, drawings, specifications and data supplied by P2D to the Customer shall, at all times, be and remain as between P2D and the Customer the exclusive property of P2D, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to P2D, and shall not be disposed of or used other than in accordance with P2D's written instructions or authorisation.

## **9. LIMITATION OF LIABILITY**

9.1 Nothing in the Contract limits or excludes P2D's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, P2D shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of or damage to goodwill; loss of use or corruption of software, data or information; or any indirect or consequential loss.

9.3 Subject to clause 9.1 and clause 9.2, P2D's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to:

- (a) £50,000 per claim; and
- (b) in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, the equivalent of the total charges paid by the Customer in that period.

9.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

## **10. TERMINATION**

10.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

- (d) 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 the other party (or any analogous arrangement outside the UK); or
- (e) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## **11. CONSEQUENCES OF TERMINATION**

### **11.1** On termination or expiry of the Contract:

- (a) the Customer shall immediately pay to P2D all of P2D's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, P2D may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within one month, return all of P2D's equipment, materials and Deliverables. If the Customer fails to do so, then P2D may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping.

11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or 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 agreement which existed at or before the date of termination or expiry.

## **12. FORCE MAJEURE**

12.1 Neither P2D nor the Contractor shall be responsible for any failure to fulfil any term or condition of the Order if and to the extent that fulfilment has been delayed or temporarily prevented by a Force Majeure Event which has been notified in accordance with this clause.

12.2 Upon the occurrence of a Force Majeure Event, the Party that is or may be delayed in performing the Order shall notify the other Party without delay with full particulars of the delay.

12.3 Save as otherwise expressly provided in the Order, no payments of whatever nature shall be made in respect of a Force Majeure Event.

12.4 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, or other natural disaster;
- (b) 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;
- (c) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (d) collapse of buildings, fire, explosion or accident;
- (e) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (f) interruption or failure of utility service.

## **13. VARIATION**

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **14. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**15. CONFLICT**

If there is a clear inconsistency between any of the provisions of the Contract and the provisions of the Order, the provisions of the Order shall prevail.

**16. NO PARTNERSHIP OR AGENCY**

16.1 Nothing in the Contract 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.

**17. NOTICES**

17.1 All notices and other communications to be given under the Contract shall be in English and in writing and delivered to the other Party at its registered office or principal place of business or such other address as may be notified in writing to the Party giving the notice.

**18. GOVERNING LAW**

The Contract and any dispute or claim 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 the law of Scotland and the parties irrevocably submit to the exclusive jurisdiction of the Scottish Courts.

## **Part B – General Terms and Conditions of Purchasing**

### **1. INTRODUCTION**

- 1.1 These conditions (“**Part B Conditions**”) shall apply to the purchase of goods (“**Goods**”) by P2D from the supplier (“**Supplier**”), jointly referred to as the Parties (the “**Parties**”) and are valid if nothing else is agreed in writing.
- 1.2 Only orders in writing are binding for P2D.
- 1.3 These terms and conditions override and take the place of any conditions used by the Supplier of the Goods or any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.4 Except as set out in these Part B Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the agreement between P2D and the Supplier.
- 1.5 These Part B Conditions are additional to the provisions set out in Part A. Unless there is a clear inconsistency, the provisions of Part A (including the Conditions) shall be deemed to be incorporated into the Part B Conditions, and any reference to the Part B Conditions shall be construed to include the Conditions as set out in Part A.

### **2. DEFINITIONS**

- 2.1 Unless this context otherwise requires, the following definitions shall apply in these Part B Conditions.

"Group" means, in respect of either Party, that Party's affiliates, directors, officers and employees (including agency personnel).

"Goods" means all the services, materials, equipment, documentation and other that shall be delivered from the Supplier to P2D to fulfil the PO requirements.

"Guarantee period" means the period specified during which the Goods should continue to conform in all respects to the specifications required by the PO and shall have the meaning ascribed to it in Paragraph 10.5

"Price" means the total amount due to the Supplier according to the provisions of the PO.

