General Terms and Conditions of Purchase

ICR-BMS-01-COP-TEM-004

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INTEGRATED MAINTENANCE & INTEGRITY SOLUTIONS
# GENERAL TERMS AND CONDITIONS OF PURCHASE

## DISTRIBUTION LISTING

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## REVISION CONTROL

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1.0 DEFINITIONS

1.1 “AFFILIATE” shall mean in relation to a company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. For the purposes of this definition, “subsidiary” and “holding company” shall have the meanings assigned to them under Section 1159 of the Companies Act 2006.

1.2 “CLAIM” means any cost, claim, cause of action, dispute, demand, protest, loss, damage, expense (including without limitation any legal costs) penalty or fine.

1.3 “CONTRACT” means the contract between ICR and Seller for the supply of Goods and/or Services in accordance with these terms and conditions.

1.4 “EFFECTIVE DATE” means the date stated in the Order, from which this Contract comes into force.

1.5 “GOODS” shall mean all components and materials to be incorporated therein or ancillary thereto and all articles, materials, supplies, drawings, data, documentation specified or required and all design carried out as part of the Order and all property rights in such design and all services including delivery, installation, testing and commissioning as required by ICR.

1.6 “ICR” shall mean ICR Integrity Limited, a company incorporated and registered in England and Wales with company number 07602331, and having its registered office at Moss Mechanical Oreille Services Ltd, Unit 10 Westmorland Business Park, Gilthwaiterigg Lane, Kendal, Cumbria, LA9 6NS.

1.7 “ICR GROUP” shall mean ICR, each Affiliate of ICR and directors, officers and employees (including agency personnel) and agents of any of the aforementioned but excluding any member of Seller Group.

1.8 “INTELLECTUAL PROPERTY RIGHTS” means patents, rights to inventions, copyright and邻 disclose rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

1.9 “ORDER” shall mean the order, of which these Standard Terms and Conditions are attached, and any other written material specifically incorporated by ICR.

1.10 “PARTY” means ICR or Seller as the context requires, and “PARTIES” means both.

1.11 “SELLER” shall mean the person, firm or company to whom the Order is addressed.

1.12 “SELLER GROUP” shall mean Seller and its Affiliates, its other contractors and subcontractors of any Tier and Affiliates of any of them, and directors, officers and employees (including agency personnel) and agents of any of the aforementioned but excluding any member of the ICR Group.

1.13 “SERVICES” shall mean the services to be provided under the Order all as more fully set out therein.

1.14 Words importing the singular shall include the plural, and words importing a particular gender include all genders and vice versa.

1.15 Any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.

2.0 GENERAL

2.1 The Order is subject to the terms and conditions set out herein. Any terms and conditions set out in any order acknowledgement, invoice or any other Seller issued document are of no force and effect.

2.2 The Order shall be deemed to have been accepted on the earliest of:

(a) Seller issuing written acceptance of the Order; or

(b) any act by Seller consistent with fulfilling the Order, at which point and on which date this Contract shall come into existence.

3.0 SERVICES TO BE PERFORMED

3.1 Seller shall, with due care and diligence and to the standard expected of a fully competent and experienced provider of services that are similar or equivalent to the Services, execute and complete the Services as stipulated within this Contract.

3.2 The Services shall be performed by suitably qualified and competent personnel and all equipment and tools required for the performance of the Services shall be provided and at all times be maintained in first class operating condition by Seller. ICR reserves the right to require the replacement of any such personnel, equipment or tools that do not comply with the foregoing provisions at Seller’s cost.

4.0 SELLER’S GENERAL OBLIGATIONS

4.1 Seller shall provide all management, supervision, personnel, materials, equipment, plant, consumables, facilities and all other things whether of a temporary or permanent nature, so far as the necessity for providing the same is specified in or reasonably inferred from the Order.

4.2 Should any Services be required which are not, either directly or indirectly stated as Seller’s responsibility in the Order but which is necessary for the proper performance of the Order by Seller, Seller shall perform such Services without any claim for additional time and/or cost compensation.

