1 Interpretation

1.1 In these Conditions, the following definitions apply:

"Applicable Ex Legislation" means Directive 2014/34/EU on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres, the Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres Regulations 2016 (SI 2016/1107), and any other legislation, regulations, harmonised or designated standards and applicable guidance in force from time to time governing the design, assessment, marking, certification or placing on the market of equipment intended for use in potentially explosive atmospheres;

"Budget Quotation" shall have the meaning set forth in clause 8.9;

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when the clearing banks in Scotland are open for business;

"**Business Hours**" means 8.00am to 4.30pm on any day which is a Business Day;

"**Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with clause 14.5;

"Conformity Assessment Services" means any Services which comprise or include the assessment, re-assessment, classification, reclassification, certification or recertification of equipment against the Applicable Ex Legislation, including ignition hazard assessment, assessment against essential health and safety requirements, the preparation, reconstruction or updating of engineering documentation, and the issue of a Declaration of Conformity;

"Conformity Documentation" means those documents issued by the Supplier to the Customer in connection with Conformity Assessment Services, being the Declaration of Conformity, the equipment nameplate and marking, the user manual and the bills of material, together with such other documents as the Contract specifies as forming part of the Conformity Documentation;

"**Contract"** means the contract between the Supplier and the Customer for the sale, supply and purchase of the Goods and/or Services and in accordance with these Conditions, which shall be constituted by these Conditions, the Quotation and the Supplier's Acceptance;

"**Contract Date**" shall have the meaning set forth in clause 2.2;

"**Customer"** means the person ordering Goods and/or Services from the Supplier, whether in writing or orally;

"Declaration of Conformity" means a declaration of conformity issued by the Supplier in respect of Ex Equipment for the purposes of the Applicable Ex Legislation;

"**Delivery Costs**" means packaging, insurance, transport and all other expenses, costs and charges relating to the delivery of Goods (other than VAT and Duties);

"**Delivery Date**" means the date(s) by which the Goods and/or Services are to be supplied to the Customer as specified in the Supplier's Acceptance, failing which such other date as is agreed between the parties;

"**Delivery Location**" means the location set out in the Supplier's Acceptance, failing which such other location as the parties may agree;

"**Despatch Date**" means the date upon which the Goods are despatched for delivery to the Customer;

"**Due Date**" shall have the meaning set forth in clause 8.6;

"**Duties**" means export and import charges, duties and taxes, customs charges and any charges levied by any governmental or regulatory authority relating to the supply of the Goods by the Supplier to the Customer (other than VAT);

"Ex Equipment" means any equipment which is the subject of Conformity Assessment Services under the Contract, as identified in the Contract;

"Fixed Price Quotation" shall have the meaning set forth in clause 8.10;

"**Force Majeure Event"** has the meaning given in clause 14.2;

"**Goods**" means the goods (or any part of them) set out in the Contract;

"Ignition Hazard Assessment" means the ignition hazard assessment prepared by the Supplier in respect of Ex Equipment;

"**Order"** means the Customer's order for the Goods and/or Services described in a Quotation;

"**Price**" means the price for the Goods and/or Services specified in the Contract;

"**Quotation**" means the Supplier's quotation for the supply of Goods and/or Services to the Customer, whether in writing or made orally;

"**Specifications"** means any specifications for the Goods and/or Services specified in the Contract;

"**Services**" means the services (or any part of them) set out in the Contract;

"**Supplier"** means Bankhead Electrical Services, a company registered in Scotland with company number SC552601 and having its registered address at Unit 5 Woodlands Road, Kirkhill Industrial Estate, Dyce, Aberdeen, Scotland, AB21 0GX;

"**Supplier's Acceptance**" shall have the meaning set forth in clause 2.2; and

"Technical File" means the technical documentation prepared, compiled or reconstructed by the Supplier in respect of Ex Equipment for the purposes of the Applicable Ex Legislation, including the Ignition Hazard Assessment, the assessment against essential health and safety requirements, drawings, calculations, survey records, photographs and supporting engineering assessment;

"**VAT**" means value added tax or any similar sales tax.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its personal representatives, successors or permitted assignees. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted. Any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. A reference to writing or written includes faxes and e-mails. All references to times are to the local time in Scotland.

