

**JOHNSON MATTHEY PLC STANDARD TERMS AND CONDITIONS OF PURCHASE (“CONDITIONS”)**

**UNITED STATES OF AMERICA**

**1. DEFINITIONS AND INTERPRETATION:**

1.1 The following definitions apply in these Conditions:

- (a) "Affiliate" means, in respect of a person, any organisation, firm or entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a Party, where 'control' means the direct or indirect power to direct or cause the direction of the management and policies, whether through ownership of at least fifty percent (50%) of the voting interests, by contract or otherwise;
- (b) "Commercial Conditions" means the terms set out in an Order and/or such other document(s) as agreed by us in writing;
- (c) "Contract" means the agreement for the sale and purchase of Goods and/or Services consisting of the Commercial Conditions and these Conditions, including the Appendices where applicable;
- (d) "Goods" and/or "Services" means the goods and/or services agreed in the Commercial Conditions to be sold to us by you;
- (e) "Order" means a purchase or release order for the Goods and/or Services placed by us on you from time to time;
- (f) "Specification" means the written specification for the Goods and/or Services;
- (g) "we", "us" and "our" means or refers to Johnson Matthey PLC and/or any of its Affiliates, as stated in the Commercial Conditions, which has entered into the Contract with you; and
- (h) "you" and "your" means or refers to the supplier from whom we purchase the Goods and/or Services.

1.2 The following interpretation apply in these Conditions:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) A reference to a party includes its successors and permitted assigns;
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision;
- (d) 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; and
- (e) The headings in these Conditions are inserted only for convenience and shall not affect their interpretation.

**2. APPLICATION OF TERMS:**

- 2.1 These Conditions are the only conditions upon which we deal with you and shall govern the Contract notwithstanding any terms that may be contained in any acknowledgment, invoice or other form received from you and notwithstanding accepting or paying for any shipment or any similar act, and we hereby reject any different or additional terms and conditions imposed by you or which are implied by trade, custom, practice or course of dealing.
- 2.2 In the event of conflict between the Commercial Conditions and these Conditions, the Commercial Conditions shall prevail to the extent necessary to resolve such conflict.
- 2.3 No change to the Contract shall be valid unless agreed in advance in writing and signed by both parties. For the avoidance of doubt, the provisions of this condition 2.3 shall apply to any price increase (arising from whatever cause) and any delivery delay. Unless otherwise agreed in writing, any purchase of precious metal by us will be subject to the relevant Johnson Matthey PLC standard spot and forward purchase terms.

**3. PERFORMANCE:**

- 3.1 You shall provide the Goods and/or perform the Services in accordance with the Contract.
- 3.2 In providing the Goods and/or Services, you shall:
  - (a) comply with our reasonable instructions;

- (b) use the best quality goods, materials, standards and techniques;
- (c) ensure that at all times you have and maintain all the licences, permissions, authorisations, consents and permits that you need to carry out your obligations under the Contract;
- (d) not do or omit to do anything which may cause us to lose any licence, authority, consent or permission on which we rely for the purposes of conducting our business;
- (e) observe all health, safety and security requirements that apply at any of our premises;
- (f) comply with all applicable laws, statutes, regulations and codes from time to time in force;
- (g) co-operate with us in all matters relating to the Services in accordance with any timescales requested by us, but, in any event, within a reasonable period of time having regard to the nature of the relevant Goods and/ or Service and the circumstances in which it is being supplied; and
- (h) supply any operating and maintenance manuals relating to the Goods in sufficient detail to enable us and our employees, agents or sub-contractors to safely and adequately operate, maintain or repair the Goods. You acknowledge that the Goods may be combined with or incorporated into other goods or products (including pharmaceutical products for human consumption) and may be supplied, alone or in combination, to third parties.

#### **4. FREE ISSUE MATERIALS:**

- 4.1 You shall hold all materials and equipment (including tools, dies, jigs, moulds, and the like), drawings and data supplied by us to you in safe custody at your own risk, maintain such materials until returned to us and not dispose of such materials other than in accordance with our written instructions or authorisation, nor shall such items be used otherwise than as authorised by us in writing. You shall carry and maintain in force (with a reputable insurance company) such insurance policy covering all risks of loss of or damage to all materials and equipment, drawings and data supplied by us to you while in your custody for their full new replacement value. You shall, on request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of this insurance.