4.3 Seller shall carry out all of its obligations under the Order and shall deliver the Goods as with all due care and diligence and with the skill to be expected by a reputable seller experienced in the types of work to be carried out under the Contract. The Goods shall be fit for the purposes specified in the Order or, where no such purpose is specified, fit for their ordinary purpose.

4.4 In case of conflict between applicable technical specifications, drawings, codes and standards, the most stringent requirements shall apply, and it shall be the responsibility of Seller to identify any deficiencies, omissions, contradictions, ambiguities or conflicts between or within the Order, and the applicable codes, regulations and standards, and to notify ICR of such deficiencies, omissions, contradictions, ambiguities or conflicts in writing within fifteen (15) days of the Effective Date.

4.5 Seller shall have an obligation to mitigate costs and changes to delivery dates arising from deficiencies, omissions, contradictions, ambiguities, or conflicts between or within the Order, applicable codes, regulations and standards, whether notified to ICR or otherwise. Seller shall not be entitled to claim an adjustment to the Order price and/or the delivery dates unless, in ICR’s opinion, the deficiencies, omissions, contradictions, ambiguities or conflict cannot be expected to have been identified by an experienced seller within the time period stated in Clause 4.4.3 above.

4.6 Seller shall be deemed to have made investigations of its own as are necessary to satisfy itself concerning:

(a) use of the Goods;

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4.7 Status of Seller

(a) Seller shall manage, control and direct the Services as an operation on behalf of ICR and perform all obligations and duties under the Order at its own cost, risk and responsibility, in due compliance with the provisions of the Order.
(b) Seller shall remain solely responsible and liable for compliance with the Order by all the subcontractors and Sellers’s obligations under the Order shall not be affected in any way due to any sub-contracting.
(c) Seller shall not, without written consent of ICR (which shall not be unreasonably withheld) partly or wholly assign the Order or in any way sub-contract for the supply of any major component of the Goods (other than sub-orders for materials, minor parts) or for any part of the Goods of which the manufacturers are named in the Order and/or drawings and particulars furnished in writing to Seller by ICR which Seller could not reasonably have been expected to discover. Should Seller find any discrepancies, ambiguities or contradictions between various parts of the Order or subsequent amendments, or any errors or omissions, it shall inform ICR in writing as soon as reasonably possible and in any event within fourteen (14) days of discovery of such discrepancies, errors or omissions. Any Services performed by Seller after such discovery shall be at Seller’s own risk and expense.

4.8 Seller shall be responsible for any discrepancies, errors or omissions in the drawings and other particulars supplied by it, whether such drawings and particulars have been received by ICR or not, provided that such discrepancies, errors or omissions are not due to uncorrected, inaccurate information or particulars furnished in writing to Seller by ICR which Seller could not reasonably have been expected to discover. Should Seller find any discrepancies, ambiguities or contradictions between various parts of the Order or subsequent amendments, or any errors or omissions, it shall inform ICR in writing as soon as reasonably possible and in any event within fourteen (14) days of discovery of such discrepancies, errors or omissions. Any Services performed by Seller after such discovery shall be at Seller’s own risk and expense.

4.9 Seller shall provide such documentation as requested in the Order and charges for which are deemed to be included in the Price specified in the Order, unless specifically mentioned to the contrary. Notwithstanding anything expressed elsewhere payment shall not become due until all documentation has been delivered to ICR.

4.10 It is Seller’s responsibility to provide suitable protection and packing for the Goods to ensure arrival at destination in satisfactory condition.

5.0 DELIVERY OF GOODS

5.1 Seller shall deliver the Goods strictly in accordance with the delivery dates set out in the Order to the location set out in the Order during ICR’s normal hours of business on a business day, or as otherwise instructed by ICR. Seller acknowledges and confirms that compliance with the delivery dates stated in the Order is an essential obligation of Seller under this Contract.

5.2 Seller shall inform ICR in writing of any actual or anticipated delay to the delivery dates referred to in clause 5.1 above. Seller shall promptly submit for approval its proposal to ICR indicating the remedial measures Seller shall take to minimise or mitigate the delay in order to maintain the said delivery dates.