2 Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (whether referenced in the Order, contained in any correspondence between the parties, or otherwise), or which are implied by trade, custom, practice or course of dealing. In the event of a conflict between the parts of the Contract the following order of precedence shall apply: the Supplier's Acceptance, the Quotation, any Specifications, these Conditions.

2.2 The Order constitutes an offer by the Customer to purchase the Goods and Services in accordance with these Conditions. The Order shall be deemed to be accepted when the Supplier issues its acceptance of the Order (the "**Supplier's Acceptance**") or takes any action consistent with fulfilling the Order, at which point the Contract shall come into existence (the "**Contract Date**").

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

3 Dates of Supply

3.1 The Supplier shall use reasonable endeavours to deliver any Goods to the Customer by the Delivery Date, however delivery of the Goods by the Delivery Date is not guaranteed and time shall not be of the essence of the Contract. The Supplier shall inform the Customer as soon as reasonably practicable after becoming aware of any material delay, or anticipated delay, to delivery of Goods, however any such notification shall not be construed as a guarantee of any revised Delivery Date, nor shall any such delay give rise to any liability on the part of the Supplier. If the parties have not specified the Delivery Date within the Contract then the Supplier shall deliver the Goods within a reasonable period following the Contract Date. The Supplier shall use reasonable endeavours to deliver the Goods during Business Hours.

3.2 The Supplier shall use reasonable endeavours to supply Services upon the Delivery Dates, however supply of the Services upon the Delivery Dates is not guaranteed and time shall not be of the essence of the Contract. The Supplier shall inform the Customer as soon as reasonably practicable after becoming aware of any material delay, or anticipated delay, to the supply of Services, however any such notification shall not be construed as a guarantee of any revised Delivery Dates, nor shall any such delay give rise to any liability on the part of the Supplier. If the parties have not specified the Delivery Dates within the Contract then the Supplier shall supply the Services within a reasonable period following the Contract Date. The Supplier shall use reasonable endeavours to supply Services during Business Hours.

3.3 The Supplier shall use reasonable endeavours to ensure that, in connection with the delivery of the Goods, at the point of despatch to the Customer the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition. If the Supplier requires the Customer to return any packaging material, the Supplier shall state this in the Quotation. Any such packaging material shall be returned at the cost of the Customer. Where Goods are delivered in instalments clause 3.9 shall apply. In the event that the Supplier delivers less than the quantity of Goods specified in the Contract, the Supplier shall pro-rate the Price payable according to the number and value of Goods actually supplied as against the number and value of Goods specified in the Contract, and in such an event the Supplier shall refund any amounts required to be repaid to the Customer as a consequence thereof within a reasonable period, however the Customer shall not have a right to terminate the Contract on the basis of the amount of the Goods actually supplied.

3.4 The Customer undertakes to supply to the Supplier all information, cooperation and assistance that the Supplier requires to allow delivery of Goods and/or Services to the Customer, including all access to relevant premises, information detailing site related matters (such as access and security protocols), in good time prior to the date of anticipated delivery, along with any other information relating to the Contract or the Customer that the Supplier may request from time to time, including taxpayer reference numbers, details of insurances and such like. The Customer further undertakes to provide all assistance required by the Supplier to ensure the delivery of Goods and/or Services to the Customer. Without limitation, the Customer shall permit the Supplier, on reasonable notice, to attend the Customer's premises and any relevant site (including the Delivery Location) for the purposes of carrying out risk assessments and familiarisation activities in advance of the supply of any Goods and/or Services. Any failure by the Customer to provide information, cooperation or assistance shall entitle the Supplier to delay supply of the Goods and/or Services without liability.