"Purchase Order" or "PO" means any order in any form which is intimated by P2D to the Supplier which shall incorporate the Part B Conditions and any other terms specified in such order.

"Supplier" means P2D or person stated on the front page of the PO.

### **3. ORDER ACKNOWLEDGEMENT**

- 3.1 P2D shall issue a PO to the Supplier for each required order of Goods.
- 3.2 The Supplier shall acknowledge the order by its written order confirmation within 7 days after receipt of PO.

### **4. QUALITY ASSURANCE AND CONTROL**

- 4.1 The Supplier shall have an established and documented quality assurance system in accordance with ISO 9001:2000 or equivalent.
- 4.2 P2D has the right to make the verifications, inspections and tests, including audits, at the Supplier's and any of the Supplier's relevant subcontractor's facility, in order to satisfy himself

that the Goods will be manufactured according to all requirements and specifications, including certification requirements, of the PO are satisfied.

## **5. DELIVERY/TERMS OF DELIVERY**

- 5.1 The Supplier shall before start of production, and/or the start of the supply of Goods process, use its professional skills to search for possible faults and omissions in the PO. Supplier shall immediately notify P2D in writing if such faults and omissions are discovered.
- 5.2 The Goods shall be delivered properly packed and marked in accordance with the requirements in the PO. Subject to clause 5.4, delivery shall be at the correct place within the agreed time of delivery as stated in the PO.
- 5.3 If the Supplier has reason to believe that the Goods are to be delayed, he shall immediately inform P2D in writing. Such notice shall include the reason for and the extent of the delay and shall state the corrective actions initiated to reduce the delay. If the Supplier's corrective actions are not sufficient, P2D may require that the Supplier takes additional measures. All costs will be for the Supplier's account. The Supplier is liable for direct and indirect losses suffered by P2D which could have been avoided if the Supplier had given P2D such notification in due time.
- 5.4 Terms of delivery are FCA at the Supplier's warehouse or forwarder's terminal, or at Company's requested point of delivery as set out on the PO, in accordance with Incoterms (2010)

## **6. VARIATIONS**

- 6.1 P2D has the right to order variations in quality, quantity, or time of delivery, provided these variations do not exceed what the parties could reasonably expect when the PO was signed.
- 6.2 Agreed variations shall be confirmed by P2D in writing ("Variation Order"). The Supplier must within 7 days confirm in writing any effects on price, time of delivery and technical specification. If the Supplier does not issue such a notice, it will be considered as an acceptance without any effects and this will be reflected in the Variation Order.
- 6.3 The Variation Order shall upon P2D's request be implemented, even if the Parties have not reached an agreement concerning the effects on the PO.

## **7. DOCUMENTATION**

- 7.1 Delivery ticket/invoice shall be in accordance with the PO. These documents shall correspond with the PO regarding item number, description and specification.
- 7.2 The Goods shall be marked in accordance with the delivery ticket and instructions in the PO. If a shipment contains several parcels, every parcel shall have a specified table of contents.
- 7.3 All documentation specified in the PO, e.g. certificates, drawings, data-discs are considered to be part of the Goods.

## **8. TERMS OF PAYMENT**

- 8.1 P2D shall pay the invoice within 45 days after receipt of a correct invoice, provided that all the Supplier's obligations against the PO are fulfilled. P2D has the right to withhold disputed amounts.
- 8.2 The invoice shall be marked with P2D's PO number. Any invoice that does not have reference to a valid PO number will be rejected.



## **9. CANCELLATION**

- 9.1 P2D may cancel the PO by giving written notice to the Supplier.
- 9.2 P2D shall in such event pay to the Supplier the unpaid amount due to the work already performed on the Goods and in addition all direct costs incurred by the Supplier due to the cancellation.