5.3 Should Seller fail to take foresaid remedial measures or should ICR not approve of the remedial measure, ICR reserves the right to require Seller, at Seller’s expense, to implement such remedial measures as ICR deems necessary, at no extra cost to ICR.

5.4 In the event that Seller’s performance is such that it will cause a substantial delay in the delivery dates that cannot be recovered despite Seller having implemented remedial measures in accordance with clauses 5.2 and 5.3 above, Seller shall, if instructed by ICR, hand over the Services to ICR to complete the Services or have it completed by others at Seller’s cost without prejudice to any other rights or remedies ICR may have under this Contract or under applicable law. The provisions of Clause 9 (SELLER’S DEFAULT) shall be applicable under such event.

5.5 In case of delivery of incorrect or defective Goods, such Goods may be returned by ICR to Seller at Seller’s risk and expense. In case of delivery of excess quantity of the Goods, such excess Goods may be returned by ICR to Seller at the Seller’s risk and expense. Any shortage in delivery of the Goods shall be rectified by Seller at its cost within five (5) business days following delivery of the Goods. In circumstances where Seller fails to rectify the shortages within five (5) business days., Seller shall, if instructed by ICR, hand over the Goods to ICR to complete the Services or have it completed by others at Seller’s expense. In case of delivery of excess quantity of the Goods, such excess Goods may be returned by ICR to Seller at Seller’s risk and expense. In case of delivery of incorrect or defective Goods, such Goods may be returned by ICR to Seller at Seller’s risk and expense.

6.0 CHANGES – CANCELLATIONS

6.1 No deviation from the specifications and other conditions contained in the Order is permitted without ICR’s prior written agreement. ICR may at any time by written notice to Seller (i) make any change to the Order, including a change in quantity, specification or drawing, or (ii) cancel the Order as to all or any portion of the Goods not transported. Any adjustment to prices and/or delivery resulting from the change or cancellation shall, where possible, be agreed in writing before or at the time the change or cancellation is instituted. Any such price adjustment may include reasonable direct costs incurred by Seller. Such adjustment in price or delivery must in any event be agreed between ICR and Seller within fourteen (14) days from date of ICR’s written notice, unless otherwise agreed. Any adjustment or any change or cancellation, as applicable, will be confirmed by amendment in writing to the Order. No cancellation shall relieve ICR or Seller of any of its obligations as to any Goods already delivered.

7.0 PRICE

7.1 The Price of the Services shall be stated in the Order and unless otherwise agreed in writing by ICR shall be exclusive of value added tax but inclusive of all other charges, taxes, levies or duties in relation to Seller’s obligations under the Contract, at law or otherwise.

7.2 Save as otherwise agreed in writing by ICR, no variation in the [price] or additional charges be accepted by ICR.

8.0 PAYMENT

8.1 For the performance and completion of the Goods and/or Services, ICR shall pay or cause to be paid to Seller the amounts provided in the Order save where Seller has failed to perform its obligations under this Contract or where Seller’s invoice contains a material error.

8.2 Without prejudice to any other right or remedy, ICR reserves the right to (i) set off any amount owing at any time from Seller to ICR against any amount payable by ICR to Seller under the Contract and (ii) withhold from any money payable by ICR to Seller under the Order any amount the subject of a dispute, pending its resolution.
8.3 Correctly prepared and supported invoices shall be paid by ICR within thirty (30) days of receipt thereof. Where any taxable supply for VAT purposes is made under the Contract by Seller to ICR, ICR shall, on receipt of a valid VAT invoice from Seller, pay to Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

8.4 Neither the presentation of an invoice nor the payment thereof shall constitute acceptance of the Goods and/or Services by ICR or a settlement of a dispute or otherwise waive or affect the rights of ICR.

9.0 SELLER’S DEFAULT

9.1 Time is of the essence for the Contract and failure of Seller to complete delivery of any of the Goods and/or perform the Services.

