

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

JAMES RAMSAY (GLASGOW) LIMITED TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

– SYSTEM UPGRADES & SYSTEM REFURBISHMENTS

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

1. Interpretation

The following definitions apply in these Conditions.

Definitions:

Completion Certificate: the certificate issued by the Supplier and accepted by the Customer (or deemed to have been accepted by it) pursuant to clause 11.2 that confirms that Take-Over has occurred.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

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

Customer: the person or firm who purchases the Goods and Services from the Supplier, as set out in the Order.

Deliverables: any operation and maintenance manuals supplied to the Customer by the Supplier together with any other written deliverables specified in the Quotation.

Delivery Location: has the meaning given in clause 4.3.

Force Majeure Event: has the meaning given to it in clause 16.

Goods: any goods or materials to be supplied by the Supplier in accordance with the Quotation.

Goods Specification: any specification for the Goods to the extent to which they are included or referred to in the Quotation, including any relevant plans or drawings.

Order: the Customer's purchase order for the Works in accordance with the Quotation.

Order Acknowledgement: the Supplier's standard written order acknowledgment in respect of the Order.

Programme of Works: has the meaning given to it in clause 2.2.

Quotation: the Supplier's final written quotation to the Customer for the Works which shall be relevant to these Conditions notwithstanding that, from the face of it, its validity has expired.

Services: the services, including the Deliverables, to be supplied by the Supplier to the Customer as set out in the Quotation.

Service Specification: any description or specification for the Services to the extent to which they are included or referred to in the Quotation, including any relevant plans or drawings.

Site Take-Over meeting: has the meaning given in clause 11.1.

Supplier: James Ramsay (Glasgow) Limited, registered in Scotland with company number SC011277 and having its registered office at 35 Weardale Lane, Queenslie Industrial Estate, Glasgow, Scotland, G33 4JJ.

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

Take-Over: means the adoption by the Customer of the Works as deemed to have occurred pursuant to clause 11.2.

Take-Over Date: the date on which Take-Over occurs in respect of the Works.

Warranty Period: has the meaning given in clause 5.1.

Works: the supply of the Goods and Services.

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues the Order Acknowledgement, at which point, and on which date the Contract shall come into existence. The Works may commence on a different date if specified in the Order or in any written programme of works agreed between the parties (**Programme of Works**).
- 2.3 Subject to clause 2.4, in the event of any discrepancy or inconsistency between the Quotation and the Order, the terms of the Order shall prevail.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.6 Each party will appoint a representative to oversee the performance of the Contract.

3. Goods

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

4. Delivery of Goods

- 4.1 Clauses 4.2 – 4.6 (in each case inclusive) shall apply only to Goods which are not consumable materials. Delivery of Goods which are consumable materials shall be completed when they are received by the Supplier at the Site.
- 4.2 The Supplier shall ensure that each delivery of the Goods (other than where the Goods are consumable materials) is accompanied by a delivery note which shows the type and quantity of the Goods (including the code number of the Goods, where applicable), and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.3 The Supplier shall deliver the Goods to the site set out in the Quotation or such other location as the parties may agree (**Delivery Location or Site**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in 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.
- 4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, 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 third business day following the day on which the Supplier notified the Customer that the Goods were ready; and

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

- (b) the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).

5. Quality of Goods and Services

5.1 The Supplier warrants that on the Take-Over Date and for a period of 12 months from the Take-Over Date (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with the Goods Specification; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3 and 5.6, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
- (b) the Supplier is given a reasonable opportunity of examining such Goods within a reasonable time of being given such notice

the Supplier shall, at its option, repair or replace the defective Goods at its cost, or refund the price of the defective Goods in full.

5.3 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects and warrants to the Customer that the Services will be provided using reasonable care and skill.

5.4 Subject to clause 5.6, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that the Services have not been carried out in compliance with the warranty set out in clause 5.1; and
- (b) the Supplier is given a reasonable opportunity of examining the workmanship relating to the Services in question within a reasonable time of being given such notice

the Supplier shall, at its option, re-perform the Services at its cost or refund the cost of the Services in question.

5.5 The warranty in clause 5.1 shall not apply to any Goods supplied by the Supplier but manufactured by a third party, in respect of which the Customer shall only 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 the avoidance of doubt, any goods or materials which are “free issued” to the Supplier by the Customer do not comprise “Goods” for the purposes of the Contract and no warranty is given by the Supplier in respect of such “free issued” goods or materials.

5.6 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 or for defective Services pursuant to clause 5.4 if (as relevant):

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2 or clause 5.4;
- (b) the defect arises because the Customer has not maintained the Goods in accordance with the relevant schedules of SFG 20 standard and any maintenance instructions in the Deliverables;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer (including but not limited to any pipework route);
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.7 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 or the Services having been supplied in breach of the warranty set out in clause 5.3.
- 5.8 Except as provided in clause 5.1 or clause 5.3, 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.
- 5.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full in cleared funds for the Works.
- 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; and
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(d).
- 6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession 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 in order to recover them.