#### **5. DELIVERY:**

- 5.1 Unless otherwise agreed by us, the Goods shall be delivered, carriage, insurance and duty paid on the date and to the address specified in the Commercial Conditions (during normal business hours) and if no such date is specified, then delivery will be required within a reasonable period having regard to the nature of the Goods being provided and the circumstances in which they are being supplied. Time for delivery of the Goods and/or performance of the Services shall be of the essence. You shall immediately inform us if you have any reason to believe that you may or will be delayed in any way from completing your obligations under the Contract.
- 5.2 All Goods shall be accompanied by delivery documentation and labels (i) giving full details of the Goods, special storage instructions (if any) and quoting our order number, and where relevant (ii) material safety data (including any necessary translations thereof), a certificate of analysis and certification of compliance with the Specification, and (iii) all export and import clearance documentation.
- 5.3 Goods must be properly packed and secured in such manner as to enable them to reach us in good condition and ensure conformity with laws and regulations relating to the manufacture, labelling (including, where applicable, proper use of a CE Mark), packaging, storage, handling and delivery of Goods applicable at the destination and date of delivery. You shall ensure that the performance of your obligations under the Contract shall at all times be conducted in accordance with our commitment to conducting business in an ethical and sustainable way.
- 5.4 If any of the Goods (or any component or packaging thereof) consist of a chemical substance, you shall ensure that the same has been reported to the US Environmental Protection Agency ("EPA") as required by the Toxic Substances Control Act and regulations ("TSCA"), for inclusion in the inventory of chemical substances compiled by the administrator of the EPA. You shall immediately notify us in writing if the Goods (or any component or packaging thereof) contain a substance or mixture that presents a substantial risk of injury to health or the environment that requires notification to the EPA pursuant to Section 8(e) of the TSCA (Notice to Administrator of Substantial Risks). On an annual basis or as otherwise requested by us you shall provide confirmation and documentary evidence of your compliance with this condition 5.4.
- 5.5 Delivery shall be completed when at the date for delivery and at the delivery location conforming Goods are off-loaded, or Services performed, by you. We reserve the right to reject any Goods which are discovered to be damaged when inspected following delivery. The issue of a receipt note by us for any Goods and/or Services shall not constitute any acknowledgement of the condition, nature, quality, quantity, substance or effectiveness of those Goods and/or Services.

#### **6. SEPARATE DELIVERIES:**

We shall not be obliged to accept delivery by instalments. Where it is agreed that the Goods and/or Services are delivered by separate deliveries, they may be invoiced and paid for separately. However, failure by you to deliver any one instalment on time or at all or any defect in an instalment shall entitle us to terminate the whole or any unfulfilled part of the Contract pursuant to which they were to be delivered without further liability to you.

**7. ACCEPTANCE, REJECTION AND INSPECTION:**

- 7.1 At any time during design, engineering or manufacture of the Goods, we or our representatives shall, upon reasonable notice to you, have the right to inspect and/or test the Goods. We may also require acceptance tests to be carried out in relation to the Goods and/or Services, at our option, either by us or by you at your site, or following installation and/or commissioning of Goods at our site (where applicable) or completion of the Services, and the results of the tests shall be made available to us.
- 7.2 If during or following any such inspection and/or testing, you notify us of deficiencies or work that does not comply with the Contract, you shall promptly correct such deficiencies at no cost to us and notify us when such deficiencies are remedied and submit a request for further inspections and/or tests.
- 7.3 We shall be entitled to reject any Goods and/or Services or require you to collect the Goods which, acting reasonably, are deemed by us as failing to meet any such inspection or testing. Any acceptance of defective, late or incomplete Goods and/or Services shall not constitute a waiver of any of our rights and remedies, including our right to reject.