9.2 Notwithstanding Clause 6, ICR shall be entitled to cancel the Order in whole or in part without liability for payment if:
   a) at any time on request, Seller fails to give assurance of due performance satisfactory to ICR, or;
   b) any of the Goods do not comply with the specification set out in the Order or are in some way deficient or defective and Seller fails to rectify the deficiency or defect within seven (7) days of receiving notice of the same from ICR; or;
   c) Seller makes any composition or arrangement with its creditors, becomes insolvent, commits an act of bankruptcy, has a receiver appointed or enters into liquidation; or
   d) a Force Majeure event has occurred and has continued or is reasonably expected by ICR to continue for a period of fourteen (14) days.

9.3 In the event ICR cancels the Order in accordance with either Clause 9.2(a) or (b), ICR may procure goods and/or services similar to the Goods and/or Services affected by the cancellation elsewhere and Seller shall pay to ICR the difference between the amount paid by ICR for the goods and/or services procured elsewhere, and the amount which would otherwise have been due from ICR to Seller for the cancelled Goods and/or Services. Furthermore ICR shall have the right to remove any uncompleted Goods from Seller’s premises and have them completed elsewhere. Additional costs incurred by ICR, including those of packing, transport and loading shall be the responsibility of the Seller.

9.4 In the event of cancellation where ICR has made any milestone or progress payments to Seller for Goods and/or Services, Seller shall pay to ICR an amount equal to the total of such milestone or progress payment.

10.0 VARIATIONS

10.1 Seller shall only make such variations to the Services whether by way of addition, modification or adaptation as confirmed in writing by ICR.

10.2 The value if any of such variations shall be made by reference to the rate and/or prices specified in the Order.

11.0 ASSIGNMENT AND SUBCONTRACTING

11.1 Seller shall not, without prior written consent of ICR, assign this Contract or sub-contract the performance of any part of the delivery of the Goods and/or Services and any unauthorised assignment or subcontracting shall not relieve Seller from any of its responsibilities or obligations to ICR under this Contract.

11.2 All applicable terms and conditions of this Contract shall be imposed in all subcontracts entered into by Seller.

12.0 CONFIDENTIAL INFORMATION

12.1 The information contained in the documents provided by ICR in connection with this Contract, including the Order and these terms and conditions is confidential and may not be disclosed to others or used by Seller for any other purpose than the performance of this Contract, without the prior written consent of ICR. No news release or advertisement of any kind relative to this Contract or the subject matter thereof shall be given to anyone without the prior written consent of ICR.

13.0 DEFECTS AND WARRANTY

13.1 For the provision of Services:

Seller shall be responsible for remediying at its expense any defects that may arise in the Services within twenty-four (24) months from the later of the date of performance of the Services or the date when the equipment provided as part of the Services has been put into service for its specified use or the date of delivery. Seller shall warrant for a further period of twelve (12) months all remedial work carried out under this warranty. Where a defect arises within the aforesaid original warranty period but does not become apparent until that period has expired, Seller’s liability shall not cease merely because ICR has not given notice of the defect to Seller within the said period. If any defects which Seller is obliged to remedy under this Clause 13.1, are not remedied within a reasonable time or circumstances render it impracticable for Seller to do so, ICR may at Seller’s cost do it itself or authorise others to do same, and Seller shall reimburse ICR for all costs arising therefrom.

13.2 For the provision of Goods:

Seller warrants that the Goods shall conform as to quantity, quality, specification and description with the particulars stated in the Order, and shall be of sound materials and workmanship. If the purpose for which the Goods are required is indicated in the Order, either expressly or by implication, then Seller warrants that the Goods shall be fit for that purpose. The Order is placed with reliance on each and all of the warranties specified herein or implied by law and usage of trade. Should any defect in design, specification, materials, workmanship or operation characteristics develop during the first twelve (12) months of use, but not later than twenty four (24) months from the date of delivery to ICR, Seller shall without limitation to ICR’s other legal rights, make all the necessary alterations, repairs or replacement of defective Goods free of charge and shall extend the warranty of the original Goods by the period during which the Goods or the plant of which the Goods form part were at a standstill as a result of such defects. If the defect cannot be corrected within seven (7) days, Seller shall promptly replace the Goods, free of charge, or at ICR’s option, remove the Goods and refund the full price paid under Clause 6 above. Furthermore, Seller shall warrant for a period of twelve (12) months any replacement part or parts.