## **10. DEFECTS, CLAIMS – SUPPLIER’S GUARANTEE**

- 10.1 The Supplier guarantees that the Goods conform to the specifications in the PO and to any relevant public regulations or legislation as required, and that any engineering performed by Supplier is suitable for its intended purpose.
- 10.2 P2D shall examine the received Goods at his earliest convenience. If any defects are found, P2D shall notify the Supplier in writing immediately.
- 10.3 If the Goods are found to be defective during the guarantee period, as specified in 10.5, the Supplier shall at its own cost immediately remedy the defects. If the Supplier is not able to remedy a defect within reasonable time after receipt of P2D’s notification, P2D has the right to have this work done by P2D or by other third parties at Company’s discretion. All costs shall be for the Supplier’s account.
- 10.4 If major defects are found in the Goods and these according to P2D’s opinion cannot be corrected within reasonable time, P2D shall either request an appropriate reduction in the Price, or choose to act in accordance with Paragraph 12.
- 10.5 For the purposes of these Part B Conditions the guarantee period shall expire one year from the date when the Goods were first used for their intended purpose by P2D, but shall be limited to a maximum of 2 years from the date of delivery (the “Guarantee Period”)
- 10.6 If any guarantee work is performed in the Guarantee Period, replaced/repaired Goods shall receive a renewed guarantee for the same Guarantee Period.
- 10.7 Should P2D suffer indirect or consequential losses as a result of defects in the Goods, it shall be entitled to indemnification for such losses in case of negligence on the part of the Supplier or someone for whom the Supplier is responsible. For the purpose of this Paragraph 10.7, consequential loss shall mean consequential or indirect loss under Scots law and loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect and whether or not foreseeable at the date of the PO.

## **11. SUPPLIER’S DELAY**

- 11.1 To the extent that any delay in delivery is caused by the negligence of the Supplier Group, the Supplier shall save, indemnify and hold harmless P2D for all direct and indirect losses arising as a result of or in connection with such delay.

## **12. TERMINATION DUE TO SUPPLIER’S DEFAULT**

P2D has the right to terminate this PO with immediate effect by giving written notice to the Supplier due to the following situations:

- (a) the Supplier becomes insolvent, bankrupt or makes a composition or arrangement with its creditors or a winding-up order is made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business

or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law; or

- (b) a substantial breach of the Part B Conditions of the PO and/or these terms and conditions.

### **13. TITLE TO THE GOODS**

- 13.1 Title to the Goods shall pass to P2D at time of delivery in accordance with the terms of the PO and Paragraph 5.0 above.
- 13.2 All drawings, specifications, data-discs etc. which are sent from P2D to the Supplier remain the property of P2D and shall not be copied or given to a third party without P2D's written approval.

### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 As between the Supplier and P2D, all intellectual property rights shall be owned by P2D. Subject to Clause 14.2, P2D licenses all such rights to the Supplier free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Supplier to perform its obligations under the PO. If the PO is terminated, this licence will automatically terminate.
- 14.2 Where any potential patent or registrable right in any country in the world results from:
  - (a) developments by P2D which are based wholly on data, equipment, processes, substances and the like in the possession of P2D at the date of the relevant PO, or otherwise produced outside of the PO; or
  - (b) enhancements of or in the existing intellectual property rights of P2D;
 such rights shall vest in P2D or another company within P2D Group as the case may be.

### **15. INDEMNIFICATION AND LIABILITIES**

- 15.1 The Supplier shall be responsible for and shall save, indemnify, defend and hold harmless P2D from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
  - (a) loss of or damage to property of the Supplier Group, whether owned by the Supplier Group, or leased or otherwise obtained under arrangements with financial institutions by the Supplier Group, relating to or in connection with the performance or non-performance of the PO; and
  - (b) personal injury including death or disease to any person employed by the Supplier Group arising from, relating to or in connection with the performance or non-performance of the PO; and
  - (c) subject to any other express provisions of the PO, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Supplier Group. For the purposes of this Paragraph 15.2 (c) "third party" shall mean any party which is not a member of P2D Group or Supplier Group.