3.5 If the Supplier determines in its reasonable opinion that the Delivery Location, or any relevant other premise, does not constitute a safe working environment for the supply of the Goods and/or Services, the Supplier shall be entitled to suspend performance of the Contract until such time as the Supplier is satisfied that the relevant safety issues have been remedied, without liability to the Customer. Any remedial measures required to address such safety issues shall be the responsibility of the Customer. For the avoidance of doubt, such suspension shall not constitute a breach of the Contract nor give rise to any right of termination, liquidated damages or other claim by the Customer. Without limitation, the

Supplier shall be entitled to rely on its obligations under applicable health and safety legislation and guidance when making such determination. Without limitation to the Supplier's other rights under the Contract, if the Customer fails to remedy such safety issues within seven (7) days of notification by the Supplier (or such other reasonable period as the Supplier may specify, having regard to the nature of the safety issue) such failure shall be deemed a breach of the Contract by the Customer, and the Supplier shall be entitled, by written notice to the Customer, to terminate the Contract with immediate effect, without liability to the Supplier, and any termination pursuant to this clause shall be without prejudice to the Supplier's right to payment for Goods and/or Services supplied incurred up to the date of termination and to its other remedies for breach of the Contract. In addition, the Customer shall pay to the Supplier its costs and expenses arising from such termination.

3.6 The Supplier shall deliver the Goods and/or Services at the Delivery Location. The Customer shall be entitled to request an amendment to the Delivery Location up to fourteen (14) days prior to the Delivery Date. In such an event the Supplier shall notify to the Customer any amendment required to the Price, Delivery Date, Delivery Costs and Duties as a result thereof. The Customer shall then notify the Supplier without delay if it wishes the Delivery Location to be duly amended or not. In the event that the Customer notifies the Delivery Location to be duly amended, then the Price, Delivery Date, Delivery Costs and Duties shall be amended accordingly. In all other events the Price, Delivery Date, Delivery Costs and Duties shall remain as specified and to be dealt with as specified in the Contract.

3.7 Delivery of Goods shall be completed on unloading of the Goods and/or Services at the Delivery Location or (if earlier) delivery of the Goods into the care of the Customer's appointed carrier, and in respect of Services in the form of services on practical completion of the services.

3.8 The Supplier may deliver the Goods and/or Services by instalments. In such an event each instalment shall be invoiced and paid for separately, and each instalment shall constitute a separate Contract. Cancellation of termination by the Customer of any such Contract shall not entitle the Customer to cancel or terminate any other such Contract.

3.9 Where any Goods are bespoke, custom-made or manufactured in accordance with any Specification, the Customer acknowledges that such Goods are produced specifically for the Customer. Accordingly, once manufacture of such Goods has commenced, the Customer shall have no right to terminate the Contract (in whole or in part) and shall remain liable to pay the Price in full.

4 Quality

4.1 In consideration of the payment of the Price to the Supplier, the Supplier warrants that on the Delivery Date the Goods and/or Services shall conform in all material respects with the Contract and any applicable Specification and shall be supplied with reasonable skill and care, however the Supplier makes no warranty, condition, representation or guarantee that the Goods and/or Services will be fit for any special or unusual purpose to which they may be applied or for which they may be provided unless the Supplier has provided advice on the selection of the Goods and/or Services for this purpose and this has been confirmed in the Contract. The warranties provided in this clause 4.1 shall not apply where any defect in the Goods and/or Services or failure of the Goods and/or Services to comply with the Contract has resulted from a failure of the Customer to comply with the Contract, applicable statutory and regulatory requirements or the instructions of the Supplier or good trade practice relating to the Goods and/or Services' use, enjoyment, storage or handling. The warranties given in this clause 4.1 are without prejudice to clause 8.13, and the Supplier gives no warranty in respect of, and accepts no liability arising from, any schematic, drawing, specification or item of design information issued to the Supplier by or on behalf of the Customer.