14.0 INSPECTION

14.1 All inspections and tests shall be made as required by the specification issued by ICR, and copies of all test reports, test data etc in the number specified by the Order shall be forwarded by Seller to ICR. Seller shall give ICR reasonable notice of any such inspection or test and ICR may at its option be present. ICR reserves the right to inspect the Goods or any part thereof (including those supplied by sub-contractors) at any time after the date of this Contract. Any inspections or any failure to inspect by ICR shall not relieve Seller of any
17.0  HEALTH, SAFETY AND ENVIRONMENT

17.1  Seller shall comply with all relevant statutes, laws, regulations, and by-laws and EU directives affecting performance of this Contract, good engineering practice and when appropriate shall comply with ICR’s safety, fire and other regulations.

17.2  Seller shall give all notices and shall obtain all permits required to be given or obtained in Seller’s name which may relate to the Goods and/or Services and are required by any statute or regulation and shall bear all costs in connection therewith.

18.0  SUSPENSION

18.1  ICR may at any time by written notice require Seller to suspend performance of all or any part of delivery of the Goods and/or performance of the Services. When suspension is ordered due to any act or omission of Seller then Seller shall be entitled to no additional remuneration in respect of such suspension. When suspension is ordered for reasons other than the aforesaid, Seller shall be entitled to reimbursement for reasonable additional costs necessarily incurred as a result thereof. Where appropriate Seller shall be granted a reasonable extension of all applicable delivery dates to take account thereof.

19.0  TERMINATION

19.1  ICR may terminate this Contract in whole or in part at any time and for its own convenience by serving notice to Seller and compensating Seller for Goods supplied and/or Services performed up to the date of termination. Notwithstanding the foregoing, if Seller (i) makes any composition or arrangement with its creditors, becomes insolvent, commits an act of bankruptcy, has a receiver appointed or enters into liquidation, either voluntary or compulsory, or (ii) refuses or fails to supply competent supervision or sufficient properly skilled personnel or proper materials or does not make proper or timely performance of the Goods and/or Services or otherwise prejudices or fails to carry out any of its obligations hereunder, ICR may terminate forthwith this Contract, and in any such circumstance ICR shall not be liable to pay Seller any further monies in respect of the Goods and/or Services and Seller shall be liable for and shall indemnify ICR for all and any Claims arising from or relating to such termination or the circumstances giving rise thereto.

20.0  TITLE AND RISK

20.1  Without prejudice to ICR’s rights and remedies under or arising from this Contract and in order to protect ICR from any event which might hamper or prevent ICR from obtaining the Goods (such as but not limited to Seller going into liquidation or having a receiver appointed by its creditors) title in the Goods shall vest in ICR at the time of delivery thereof to ICR or at the time ICR makes any payment in whole or in part to Seller in respect of the Goods, whichever is earlier.

If, however, the Goods are subject to any process of management, modification or the like prior to delivery of the completed Goods to ICR, title in the component parts shall vest in ICR as soon as they are appointed by Seller for incorporation into the Goods, provided always that ICR shall have made a payment to Seller towards the price of the Goods. Notwithstanding the foregoing, risk in the Goods shall pass to ICR only when physical delivery of the Goods to ICR has been completed. Until then, risk in the Goods shall remain with Seller.

21.0  LIABILITIES AND RESPONSIBILITIES

21.1  Seller shall be liable for and shall indemnify, defend and hold harmless ICR Group from and against all Claims, losses, damages, costs (including legal costs) expenses and liabilities in any way arising from, relating to or in connection with the delivery of the Goods and/or performance of the Services and irrespective of cause in respect of (i) loss or damage to property of Seller Group whether owned, hired or leased by Seller Group, (ii) personal injury including death or disease to any person employed by Seller Group, or (iii) third party Claims against ICR arising out of or in connection with the supply of the Goods and/or Services.

21.2  ICR shall be liable for and shall indemnify, defend and hold harmless Seller Group from and against all Claims, losses, damages, costs (including legal costs) expenses and liabilities in any way arising from, relating to or in connection with the delivery of the Goods and/or performance of the Services and irrespective of cause in respect of (i) loss or damage to property of the ICR Group whether owned, hired or leased by ICR Group, (ii) personal injury including death or disease to any person employed by the ICR Group.