- 15.2 All exclusions and indemnities given under this Paragraph (save for those under Paragraph 15.1(c)) and Paragraph 15.5 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.
- 15.3 If either party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other and both parties shall co-operate fully in investigating the incident.
- 15.4 For the purposes of this Paragraph 15.0 the expression "Consequential Loss" shall mean:
- (a) consequential or indirect loss under Scottish law; and
  - (b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (a), and whether or not foreseeable at the date of the PO.
- 15.5 Notwithstanding any provision to the contrary elsewhere in the PO, P2D shall save, indemnify, defend and hold harmless the Supplier Group from P2D Group's own Consequential Loss and the Supplier shall save, indemnify, defend and hold harmless P2D Group from the Supplier Group's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the PO.

**Part C: Additional Terms and Conditions applicable to hire of Goods by P2D to customers.**

**1. GENERAL**

- 1.1 These conditions ("**Part C Conditions**") shall apply to the hire of plant and/or equipment ("**Equipment**") by the hirer ("**Hirer**") from P2D, hereinafter collectively referred to as the Parties (the "**Parties**"), unless otherwise agreed in writing.
- 1.2 These Part C Conditions override and take precedence over any conditions used or presented by the Hirer or any other terms that the Hirer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing between the Parties.
- 1.3 These Part C Conditions, together with the Order, shall constitute the entire agreement between the Parties and shall form the contract ("Contract") and the Hirer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of P2D which is not set out in the Contract.
- 1.4 Any written purchase order submitted by the Hirer ("Order"), following issue of a commercial proposal (as referenced in Paragraph 2.0) by P2D, shall constitute an offer by the Hirer to hire Equipment from P2D in accordance with these Part C Conditions. The Order shall only be deemed to be accepted when P2D issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 1.5 These Part C Conditions are additional to the provisions set out in Part A. Unless there is a clear inconsistency, the provisions of Part A (including the Conditions) shall be deemed to be incorporated into the Part C Conditions, and any reference to the Part C Conditions shall be construed to include the Conditions as set out in Part A.

**2. PRICE**

P2D shall issue a commercial proposal or quotation for the hire of Equipment to the Hirer ("**Commercial Proposal**") and the Commercial Proposal shall constitute an invitation to treat from P2D. All prices stated by P2D in the Commercial Proposal shall remain fixed for a period of one month or such other period or periods agreed in writing and thereafter shall be subject to revision at the option of P2D. If a Contract based on the provisions set out in the Commercial Proposal has not been entered into between the parties within one month (or such other period agreed in writing), P2D may, by giving notice to the Hirer, increase the price of the Equipment to reflect any increase in cost and this shall constitute a revised Commercial Proposal. For the avoidance of doubt, all prices are exclusive of any taxes or duties and the costs and charges of packaging, insurance and transport of the Equipment (unless otherwise stated in the Commercial Proposal).

**3. VARIATION AND CANCELLATION OF ORDERS**

- 3.1 P2D has the right to terminate any Contract with immediate effect and without liability to the Hirer by giving written notice to the Hirer in the following situations:
- (a) the Hirer becoming insolvent or making a composition or arrangement with its creditors or a winding-up order being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional liquidator, receiver, administrator or manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 Insolvency Act 1986, or possession

being taken by or on behalf of the holders of any debenture secured by a floating charge of any property comprised in or subject to the floating charge, or any equivalent act or thing being done or suffered under any applicable law; or

- (b) the Hirer committing a material breach of the Contract; or
- (c) the Hirer defaults on any of its payment obligations.

3.2 If for any reason a Contract is cancelled, the Hirer shall indemnify P2D in full for all costs incurred by P2D as a result of such cancellation.

3.3 With reasonable prior notice, P2D and the Hirer shall discuss variations to the Order and/or Contract and agree with each other resulting changes to any of the details shown in the Order. Any agreed variations to the Contract must be in writing. In such event, P2D shall advise the Hirer in writing of the estimated impact of such changes on the Hirer's charges and time of performance of the Order and subject to the Hirer's agreement of P2D's estimate in writing, the price of the Order shall be adjusted accordingly.