7. Supply of Services

- 7.1 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation, the Order or any Programme of Works 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:

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

- (a) ensure that the terms of the Order and any information it provides in relation to 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 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 maintain all necessary licences, permissions and consents which 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 and the Bribery Act 2010;
 - (h) keep all materials, equipment, documents 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 Quotation.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by 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 shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to 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 Works shall be the price set out in the Order.
- 9.2 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.
- 9.3 Unless agreed otherwise in the Order, the Supplier shall invoice the Customer:
- (a) at the end of the first calendar month following commencement of the Works and at each month end thereafter until Take-Over, in respect of the percentage completion of the Works achieved by the relevant month end; and
 - (b) upon or after the Take-Over Date in respect of any residual amount of the price still unpaid to the Supplier.
- 9.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

- (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.
- 9.5 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.
- 9.6 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 13, 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 9.6 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%.
- 9.7 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 Works (other than intellectual property rights in any materials or drawings provided by the Customer) shall be owned by the Supplier.
- 10.2 The Supplier grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free licence to use the Deliverables to make use of and maintain the Works, in its business.

11. Take-Over

- 11.1 Promptly upon completion of the Works, the Supplier's representative and the Customer's representative will arrange to meet on Site (**Site Take-Over meeting**) during normal business hours when:
- (a) the Supplier will hand over all relevant documentation to the Customer including the Deliverables, to the extent not already done;
 - (b) a physical inspection of the Works will be conducted; and
 - (c) there will be a demonstration of operation of the Customer's system or equipment on which the Works have been carried out.
- The Site Take-Over meeting may be attended either by the relevant party's representative appointed pursuant to clause 2.6 and/or by a senior colleague of such representative (who shall also be the "representative" for the purposes of clause 11).
- 11.2 Provided that no snagging is identified, and the demonstration of operation is successful in so far as it relates only to the Works, the Supplier's representative will issue the Completion Certificate to the Customer's representative by email as soon as possible after the Site Take-Over meeting. The Customer's representative will sign the Completion Certificate and return it by email to the Supplier's representative as soon as possible and in any event within seven days of receipt of the email from the Supplier's representative. Take-Over will be deemed to have occurred on the earliest of the following dates:
- (a) the date on which the fully signed Completion Certificate is received by the Supplier's representative;
 - (b) the date which falls seven days after the date on which the Completion Certificate is emailed to the Customer's representative;
- and

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

- (c) the date on which the final invoice is paid by the Customer.
- 11.3 If the Customer's representative rejects at least three dates suggested reasonably by the Supplier's representative for the Site Take-Over meeting, the Supplier's representative will be given access to the Site on a date which is convenient to him and may conduct the Site Take-Over meeting alone. If the Customer's representative fails to attend the Site Take-Over meeting on the date agreed, the Supplier's representative may conduct the Site Take-Over meeting alone. Notwithstanding the absence of the Customer's representative in either of these eventualities, the Site Take-Over meeting will be deemed to have occurred (with no snagging identified and successful demonstration of operation) for the purposes of clause 11.2.
- 11.4 If at any Site Take-Over meeting snagging is identified and/or the demonstration of operation, in so far as it relates only to the Works, is not successful, the Supplier will rectify such issues as soon as reasonably possible after which another Site Take-Over meeting will be organised. The provisions of clauses 11.1 - 11.3 (both inclusive) and this clause 11.4 will then apply.

12. Limitation of liability

- 12.1 References to liability in this clause 12 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.
- 12.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 12.3 Subject to clause 12.2, the Supplier's total liability to the Customer under or in connection with the Contract shall not exceed the total price payable to the Supplier under this Contract.
- 12.4 This clause 12.4 sets out specific heads of excluded loss. The following types of loss are wholly excluded:
- (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
- 12.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 11C, 11D and 11E of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.6 This clause 12 shall survive termination or expiry of the Contract.

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

13. Termination

- 13.1 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 any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its 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.
- 13.2 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.
- 13.3 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 13.1(b) to clause 13.1 (d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of termination

- 14.1 On termination of the Contract:
- (a) the Customer shall 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;
 - (b) the Customer shall 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 will not use them for any purpose not connected with this Contract.
- 14.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

15. Confidentiality

15.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry 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 15.2.

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

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3 No party shall 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.

16. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for at least three months, the party not affected may terminate the Contract by giving fourteen days' written notice to the affected party.

17. General

17.1 Assignment and other dealings

Neither party may 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 other party.

17.2 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.

17.3 **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.

17.4 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.

Terms & Conditions – System Upgrades & Refurbishments (OP02-09)

- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

17.5 **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.

17.6 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (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 shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

17.7 **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.

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

17.9 **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.

17.10 **Jurisdiction.** Each party agrees that the Scottish courts 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.