21.3  Notwithstanding any provision of this Contract to the contrary, each party shall be responsible for and hold harmless and indemnify the other party from and against its own special, indirect, or consequential damages resulting from or arising out of this Contract, tort, negligence, strict liability, statutory or regulatory violation or any other legal theory, which is agreed to mean loss of profits including anticipated profits if any, loss or delay of production, business interruptions, loss of use, losses resulting from failure to meet other contractual commitments or deadlines however same may be caused and whether or not foreseeable at the time of entering into this Contract.

22.0  INSURANCE

22.1  Without any limitation to Seller’s liabilities and responsibilities under this Contract, Seller shall at its own cost obtain and maintain in full force and effect throughout the term of this Contract following insurances:

a) insurance against any risk of loss and/or damage up to the replacement value of the Goods from the Effective Date up to and including the delivery of the Goods and/or Services to ICR.

b) a General Third Party Liability Insurance up to limit which is commensurate with the risks and liabilities attached to the provision of the Goods and/or performance of the Services by Seller.

c) other insurances such as Workmen’s Compensation Insurance (Employer’s Liability Insurance).
23.0 FORCE MAJERE

23.1 Where either Party is unable to perform this Contract by reason of unforeseen circumstances beyond their reasonable control and whose effects they could not have avoided and cannot overcome by the use of reasonable diligence and foresight (“Force Majeure”) they shall be entitled to a reasonable extension of time for performance.

23.2 In any such event the Party concerned should immediately notify the other Party in writing and estimate how long these circumstances are likely to continue. In the event that it appears that the circumstance giving rise to the Force Majeure may subsist for longer than fourteen (14) days, ICR and Seller shall discuss in good faith how to resolve the situation.

23.3 The Party concerned shall take all reasonable steps to avoid further or consequential delay and to proceed with the due performance of this Contract.

24.0 LIENS AND CLAIMS

24.1 Seller agrees to pay, discharge and hold ICR harmless from all liens, claims (including legal fees and other expenses incidental thereto), whether groundless or not, judgements and awards which may arise out of or in connection with this Contract.

25.0 INTELLECTUAL PROPERTY RIGHTS

25.1 Title to all Intellectual Property Rights created under or arising out of the provision of the Services (“Contract IPR”) shall vest in ICR. Seller hereby irrevocably assigns to ICR all right, title and interest in and to all existing and future Intellectual Property Rights subsisting in or relating to any Contract IPR whether created before, on or after the Effective Date.

25.2 Seller warrants that it has obtained or shall obtain from all sub-contractors an unconditional assignment without restriction of the legal and beneficial ownership of all existing and future Intellectual Property Rights subsisting in or relating to any Contract IPR created or developed by such sub-contractors.

26.0 TAXATION

26.1 Seller shall be responsible for all taxes, imposts, fees, duties and the like related to the performance of the Services and shall indemnify and hold harmless ICR Group from and against all any Claims which may be incurred or arise in connection therewith.

26.2 ICR is required to deduct tax at the standard rate for the labour elements of payments due to Seller in respect of those construction activities specified as “operations included” in the Finance Act (No.2) 1975 and performed within the territorial limits of the UK, unless Seller holds a valid exemption certificate issued by HM Inland Revenue. Any such certificate held by Seller shall be submitted to ICR for examination before payment against the labour elements will be made without such deduction. Seller shall advise ICR immediately of any change or cancellation of any such certificate.
conditions is enforceable under the terms of the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party hereto.

33.0 ENTIRE AGREEMENT

33.1 This Contract and documents made a part hereof by express reference constitute the entire agreement between the Parties and supersede all prior agreements and understandings written or oral and may not be varied, except in writing between the Parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

34.0 SURVIVING CLAUSES

The provisions of this Contract relating to Confidential Information (Clause 12), Defects and Warranty (Clause 13), Liabilities and Responsibilities (Clause 21), Audit (Clause 27), Law and Jurisdiction (Clause 30) will survive its termination.