#### **4. HIRER'S RESPONSIBILITIES**

4.1 The Hirer undertakes to keep the Equipment in good condition and working order and will be responsible for any loss or damage to the Equipment from whatever cause that may arise, notwithstanding that no fault can be imputed to the Hirer, and the Hirer will notify P2D immediately of the loss or damage. The Hirer shall indemnify P2D accordingly against any losses suffered by Company as a result of Hirer's obligations under or breach of the provisions set out in this clause.

4.2 The Hirer is responsible for maintaining the Equipment in good working order. Costs for any maintenance and assistance in relation to the Equipment are for Hirer's account.

4.3 The Hirer will be responsible to P2D for the full replacement cost of Equipment or any part thereof which may be lost or stolen and for full repair costs including parts, labour and overhead element on items damaged. This condition must be met by the Hirer notwithstanding any insurance claim by P2D or the Hirer which may be pending. The Hirer shall indemnify P2D accordingly against any losses suffered by Company as a result of Hirer's obligations under or breach of the provisions set out in this clause.

4.4 The Hirer will not alter or modify the Equipment without the written permission of P2D and all alterations or modifications are undertaken at the Hirer's cost. The Hirer will be responsible for reverting the Equipment back to its original condition (if required by Company at its sole discretion) upon expiry or termination of the Contract at the Hirer's cost. The Hirer shall indemnify P2D accordingly against any losses suffered by Company as a result of Hirer's obligations under or breach of the provisions set out in this clause.

4.5 The Hirer shall only use the Equipment for the purpose for which it was made and designed.

4.6 The Hirer shall only use the Equipment in a safe and correct manner and in accordance with any operating and/or safety instructions provided.

4.7 The Hirer shall not do or permit to be done any act which may jeopardise the right, title and/or interest of P2D in the Equipment (including, but not limited to, part with the control of the Equipment, sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it).

- 4.8 The Hirer will be responsible for compliance with all laws and regulations applicable to the Equipment and to the work being performed and will be responsible for obtaining all necessary permission for use of the Equipment and for the carrying out of the work being performed. The Hirer shall indemnify P2D accordingly against any losses suffered by Company as a result of Hirer's obligations under or breach of the provisions set out in this clause.
- 4.9 The Hirer shall keep P2D informed of all material matters relating to the Equipment and P2D shall be entitled to enter the premises of the Hirer to inspect the Equipment at all reasonable times by providing the Hirer with a reasonable period of notice.
- 4.10 If applicable, fuel, lubricating oil and spares used during the Hire Period are for Hirer's account.
- 4.11 Any repairs to the Equipment shall only be carried out after written approval by P2D.

## **5. CONDITION OF EQUIPMENT ON DELIVERY**

If required, pre-hire surveys of the Equipment will be undertaken by independent inspection authorities at the Hirer's request and cost and the Hirer must immediately intimate to the Company in writing any faults or defects in the Equipment revealed thereby. If such surveys are not requested by the Hirer the Equipment shall be deemed to be in good working order and condition and to the Hirer's satisfaction on delivery.

## **6. TITLE AND RISK**

- 6.1 The Equipment shall at all times remain the property of P2D, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the provisions of these Part C Conditions).
- 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery (in accordance with Paragraph 10.1). The Equipment shall remain at the sole risk of the Hirer during the Hire Period (as defined in Paragraph 10.4) and any further term during which the Equipment is in the possession, custody or control of the Hirer ("Risk Period") until such time as the Equipment is redelivered to P2D. During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain insurance with a reputable insurance company for an amount sufficient to cover its liabilities under the Contract.