**8. PRICE AND PAYMENT:**

- 8.1 The price for the Goods and/or Services shall be set out in the Commercial Conditions and unless otherwise agreed in writing, shall include all duties, levies, freight, carriage, insurance and packaging charges but shall exclude VAT or any other similar tax payable in our jurisdiction. Where any taxable supply for VAT purposes is made under the Contract by you, we shall, on receipt of a valid VAT invoice from you, pay to you such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or performance of Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.2 The price for the Goods and/ or Services shall be the entire payment liability to you in respect of the supply of the Goods and/ or performance of the Services and shall include every cost and expense (including any expenses incurred by third parties on your behalf) directly or indirectly incurred in connection with the supply of the Goods and/ or the performance of the Services. No extra charges shall be effective unless agreed in writing and signed by us.
- 8.3 Unless otherwise agreed, you shall invoice us for (i) Goods no sooner than completion of delivery of the Goods or, if later, our acceptance of the Goods; and (ii) Services no sooner than completion of performance of the Services or, if later, our acceptance of the Services. Each invoice shall include such supporting information required by us to verify the accuracy of the invoice, including the relevant purchase order number.
- 8.4 We shall pay each validly submitted invoice within 60 days from the end of the month following receipt of invoice.
- 8.5 The correct purchase order number must be quoted on all invoices, and we will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such purchase order numbers.
- 8.6 If there is a good faith dispute about whether any amount is payable to you under the Contract, we may withhold the amount in dispute until the dispute is resolved, provided that: (i) we must pay any undisputed amounts in accordance with condition 8.4; and (ii) the other obligations of the parties under the Contract will in no way be affected by any dispute under this condition 8.6.
- 8.7 If we fail to make any payment when due under the Contract, you may charge interest on the overdue amount at the rate of two per cent (2%) per annum above the Bank of England base rate from time to time. This condition 8.7 shall not apply to payments that are disputed in good faith.
- 8.8 We may at any time, without prejudice to any other rights or remedies available us under the Contract or otherwise, set off any of your liability to us, whether such liability is present or future, liquidated or unliquidated, under the Contract or otherwise and irrespective of the currency of its denomination against any of our liability of to you. If the liabilities to be set off are expressed in different currencies, we may convert either liability at a market rate of exchange for the purposes of such set off.
- 8.9 Payments by us for the Goods and/or Services shall not constitute a waiver of any of our rights, nor shall such payment terminate any of your obligations.

**9. TITLE AND RISK:**

Unless otherwise agreed, title in the Goods shall pass to us on payment or delivery, whichever occurs earlier. You shall ensure that title to the Goods transfers with full title guarantee and free from all security interests. Neither payment by, nor passing of title or risk in the Goods or Services to, us shall be deemed to constitute acceptance of the Goods and Services nor shall it prejudice any of our rights and remedies. Risk in the Goods shall pass to us on completion of delivery in accordance with condition 5.5.

## 10. VARIATIONS:

10.1 Subject to condition 10.2, we may, without invalidating the Contract, issue instructions requiring additions, reductions, deletions, substitutions or any other alterations to delivery including to any aspect of the Goods and/or to the Services, and/or to the Specification, and/or changes in the sequence of, and/or scheduled date(s) for, delivery.

10.2 The parties shall endeavour to agree the time and cost impact prior to you carrying out any instruction issued pursuant to condition 10.1, failing which, any instructions issued shall be valued by us on a fair and reasonable basis. You shall not be entitled to any additional cost and/or an extension of time where such instruction was issued as a result of your failure to comply with the terms of the Contract. Any instruction shall only be binding on the parties once agreed in accordance with condition 2.3.

## 11. SUBCONTRACTORS:

You may subcontract your performance under the Contract to any suitably qualified persons (a "**subcontractor**"), provided that you obtain our prior written consent. In all cases, you shall be responsible and liable for the acts and omissions of any subcontractor, including subcontractor's personnel to the same extent as if such acts or omissions were by you or your personnel, and you shall be responsible for all fees and expenses payable to any subcontractor.

## 12. CONFIDENTIALITY:

12.1 Each of the parties to this Contract shall keep in strict confidence and not disclose to any third party, or use or exploit for a purpose other than the performance of its obligations under the Contract, all technical, financial or commercial know-how or information, data, Specifications, inventions, processes or initiatives which are of a confidential nature relating to the other party ("**discloser**") or its Affiliates disclosed, directly or indirectly, to it ("**receiver**") by the discloser or its Affiliates, employees, officers, advisers, agents or subcontractors ("**representatives**") and any other confidential information concerning the discloser's business or its products which the receiver may obtain ("**Confidential Information**").

