



PUMP ACTION LIMITED TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES (OTHER THAN REPAIR AND MAINTENANCE)

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. Definitions

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.9.

Contract: the contract between the Supplier and the Customer for the supply of Goods alone, Services alone or Goods and Services, in accordance with these Conditions.

Customer: the person or firm who purchases the Goods alone, Services alone or Goods and Services from the Supplier.

Customer Default: has the meaning given in clause 8.2.

Deliverables: any operating and maintenance manuals, manufacturer's instructions or equivalent and any Services' report supplied to the Customer by the Supplier together with any other written deliverables specified in the Order.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Goods: such pump(s), pump set(s), valves, actuator(s), motor(s), pipe and fittings, spares or accessories or any other goods as are set out in the Order (or in the Quotation if not set out in the Order).

Goods Specification: any specification for the Goods contained in the Quotation or supporting documents supplied along with the Quotation.

Order: the Customer's order for the supply of Goods alone, Services alone or Goods and Services, as set out in the Customer's purchase order form, the Customer's written acceptance of the Quotation or placed by the Customer with the Supplier by telephone, as the case may be.

Quotation: the Supplier's final written quotation to the Customer for the relevant supply.

Services: the services to be supplied by the Supplier to the Customer as set out in the Order, which might include equipment selection, installation and/or commissioning.

Service Specification: the description or specification for the Services contained in the Quotation.

Supplier: Pump Action Limited registered in Scotland with company number SC148802 and having its registered office at 19 Hutchison Road, Edinburgh, Midlothian, EH14 1RA.

Supplier Materials: has the meaning given in clause 8.1(h).

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods alone, Services alone or Goods and Services from the Supplier in accordance with these Conditions.

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- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**). If Services are to be supplied under the Contract, they may commence on a different date as agreed in writing between the parties.
- 2.3 Any photographs, descriptive matter or advertising issued by the Supplier, and any photographs, descriptions or illustrations contained in the Supplier's brochures or on its website, are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or that are implied by law, trade custom, practice or course of dealing.
- 2.5 Any Quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 days from its date of issue, unless an alternative period is specified in the Quotation.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. Supply of Goods

The Supplier reserves the right to amend the Goods Specification if required by any applicable law or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 Delivery shall be effected by one of the following methods as specified in the Order or in the Quotation if not specified in the Order or otherwise as agreed in writing by the parties:
- (a) the Supplier shall deliver or shall organise for the manufacturer of the Goods or a third party transport company to deliver the Goods to the location set out in the Order or in the Quotation if not specified in the Order or to such other

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location as the parties may agree in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready; or

- (b) the Customer shall collect the Goods from the Supplier's premises within five Business Days of the Supplier notifying the Customer that the Goods are ready.

4.3 Delivery of the Goods is completed on the completion of unloading (clause 4.2(a)) of the Goods at the Delivery Location or Customer collection (clause 4.2(b)) at the Supplier's premises, as the case may be.

4.4 Any dates quoted for delivery of the Goods in accordance with clause 4.2(a) are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in such delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Customer fails to accept delivery of the Goods at the Delivery Location or fails to collect the Goods within five Business Days of the Supplier notifying the Customer that the Goods are ready for collection, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the delivery was attempted at the Delivery Location or Supplier notified the Customer that the Goods were ready for collection; and
- (b) the Supplier shall store the Goods until actual delivery/collection takes place and charge the Customer for all related costs and expenses (including insurance and repeated attempt(s) to deliver to the Delivery Location).

4.6 If twenty Business Days after the day on which the Supplier notified the Customer that the Goods were ready, actual delivery/collection has not taken place, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

5. Quality of Goods and Services

5.1 The Goods are supplied by the Supplier to the Customer but are manufactured by a third party. In the event that the Goods do not conform to the Goods Specification or there are material defects in design, material or workmanship with respect to the Goods, the Customer shall be entitled, in conjunction with the Supplier, to the benefit of any warranty or guarantee as is given by the manufacturer to the Supplier and/or to the Customer, for such duration and subject to such limitations as relate to the manufacturer's warranty. The Customer shall only be afforded such remedies for breach of the manufacturer's warranty or damage to the Goods before delivery is completed as are afforded to it or to the Supplier by the manufacturer.

5.2 Subject to clauses 5.1 and 5.3, the Customer may at any time within the relevant manufacturer's warranty period, raise a complaint in writing to the Supplier of any defect in the Goods which becomes apparent. Provided that a complaint has

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been timeously notified, the Supplier and the Customer shall work together in good faith (which may include a site visit and inspection by the Supplier or by the Supplier and the manufacturer of the Goods) to establish whether the Goods were defective upon delivery or if the defect has been caused by an act or omission of the Customer.

5.3 Notwithstanding clause 5.1, neither the Supplier nor the manufacturer shall have any liability for any defects in the Goods or any breach of manufacturer's warranty or any breach of clause 5.4 if:

- (a) the Customer makes any further use of such Goods after raising a complaint in accordance with clause 5.1;
- (b) the defect has arisen due to the installation or commissioning of the Goods by a third party or by the Customer;
- (c) the defect arises because the Customer failed to follow the Supplier's oral or written instructions or instructions contained in the Deliverables as to the use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (d) the defect arises as a result of unsuitable Goods being selected by the Customer with little or no input from the Supplier or the Supplier following any existing pipework route or any pipework route specified by the Customer when installing the Goods;
- (e) the Customer or a third party alters or repairs such Goods or attempts to alter or repair such Goods without the written consent of the Supplier;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (g) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 The Supplier warrants to the Customer that it will perform the Services with reasonable skill and care, in a good and workmanlike manner and in accordance with the Service Specification in all material respects. In the event the Services do not conform to this warranty, Supplier's sole liability and Customer's exclusive remedy in any cause of action alleging breach of this warranty or any claim related to a defect in Services provided by Supplier is expressly limited to the re-performance of such Services or a refund of the amount paid for the non-conforming Services, at Supplier's option. In any event, Supplier's liability for non-conforming Services will not exceed the cost of the non-conforming Services.