## **7. LIABILITIES**

- 7.1 P2D warrants that on delivery, and for the duration of the Hire Period (as defined in Paragraph 10.4), the Equipment shall:
- (a) conform in all material respects with their description and any applicable specification and certification as described in the Commercial Proposal; and
  - (b) be free from material defects in design, material and workmanship, (together the "Warranties").
- 7.2 Subject to Paragraphs 7.3 to 7.5, P2D shall be liable to the Hirer for the cost of repairing or replacing (at P2D's option) any Equipment which does not conform with the Warranties (to the reasonable satisfaction of P2D), and where such defect is reported to P2D in writing as soon as reasonably practicable and in any event within 6 calendar months of delivery of the equipment. Upon notification from the Hirer, P2D shall be given a reasonable opportunity to inspect the Equipment and the Hirer shall, if requested to do so by P2D, return such Equipment to P2D's place of business or such other place as P2D may require (at the Hirer's cost).

- 7.3 The Hirer shall be responsible for and shall pay to P2D the full cost incurred by P2D for repairing or replacing any Equipment which becomes defective or damaged because the Hirer has failed to properly use and maintain the Equipment in accordance with any instruction manual, or other notices issued in respect of them, or in accordance with standard industry practice.
- 7.4 P2D shall not be liable to the Hirer under these Part C Conditions where the Hirer fails to deliver the allegedly defective Equipment to such place as P2D may specify and/or provide such facilities for inspection as P2D may consider adequate or the Hirer makes any further use of the Equipment after giving notice in accordance with Paragraph 7.2.
- 7.5 The Hirer shall be responsible for and shall pay to P2D the full cost incurred by P2D for repairing or replacing any Equipment (and for the avoidance of doubt P2D shall not be liable to the Hirer under these Part C Conditions) where:
- (a) the Hirer has altered or repaired the Equipment (other than by appointing an expert with sufficient experience to repair such Equipment) without the written consent of the Company; and/or
  - (b) the defect in the Equipment has arisen as a result of wilful damage, negligence, improper use, or abnormal storage or working conditions.
- 7.6 Except as set out in these Part C Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 7.7 Except as otherwise provided in this Paragraph 7.0, P2D shall have no liability to the Hirer for any breach of these Part C Conditions and the remedy available to the Hirer in Paragraph 7.2 above shall be the Hirer's sole and exclusive remedy for any breach of the Warranties by P2D.
- 7.8 The Hirer shall be responsible for and shall save, indemnify, defend and hold harmless the Company from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of loss of or damage to:
- (a) property of the Hirer Group, whether:
    - (i) owned by the Hirer Group, or
    - (ii) leased or otherwise obtained under arrangements with financial institutions by the Hirer Group,relating to or in connection with the performance or non-performance of these Part C Conditions;
  - (b) the loss or damage of all Equipment during the Hire Period (where such loss or damage occurs in connection with the performance or non-performance of these Part C Conditions; and
  - (c) personal injury including death or disease to any person employed by the Hirer Group arising from, relating to or in connection with the performance or non-performance of these Part C Conditions; and
  - (d) subject to any other express provisions of these Part C Conditions, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the Hirer Group. For the purposes of this Paragraph

7.9 (c) "third party" shall mean any party which is not a member of P2D Group or Hirer; and

- (e) loss of or damage to such permanent third party property (including without limitation, oil and gas production facilities and pipelines), and all pollution emanating from such third party property, all personal injury occurring in connection with such loss or damage to third party property and all related Consequential Loss (as defined below), where such loss or damage arises from or relates to the performance of these Part C Conditions, regardless of cause.

The provisions of this Paragraph 7.9(d) shall apply notwithstanding the provisions of this Paragraph 7.