12.2 The receiver shall restrict disclosure and/or use of such Confidential Information to its representatives who need to know the same for the purpose of performing its obligations under the Contract. The receiver shall ensure that such representatives are subject to like obligations of confidentiality as bind the receiver under this condition 12.2. Each of the parties to this Contract is responsible for any unauthorised use or disclosure of the other party's Confidential Information by its representatives.

12.3 The receiver may disclose any Confidential Information to any regulator, law enforcement agency or other third party if it is required to do so by law, regulation, or similar authority. In those circumstances the receiver shall (to the extent practical and lawful to do so) notify the discloser in writing as soon as practicable before the disclosure and use all reasonable endeavours to consult with the discloser with a view to agreeing the timing, manner and extent of the disclosure.

12.4 Any such Confidential Information shall remain discloser's property and shall be deemed to have been imparted in trust to the receiver and shall be returned to discloser or destroyed (as discloser shall direct and with destruction certified) immediately upon request. You shall not without our prior written consent disclose, copy, publicise or publish, the existence of the Contract or any information related to the Contract including the name of Johnson Matthey, the Goods, Services, or the place of delivery or performance.

12.5 Each party acknowledges that damages alone would not be an adequate remedy in the event of breach by the other party of the provisions of this condition 12. Accordingly, it is agreed that either party shall be entitled, without proof of special damages, to seek an injunction or other interim remedy for any threatened or actual breach of this condition 12 by the other party, without prejudice to any other rights and remedies which that first party may have.

12.6 This condition 12 shall survive the expiry or termination of the Contract.

## 13. INTELLECTUAL PROPERTY RIGHTS:

13.1 Any Specification, drawings or data supplied by us to you, or produced by you based on such Specification, drawings or data supplied by us, in connection with the manufacture of the Goods and/or performance of the Services on our instruction, together with all intellectual property rights therein shall be our exclusive property and shall not be used by you for any purpose, commercial or otherwise, except as required for the performance of your obligations under the Contract and as expressly stated by us. You undertake to execute any formal assignment requested by us and to assist us in formally registering any such intellectual property rights.

13.2 To the extent that the Contract provides for Goods to be manufactured or Services to be performed to your or your subcontractor's designs and specifications, you shall be responsible for providing all drawings, specifications, calculations and other information necessary for the execution of such work. You shall be responsible for any errors or omissions in drawings, specifications, calculations or other information provided by you whether the same have been approved by us or not and you shall rectify all errors and omissions. You shall be responsible for the cost of any such rectification as shall be necessitated unless the errors and omissions are due to inaccurate information provided in writing by us, save insofar as any inaccuracy which should have been reasonably apparent to an experienced supplier or should have been detected by you and you fail to bring it promptly to our attention.

**14. SUPPLIERS DEFAULT:**

14.1 It shall be a condition of the Contract that the Goods and/or Services will conform to the Contract in all respects. You warrant, represent and undertake that:

- (a) all Goods will be: (i) provided in the quantity specified in the Contract; (ii) in accordance with the Specification (and any other description of the Goods agreed between the parties) and, in the absence of any Specification or description, be to our reasonable satisfaction; (iii) of satisfactory quality and manufactured in accordance with best industry practice; (iv) fit for any purpose for which they are held out by you, specifically communicated to you, or may otherwise be reasonably expected to be used; and (v) free from defects in design, materials and workmanship; and
- (b) the Services will: (i) be provided in accordance with the Specification and any other description of the Services in the Contract; (ii) be provided so that the products of the Services and all goods and materials supplied and used in the Services will be free from defects in workmanship, installation and design; (iii) be performed in accordance with best industry practice and using personnel who, are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that your obligations are fulfilled in accordance with the Contract; (iv) be performed with reasonable skill and care to be expected of a company with your expertise and experience working on projects of a similar size, scope and value; and (v) meet any performance dates specified in the Commercial Conditions and if no such date is specified, then performance is required within a reasonable period having regard to the nature of the Services being provided.