4.2 If the Customer gives notice to the Supplier that some or all of the Goods and/or Services do not comply with the warranties set out in clause 4.1 the Supplier shall, at the Supplier's sole option and to the extent permitted by law in full satisfaction of any liability arising from such non-compliance, repair, replace or resupply the such Goods and/or Services, or refund the Price paid for such Goods and/or Services to such extent as is reasonable to reflect such non-compliance. These Conditions shall apply to any repaired, replacement or resupplied Goods and/or Services supplied by the Supplier.

4.3 The Customer shall be deemed to have accepted Goods and/or Services on expiry of a period of seven (7) days following the Delivery Date, unless the Customer notifies the Supplier otherwise within such period.

5 Applicable laws

The Customer shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract. The Customer undertakes to comply with all applicable laws, regulations and applicable guidance in connection with the Contract, the Goods and/or Services and its use or enjoyment thereof. Where the Contract includes Conformity Assessment Services, the Customer shall in addition comply with its own duties under the Dangerous Substances and Explosive Atmospheres Regulations 2002 and shall ensure that any Ex Equipment is selected, installed, inspected and maintained in accordance with the applicable parts of the BS EN 60079 series and with the user manual issued by the Supplier.

6 Materials and Property

The Customer acknowledges that all information, drawings, specifications and data supplied by the Supplier to the Customer and all rights therein are and shall remain the exclusive property of the Supplier. The Customer shall return same to the Supplier on demand, keep same in safe custody at its own risk until returned to the Supplier, and shall not dispose or use the same other than in accordance with the Supplier's written instructions or authorisation. This clause 6 does not require the return of, or restrict the Customer's use of, any Conformity Documentation, which is dealt with in clause 13.

7 Title and risk

7.1 In so far as is applicable, risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 3.

7.2 In so far as is applicable, title to Goods shall pass to the Customer on payment to the Supplier in full (in cash or cleared funds) of (i) the Price for those Goods, and (ii) any sums due to the Supplier by the Customer under any other agreement or otherwise.

8 Price and payment

8.1 The Price is expressed exclusive of all VAT, Duties and Delivery Charges to be paid in relation to the supply of the Goods and/or Services to the Customer, which shall be paid by the Customer when specified in the Contract.

8.2 Where the Goods and/or Services are bespoke, custom-made or manufactured in accordance with any Specification, the Supplier reserves the right to amend the Price to reflect any additional costs and expenses incurred by the Supplier in connection with such bespoke manufacture or compliance with the Specification, provided that, save where clause 8.9 applies, any such amendment to the Price shall be notified to the Customer in advance. Where the Price is intended to be an estimate only, this shall be expressly stated as such in the Contract and the final Price payable shall be that confirmed by the Supplier.

8.3 The Supplier shall invoice the Customer for the Price and any other sums due in relation to the supply of the Goods and/or Services on the date(s) specified in the Contract. Where the Contract does not specify any such date(s) the Supplier shall be entitled to invoice the Customer on receipt of or following the date of the Order. The Customer acknowledges that unless otherwise agreed between the Supplier and the Customer receipt of the Price and all other sums due hereunder is required prior to the supply of any Goods and/or Services.

8.4 The Customer shall pay any invoices submitted by the Supplier in full and in cleared funds within seven (7) days of the date of receipt of the invoice by the Customer, unless specified otherwise in the Contract. Payment shall be made by direct transfer to the bank account specified in the Contract, and where the Contract does not specify a bank account to such bank account as the Supplier specifies from time to time.

8.5 The Customer shall be entitled to deduct or withhold any sums due under the Contract (in whole or in part) as required by law, for example sums that the Customer is required to withhold pursuant to the operation of the Construction Industry Scheme by Her Majesty's Revenue and Customs, but only where the Customer has provided to the Supplier adequate evidence of both the obligation to withhold such sums and payment of such sums to any relevant person. The Customer shall not be entitled to credit or set-off any sums due to the Customer or any counterclaim against the Supplier against any sums due to the Supplier under the Contract.