5.5 The Supplier shall have no liability for any Services provided assisting the Customer to select Goods which transpire to be unsuitable in circumstances where the Supplier has not had the opportunity to carry out a site inspection or where other relevant information about the precise requirement for the Goods has not been supplied by the Customer to the Supplier.

5.6 Claims made under the warranty in clause 5.4 must be notified to Supplier within 24 hours of the Supplier engineer who carried out the Services having left site upon completion of the Services.

5.7 The Supplier shall not be liable for defective Services pursuant to clause 5.4 if the defect arises as a result of Customer Default.

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5.8 Except as referred to in clause 5.1 and as provided for in clause 5.4, Supplier makes no other warranty, express or implied, including but not limited to any warranty of merchantability or fitness for any particular purpose, and the Supplier shall have no other warranty liability to the Customer. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.9 Where it transpires that a defect in the Goods was caused by an act or omission of the Customer or there has been no breach of warranty by the Supplier in respect of the Services, any repaired or replaced Goods or reperformed (or partially reperformed) Services by Supplier shall be paid for by the Customer at the Supplier's prevailing charge for those Goods or Services.

5.10 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier or any reperformed Services carried out by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery or deemed delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d).

6.4 Subject to clause 6.4, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing to the Customer, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

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- (b) require the Customer to deliver up all Goods in its possession and control that have not been resold, or irrevocably incorporated into another product, and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored, to recover them.

7. Supply of Services

7.1 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services estimated in the Quotation or otherwise agreed by the parties in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.2 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information (including where relevant and without limiting the generality of the foregoing, any documentation, drawings or wiring information relating to old or bespoke equipment) and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and at all times maintain all necessary licences, permissions and consents that may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment and tools, documents, data and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations or conditions noted in the Supplier's quotation.

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8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier may suspend performance of the Services until the Customer remedies the Customer Default, and rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and payment

9.1 The price for the Goods in a Contract for the sale of Goods alone, for the Services in a Contract for the sale of Services alone and for the Goods and Services in a Contract for the sale of Goods and Services shall be as set out in the Quotation as confirmed by the Order.

9.2 Notwithstanding clause 9.1, the Supplier shall be entitled to charge the Customer in addition to the price specified in the Quotation as follows:

- (a) its prevailing hourly overtime rate for any hours worked by its engineers in providing the Services outside the hours referred to in 9.2(b);
- (b) the engineers' day is 8 am to 5 pm Monday to Friday.

9.3 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier.

9.4 With respect to a Contract for the sale of Goods alone, the Supplier shall invoice the Customer on or at any time after notifying the Customer that the Goods are ready for delivery or collection in accordance with clause 4.2. In respect of a Contract for the sale of Services alone or for Goods and Services, the Supplier shall invoice the Customer on completion of the Services unless provided otherwise in the Quotation.

9.5 The Customer shall pay each invoice submitted by the Supplier:

- (a) by the end of the month following that in which the invoice is sent to the Customer or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier,

and time for payment shall be of the essence of the Contract.

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9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable, unless the Customer has Reverse VAT arrangements in place which it can evidence to the Supplier.

9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 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).

10. Intellectual property rights

10.1 All intellectual property rights in or arising out of or in connection with the Contract (other than intellectual property rights in any materials or drawings provided by the Customer) shall be owned by the Supplier.

10.2 The Customer may use the Deliverables to make use of and maintain the Goods, in its business.

11. Limitation of liability

11.1 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, delict, tort (including negligence), misrepresentation, restitution or otherwise.

11.2 Nothing in the Contract limits any liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);

11.3 Subject to clause 11.1, the Supplier's total liability to the Customer shall not exceed the total price payable to the Supplier under the relevant Contract.

11.4 Subject to clause 11.1, the Supplier shall have no liability in respect of any of the following types of loss, all of which are wholly excluded:

- (a) loss of profits (including loss of anticipated savings);
- (b) loss of sales or business;
- (c) loss of agreements or contracts;

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- (d) loss of use or corruption of software, data or information;
- (e) loss of or damage to goodwill; and
- (f) indirect or consequential loss.

11.5 This clause 11 shall survive termination of the Contract.

12. Termination

12.1 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 commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;
- (b) the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 12.1(b);
- (c) the other party suspends or ceases, or threatens to suspend or cease carrying on business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

12.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

12.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 0 to clause 6.5(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13. Consequences of termination

13.1 On termination of the Contract, the Customer shall:

- (a) immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

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- (b) return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and shall not use them for any purpose not connected with the Contract.

13.2 Termination of the Contract shall not affect the parties' rights and remedies, that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

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

14. Confidentiality

14.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.

14.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party may use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15. Force majeure

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for at least thirty days, the party not affected may terminate the Contract by giving not less than fourteen days' written notice to the affected party.

16. General

16.1 Interpretation

Any reference to "in writing" or "written" contained in these Conditions shall include email.

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16.2 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract, provided that it gives prior written notice of such dealing to the Customer.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

16.3 Notices

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address; or
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting.

16.4 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.4, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

16.5 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

16.6 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.7 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.

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- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation based on any statement in the Contract.

16.8 Third party rights.

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of the Contract.

- 16.9 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 16.10 Governing law.** 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 and construed in accordance with the law of Scotland.

- 16.11 Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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