If you fail to complete an Order in accordance with the Contract or the Goods and/or Services prove to be defective within 12 months of delivery, then, we may, at our discretion: (i) reject the Goods (in whole or in part) and return them to you at your own risk and expense; (ii) require you as soon as reasonably practicable to either repair or replace the Goods at the site of delivery or at your premises, whichever we shall so determine, or to refund to us any amounts paid in respect of any Goods which do not correspond with the Contract (and repaired or replacement Goods shall themselves be subject to the obligations in the Contract); (iii) in the case of incorrect delivery, require you to promptly reimburse us in respect of any cost (including freight, clearance, duty and storage charges) incurred by us; (iv) reject the Goods or suspend performance of the Services and obtain substitute Goods and/or Services from another supplier and recover from you any costs and expenses reasonably incurred by us in obtaining such substitute Goods and/or Services; (v) require you to repeat performance of the Services at your expense; and/or (v) claim damages for any costs, losses or expenses incurred by us which are in any way attributable to your failure to carry out your obligations under the Contract.

14.2 Without prejudice to any other remedy available to us under these Conditions or at law, you shall indemnify us and our Affiliates against all liabilities, actions, proceedings, damages, costs, claims, demands, expenses and losses whatsoever suffered by us arising out of (i) any claim made against us or our Affiliates for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods or the performance of the Services, (ii) loss of life, personal injury or damage to property arising out of or in connection with any error or omission in relation to the Services and/or caused by you whilst on our or our Affiliate's site and/or or any defect in the Goods, or performance of Services or defect therein. Any such obligation shall survive expiry or termination of the Contract.

**15. FORCE MAJEURE:**

Neither party shall be liable to the other for any default, delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure**"), provided that you shall use all reasonable endeavours to minimise the effects of Force Majeure and to resume performance of the Contract. If any events or circumstances prevent you from carrying out any of your obligations under the Contract for a continuous period of more than five days, we may terminate the Contract (in whole or in part) immediately by giving written notice to you. Shortage of labour, materials or utilities, breakdown of machinery or delays by subcontractors, shall not by themselves constitute Force Majeure unless they are caused by circumstances which are circumstances within the above meaning of Force Majeure.

**16. INSURANCE:**

16.1 In addition to the requirements under condition 4.1, you shall at your own cost maintain during the term of the Contract and for a period of two years thereafter such insurance (with a reputable insurance company) as is appropriate to provide for the obligations and liabilities under the Contract arising from the delivery of the Goods and/or performance of the Services. Such insurance shall:

- (a) include insurance for the Goods: (i) for an amount as specified by us in the Commercial Conditions, or in the absence of such a specification, an amount equal to the replacement cost for the Goods, and (ii) against all risks, including theft, pilferage and non-delivery for any reason from the point of production to the point of delivery; and
- (b) limits of cover which prudent business of a similar size to you working in your industry would obtain, and which is in any event not less than the following limits set out in this condition 16.1(b) for any claim or series of claims arising out of a single event during such period: errors & omissions insurance – GBP 1,000,000 or the US dollar (USD) equivalent; product liability insurance - GBP 1,000,000 or the USD equivalent; public liability insurance – GBP 1,000,000 or the USD equivalent; commercial automobile liability insurance – such sum as is required by law in the relevant jurisdiction; and employer's liability and workers compensation insurance – such sum as is required by law in the relevant jurisdiction,
- (c) to cover liabilities that may arise under or in connection with the Contract. The conversion of GBP to USD shall be calculated at the market rate of exchange.

16.2 You shall on request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

16.3 Any limitation, monetary or otherwise in such insurance policy referred to in condition 16.1 above shall not be construed as a limitation on your liability and you shall remain liable in full for any matters and to any extent not covered by the policy.

#### 17. TERMINATION:

17.1 Without prejudice to any other right or remedy available, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party (i) commits a material breach (or a series of persistent minor breaches which, when taken together, amount to a material breach) of this Contract that is incapable of remedy or, if capable of remedy, has not been remedied within 20 days from having been provided with reasonable details by the other party of such breach; or (ii) becomes insolvent or is not able to pay its debts, passes a resolution for winding-up its business, or a court makes an order to wind up the business (in either case other than for the purposes of a solvent reorganisation), has a receiver, manager or administrator appointed over all or any of its assets or makes any arrangement with or for the benefit of its creditors.

17.2 We (without prejudice to our other rights) shall be entitled to immediately terminate the Contract at any time for convenience by giving written notice to you and shall have no further liability to you other than the payment of a reasonable sum to you for any work already completed (provided that you have taken steps to minimise costs).

17.3 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry. Conditions which expressly or by implication survive expiry or termination of the Contract shall continue in full force and effect.