8.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (the "**Due Date**"), then the Customer shall pay interest on the overdue amount at the rate of eight percent (8%) per annum above the Bank of England's Bank Rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The Supplier shall also be entitled to suspend performance of the Contract until the payment is made.

8.7 The Customer shall be deemed to have accepted any invoice submitted by the Supplier, and the amounts set out therein, on expiry of a period of seven (7) days following the date of receipt of the invoice by the Customer, unless the Customer raises a query in respect of such invoice in writing to the Supplier within such period. Any such query shall identify in reasonable detail the amount disputed and the grounds for the dispute, and the Customer shall pay any undisputed amounts by the Due Date in accordance with these Conditions.

8.8 In the event of any dispute or query raised by the Customer in respect of any invoice or any sum due to the Supplier, the Supplier shall be entitled (without prejudice to its other rights and remedies under the Contract, including its rights under clause 8.6) to suspend, delay or cease performance of the Contract and of any other current or future contract or order placed by the Customer, in each case without liability to the Customer, until such time as the dispute or query has been resolved and all undisputed sums due to the Supplier have been paid in full.

8.9 Every Quotation issued by the Supplier is a budget quotation (a "Budget Quotation") unless it is expressly stated by the Supplier to be a Fixed Price Quotation. The Price stated in a Budget Quotation is indicative only and is provided for the Customer's budgetary purposes. The Supplier shall be entitled, upon completion of the first item of Goods and/or the first tranche of Services to which the Budget Quotation relates, to revise the Price so as to reflect the labour, materials, subcontract costs and other costs and expenses actually and reasonably incurred by the Supplier in connection with that item or tranche, together with the Supplier's applicable overhead and margin. The revised Price shall be notified to the Customer in writing and shall thereafter be the Price payable under the Contract in respect of that item or tranche. The Customer shall not be entitled to withhold, deduct or set off any sum on the basis that the revised Price exceeds the Budget Quotation, and clause 8.5 shall apply.

8.10 Following completion of the first item of Goods and/or the first tranche of Services supplied under a Budget Quotation, the Supplier may (but shall not be obliged to) issue a fixed price quotation in respect of subsequent items of Goods and/or Services (a "Fixed Price Quotation"). A Fixed Price Quotation shall be expressly stated by the Supplier to be a fixed price, shall remain fixed for the period stated in it or, where no period is stated, for thirty (30) days from its date, and shall apply only to items which are of identical build, configuration and specification to the item or tranche already completed. Any variation in build, configuration, specification, quantity, programme, applicable standards or site conditions shall entitle the Supplier to amend or withdraw the Fixed Price Quotation or to issue a further Quotation. Clauses 8.2, 14.7 and 14.9 shall continue to apply to a Fixed Price Quotation.

8.11 Unless expressly stated otherwise in it, every Quotation (including a Fixed Price Quotation) is open for acceptance for thirty (30) days from its date, and may thereafter be withdrawn or amended by the Supplier without notice. This clause is without prejudice to clause 14.9.

8.12 The Supplier shall be entitled to act upon any instruction, request or direction given to it by the Customer or by any person reasonably appearing to the Supplier to be authorised by the Customer, whether given orally or in writing and whether given before or during performance of the Contract, and any such instruction shall constitute a variation to the Contract. Where the Supplier proceeds with varied, additional or altered work without a prior written adjustment to the Price having been agreed, the Customer shall remain liable for the cost of that work and the Price shall be adjusted on completion in accordance with clause 8.9. Clause 14.5 shall not apply to variations of scope or Price under this clause 8.12. The Supplier's records of the labour, materials, plant and subcontract costs incurred shall, in the absence of manifest error, be conclusive evidence of those costs.