- 7.9 All exclusions and indemnities given under this Paragraph (save for those under Paragraphs 7.9(c) and 7.12 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under contract or otherwise at law.
- 7.10 If either party becomes aware of any incident likely to give rise to a claim under the above indemnities, it shall notify the other and both parties shall co-operate fully in investigating the incident.
- 7.11 For the purposes of this Paragraph 7 the expression "Consequential Loss" shall mean:
  - (a) consequential or indirect loss under Scots law; and
  - (b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the date of these Part C Conditions.
- 7.12 Notwithstanding any provision to the contrary elsewhere in these Part C Conditions, P2D shall save, indemnify, defend and hold harmless the Hirer Group from P2D Group's own Consequential Loss and the Hirer shall save, indemnify, defend and hold harmless P2D Group from the Hirer Group's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of these Part C Conditions.
- 7.13 Subject to Paragraph 7.10, P2D's total liability to the Hirer in respect of all other losses arising under or in connection with the Contract (including if any limit or exclusion of P2D's liability is deemed by statute or other competent Court to be unenforceable), whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, shall in no circumstances exceed 50% of the amount paid by the Hirer under the Contract.
- 7.14 The Parties agree that they have considered the allocation of liabilities and risks, including the exclusions and limitations of liability and force majeure provisions contained in these Part C Conditions in the context of all the circumstances of the transaction to which these Part C Conditions relate. In considering the allocation of liabilities and risks under the Contract the parties have taken into account such matters as the nature of the Equipment, price, and the possible availability and cost to each party of putting in place preventative, protective, curative, insurance and other measures to minimise the impact and amount of loss suffered if such risk should materialise. Accordingly the parties agree that the exclusions and limitations of liability contained in these Part C Conditions are reasonable as between the parties in all the circumstances.



## **8. LOSS OR DAMAGE TO THE EQUIPMENT**

- 8.1 The Hirer will pay to P2D any costs which P2D may incur in tracking or recovering any lost or stolen Equipment
- 8.2 The Hirer shall pay the charges for the Equipment up to and including the date that the Hirer notifies P2D that the Equipment has been lost, stolen and/or damaged beyond economic repair. From that date through such reasonable period as P2D requires to replace such Equipment (or has retrieved any lost or stolen Equipment), the Hirer shall pay, as a genuine pre-estimate of lost rental charges, a sum equal to two thirds of the charges that would have applied for such Equipment for that period.

## **9. HIRE PERIODS AND TERMS OF DELIVERY**

- 9.1 The Hirer will be responsible for collection of the Equipment from the location specified within the Commercial Proposal (and where the location is not stated in the Commercial Proposal the Hirer shall collect the Equipment from P2D's designated base), or alternatively P2D shall deliver the Equipment to the Hirer's designated point of delivery if so detailed in the Commercial Proposal. Delivery of the Equipment shall take place when the Equipment is either collected by the Hirer or accepted by the Hirer at Hirer's designated point of delivery ("**Delivery**").
- 9.2 The Hirer shall be responsible for returning the Equipment to P2D's designated base (or such other place as agreed in writing with P2D or detailed in the Commercial Proposal) at the end of the Hire Period (as defined in Paragraph 9.4).
- 9.3 The Hirer will be responsible for all transportation and full coverage insurance costs associated with the delivery and return of the Equipment, based on Ex Works (Incoterms 2010) for deliveries and DDP (Incoterms 2010) for returns, unless as agreed otherwise in writing with P2D or detailed in the Commercial Proposal. Any transport and handling arranged by P2D on behalf of the Hirer will be billed at cost plus 10%.
- 9.4 The Equipment shall be deemed to be on hire from the time Delivery has taken place and it shall continue to remain on hire until it is received back at P2D's designated base or such other place accepted by P2D in writing for its return ("Hire Period").
- 9.5 All Equipment is hired on a four weeks minimum hire period basis unless an alternative hire period is specified in the Commercial Proposal, or otherwise confirmed in writing by the Company.

## **10. TERMS OF DELIVERY AND PAYMENT**

- 10.1 Payment by the Hirer of an invoice is due within 30 days from the date of the invoice (unless otherwise agreed in writing) and P2D shall be entitled to issue an invoice to the Hirer at any time
- 10.2 In the event of any failure by the Hirer to make payment as specified, P2D shall take such action as they consider necessary to recover the price together with any pecuniary loss, including loss of profit. Interest will be charged at 5% per annum (calculated on a daily basis) above The Royal Bank of Scotland plc's base lending rate on the total sum due as from the payment due date. Nothing in this or the preceding conditions shall in any way prejudice the remedies whether statutory or otherwise exercisable by P2D on non payment of the hire price.