#### 18. COMPLIANCE WITH LAWS:

18.1 You warrant and represent that you shall not directly or indirectly, offer, pay, promise to pay or authorise the payment of, any monies or financial or other benefit to any person for the purpose of obtaining an improper advantage, or otherwise conduct yourself in a manner contrary to any anti-corruption laws and in particular (but without prejudice to the generality of the foregoing) the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 or any other applicable anti-bribery law ("**Anti-Bribery Laws**").

18.2 You warrant and represent that you shall comply with all applicable taxation, anti-money laundering and financial crime laws, regulations and rules ("**Financial Crime Laws**"), and (i) the Goods and/or Services do not constitute the proceeds of crime under any applicable Financial Crime Laws, and are not derived from conflict, terrorism or money laundering sources, and that any consideration paid by us for the purchase of Goods and/or Services will be used for lawful purposes by you; and (ii) you shall not commit an offence of cheating the public revenue or an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by you or any other person.

18.3 You acknowledge that the Goods and/or Services may be subject to export control and trade sanction laws, regulations, rules and licences ("**Export Control and Trade Sanctions Rules**") and agree to comply with the Export Control and Trade Sanctions Rules.

18.4 You warrant and represent that you are fully aware of and shall comply with all applicable (i) anti-slavery and human trafficking laws statutes, regulations and codes from time to time in force, including the UK Modern Slavery Act 2015 ("**Anti-Slavery Laws**"); and (ii) international conventions (including the International Labour Organisation Core Conventions, the United Nations Global Compact and the UN's Guiding Principles on Business and Human Rights) and applicable laws regarding working conditions and labour standards ("**Labour Laws**"); and that you have in place robust and reasonable internal procedures to ensure that you and your personnel comply with Anti-Slavery and Labour Laws.

18.5 You warrant and represent that the Goods do not contain any conflict minerals as defined in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and have not been obtained from a source which has financed conflict or terrorism, or which has participated in abuse of Labour Laws or Financial Crime Laws.

18.6 You confirm that you have not taken nor will take directly or indirectly, any action that would cause our officers, directors, employees and/or Affiliates to be in breach or violation of Export Control and Trade Sanction Rules, Anti-Bribery Laws, Financial Crime Laws and/or Anti-Slavery Laws and Labour Laws (collectively "**Compliance Laws**") and shall provide us with such information and/or documentation (including identification documentation) as shall be required by us to comply with such laws.

18.7 You shall implement full and robust due diligence and monitoring procedures for your suppliers, to ensure your suppliers are compliant with Compliance Laws. You agree to ensure that all persons associated with you in connection to the Contract comply with this condition 18.7.

18.8 In circumstances where we determine, in good faith, that you have breached this condition 18 we will be entitled, in addition to our other rights, to terminate the Contract with you by giving written notice with immediate effect.

18.9 You shall protect, indemnify and hold us and our Affiliates harmless from any fines, damages, costs, losses, liabilities, fees and penalties incurred by us as a result of your errors, failures or omissions to comply with this condition 18 and/or any termination pursuant to this condition 18.

18.10 This condition 18 shall survive the expiry or termination of the Contract.

#### **19. DATA PROTECTION:**

19.1 For the purposes of this condition 19, Data Protection Laws means all data protection laws, regulatory requirements, guidance and codes of practice, including Regulation (EU) 2016/679 ("**GDPR**"), UK General Data Protection Regulation ("**UK GDPR**"), the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("**PECR**"), the Data Protection Act 2018, and the California Consumer Privacy Act, Cal. Civ. Code § 1798.100 ("**CCPA**") as applicable and as amended and/or replaced from time to time, and the terms Controller, Data Processor, Personal Data and Processed shall have the definitions given to such terms in the GDPR.

19.2 Unless condition 19.3 below applies, or otherwise explicitly agreed in writing between the parties, you shall be deemed to be a Controller in respect of any Personal Data processed by you in connection with the Contract. You shall comply with the requirements of the Data Protection Laws applicable to you in connection with the Contract and shall not knowingly do anything or permit anything to be done which might lead to a breach by the other party of the Data Protection Laws.

19.3 If you are acting as a Processor, you agree that the provisions set out in [Appendix A](#) shall govern the processing.

19.4 If you are transferring Personal Data internationally you agree to the Standard Contractual Clauses provided in [Appendix B](#) which will need to be completed and entered into by you.

#### **20. GOVERNMENT CONTRACTS:**

Where the Goods and/or Services are to be used in carrying out, or in connection with, a government contract or sub-contract, the Contract shall be subject to any special conditions stipulated by the government department concerned and to these Conditions (so far as they are not inconsistent with such special conditions). Details of such special conditions will be supplied on request and referred to in the Commercial Conditions where applicable.

#### **21. NOTICES:**

Notices shall be sent by first-class post to the parties' registered offices and shall be deemed to have been delivered 2 business days after posting (UK) or 5 business days after posting (outside of UK).

#### **22. NON-ASSIGNMENT:**

You may not assign, novate or otherwise transfer the Contract or any of your rights or obligations under the Contract, in whole or in part, without our prior written consent.

#### **23. VALIDITY:**

If any provision, or part of a provision, of the Contract is found by any court or authority of competent jurisdiction to be illegal, invalid, or unenforceable, that provision or part-provision shall be deemed not to form part of the Contract and the legality, validity or enforceability of the remainder of the provisions of the Contract shall not be affected, unless otherwise required by operation of applicable law and the parties shall use reasonable endeavours to agree within a reasonable time on a full and reasonable variations to the Contract which may be necessary in order to achieve, to the greatest extent possible, the same commercial effect as would have been achieved by the provision, or part-provision, in question and with no fundamental change to the bargain between the parties.

#### **24. THIRD PARTY RIGHTS:**

Your obligations under this Contract (including all representations, warranties and undertakings) are given for our benefit and for the benefit of each of our Affiliates. Any costs, expenses or losses suffered or incurred by any of our Affiliates under or in connection with the Contract will be deemed to have been suffered or incurred by us and we shall be entitled to recover such costs, expenses or losses from you as if we had suffered such costs, expenses or losses (provided that there is no double recovery of the same). Where any applicable law would prevent any such costs, expenses or losses incurred by any of our Affiliates being fully recovered in accordance with the previous sentence, the applicable Affiliate may enforce the benefits conferred on it under the Contract in order to recover such costs, expenses or losses itself. The consent of a person who is not a party to this Contract is not necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Contract or any one or more conditions of it. Except as set out in this condition 24 a person who is not a party to this Contract may not enforce any of its provisions.

**25. WAIVER:**

No failure or delay to exercise any right or remedy under the Contract or by law shall constitute a waiver of, or in any way prejudice, that or any other right or remedy under the Contract or at law.

**26. NO PARTNERSHIP OR AGENCY:**

Nothing in the Contract is intended to, or shall be deemed to, establish or constitute any partnership or joint venture between any of the parties, create a relationship of principal and agent for any purpose between the parties or authorise either party to make or enter into any commitments for or on behalf of the other party.

**27. TRANSLATION:**

If the Contract is translated into any other language and/or a bilingual version is used, the English language version shall prevail, as available at [www.matthey.com](http://www.matthey.com).

**28. ENTIRE AGREEMENT**

28.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all agreements, arrangements, promises, undertakings, proposals, warranties, representations and understandings between them at any time before their respective signature ("**Pre-Contractual Statements**"), whether written or oral, relating to its subject matter.

28.2 Each party acknowledges that in entering into this Contract it does not rely on any Pre-Contractual Statement made by or on behalf of the other party (whether made innocently or negligently) in relation to the subject matter of this Contract, other than those which are set out expressly in this Contract.

28.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on, and hereby waives all rights and remedies which might otherwise be available to it in relation to, any Pre-Contractual Statement.

28.4 Nothing in this condition 28 shall limit or exclude the liability of either party arising out of any pre-contractual fraudulent misrepresentation or fraudulent concealment.

**29. LAW AND JURISDICTION:**

The construction, validity and performance of the Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by the laws of the State of Delaware in the United States of America, without regard to conflicts of laws principles, and the parties irrevocably agree to submit to the non-exclusive jurisdiction and venue of the state and federal courts located in the State of Delaware in the United States of America, however nothing in these Conditions shall prevent a party from applying to any court of competent jurisdiction for interim relief and/or conservatory measures. The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**APPENDIX A: DATA PROCESSOR CLAUSES**

1.1 In this Appendix A, "**Data Protection Legislation**" shall mean (EU) 2016/679 (GDPR) and any amendment or replacement to it (including any corresponding or equivalent national law or regulation which implements it; (ii) other applicable legislation of the European Union (EU); (iii) the Data Protection Act 2018; (iv) to the extent applicable, the data protection or privacy laws of any other country; and (v) any binding guidance or code of practice issued by a competent authority responsible for supervising compliance with applicable Data Protection Legislation.

1.2 To the extent that any Personal Data is Processed by you under this Agreement, you shall be a Data Processor acting on our behalf as described in the record of processing below.

1.3 You shall, in connection with the Contract:

1.3.1 comply at all times with the Data Protection Legislation and shall not perform your obligations under this Agreement in such a way as to cause us to breach any of our applicable obligations under the Data Protection Legislation;

1.3.2 only process Personal Data to the extent, and in such a manner, as is necessary for the performance of your obligations under this Agreement, as further set out in the record of processing below and in accordance with any instructions from us and shall not disclose the same to any third party;

1.3.3 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;

1.3.4 take reasonable steps to ensure the reliability and trustworthiness of employees or agents which have access to Personal Data and ensure that they are have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

1.3.5 not Process or transfer any Personal Data in or to any country: (a) outside the European Economic Area and (b) not deemed adequate by the European Commission pursuant to Data Protection Legislation ("**Restricted Country**") without our prior written consent;



- 1.3.6 where such permissions is given, it will be conditional on: (1) any transfer of Personal Data to any Restricted Country being done on the terms of a binding agreement incorporating the EU standard clauses for the transfer of Personal Data from Data Controller to Data Processor entered into between us and the relevant transferee (or any other valid transfer mechanism under Data Protection Legislation) as referred to in Appendix B, (2) the Data Subject having enforceable rights and effective legal remedies, (3) you complying with your obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (4) you complying with instructions notified to you in advance by us with respect to the processing of the Personal Data. In relation to (1) above, we authorize you to enter into EU standard clauses in our name and on our behalf. You will make the executed EU standard clauses available to us on request. You agree to accept any modifications to such standard clauses which are necessary to comply with applicable law which applies to such data transfer. Such binding agreement shall be without prejudice to the rights of the Company under this Agreement; and
- 1.3.7 co-operate as requested by us to enable us to comply with your obligations under the Data Protection Legislation, including with respect to any exercise of rights by a Data Subject under the Data Protection Legislation;
- 1.3.8 not engage another processor without the prior consent of the controller;
- 1.3.9 deletes or returns (at our option) all the personal data after the end of the provision of Services, and delete any existing copies thereof;
- 1.3.10 makes available to us all information necessary to demonstrate compliance with the obligations laid down in this clause 1.3 and allow for and contribute to audits, including inspections, conducted by us or another auditor mandated by us;
- 1.4 You shall notify us immediately (and in any event within twenty-four (24) hours) after becoming aware of, or suspecting the occurrence of, any loss or corruption of Personal Data or data security breach relating to Personal Data.
- 1.5 You will indemnify us from and against any costs, losses, damages, proceedings, claims, expenses, demands, penalties or fines incurred or suffered by us which arise as a result of or in connection with any breach of your obligations under this Contract or the Data Protection Legislation.
- 1.6 Record of processing table as referred to above:

|   |  |
|---|--|
| <b>Subject matter and duration of Processing of personal data under this Statement of Work/Purchase Order</b> |  |
| <b>Nature and purpose of the Processing of personal data</b>  |  |
| <b>Types of personal data to be processed</b>   |  |
| <b>Special categories of personal data to be processed</b>  |  |
| <b>Categories of data subject to whom the personal data relates</b>   |  |
| <b>Approved sub-processors</b>  |  |

#### **APPENDIX B: STANDARD CONTRACTUAL CLAUSES FOR THE TRANSFER OF PERSONAL DATA TO THIRD COUNTRIES**

Where permission to transfer personal data internationally is given by us, the parties will enter into the current version of the EU standard clauses for the transfer of Personal Data from Data Controller to Data Processor as provided on the Europa EUR-LEX website in various languages: <https://eur-lex.europa.eu> under the Standard Contractual Clauses section.