8.13 The Customer acknowledges that the Supplier prices the Goods and/or Services on the basis of the electrical schematics, drawings, specifications and design information issued to the Supplier by or on behalf of the Customer, and that those documents are the sole basis upon which the Supplier calculates labour, materials and cost. The Customer shall issue complete, current, clear and legible electrical schematics and associated design information to the Supplier prior to commencement, and shall notify the Supplier in writing of any revision to them. Where (i) complete and current electrical schematics are not issued to the Supplier; (ii) the schematics or design information issued are unclear, incomplete, superseded or inconsistent; or (iii) any schematic, drawing or item of design information is revised, reissued or added to at any time after the date of the Quotation, then each such event shall constitute a variation to the Contract for the purposes of clause 8.12, and the Price shall be subject to full review and adjustment on completion in accordance with clause 8.9. No allowance is included in any Quotation for design development, redesign, rework or abortive work arising from any of those events. The Supplier shall be under no obligation to verify the accuracy, completeness or adequacy of any schematic, drawing or design information issued to it, and where the Contract includes Conformity Assessment Services clause 13.3 shall also apply.

8.14 The Supplier shall be under no obligation to notify the Customer of any variation, additional cost or anticipated increase in the Price during the course of the supply of the Goods and/or Services, and no failure or delay by the Supplier in doing so shall constitute a waiver of, or otherwise prejudice or limit, the Supplier's right to revise the Price under clause 8.9 upon completion. The Price payable under the Contract is not limited by the value of any purchase order or other instrument issued by the Customer, and where the revised Price exceeds the value of any such purchase order the Customer shall issue an amended or supplementary purchase order within five (5) Business Days of a request by the Supplier. Any failure by the Customer to do so shall not affect the Customer's liability to pay the revised Price in accordance with clause 8.4.

9 Cancellation

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel the Contract by written notice to the Customer without incurring any liability to the Customer.

9.2 For the purposes of clause 9.1, the relevant events are: breach by the Customer of the Contract; the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due; the Customer admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with its creditors; (being an individual) the Customer is the subject of a bankruptcy petition or order; a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets; (being a company) an application is made to court or an order is made for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 9.2; the Customer suspends, threatens to suspends, ceases or threatens to cease carrying on all of its business, substantially the whole of its business, or the part of its business to which the Goods and/or Services relate; (being an individual) the Customer dies or by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or a Force Majeure Event persists in excess of ten (10) Business Days.

10 Limitation of liability

10.1 Nothing in the Contract shall limit or exclude a party's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); fraud or fraudulent misrepresentation; breach of the terms implied by section 12 of the Sale of Goods Act 1979; or any matter in respect of which it would be unlawful to limit or exclude liability.

10.2 Subject to clause 10.1 the Supplier shall not be liable to the Customer, whether in contract, delict (including negligence), through breach of statutory duty or otherwise, for any loss of use or profit or decrease in turnover or any indirect, secondary or consequential loss (including any such loss that may result from a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors) arising under or in connection with the Contract.

10.3 Subject to clause 10.1 the Supplier's total liability to the Customer in respect of all loss, cost and expense arising under or in connection with the Contract, whether in contract, delict (including negligence), through breach of statutory duty or otherwise (including any loss caused by a deliberate breach of the contract by the Supplier, its employees, agents or subcontractors) shall not exceed an amount equivalent to the Price paid to the Supplier.

10.4 The Customer acknowledges that the restrictions provided in this clause 10 are reasonable in the circumstances.

11 Indemnity

The Customer shall keep the Supplier indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Supplier as a result of or in connection with: any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods and/or Services, to the extent that the claim is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors; the breach, negligent performance or failure or delay in performance of the Contract by the Customer, its employees, agents or subcontractors; and any claim made against the Supplier by a third party for death, personal injury or damage to property arising out of, or in connection with, the Goods and/or Services, to the extent that the claim is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors; and any claim, investigation, enforcement action or proceeding brought against or affecting the Supplier arising out of or in connection with the modification, repair, marking, installation, use, operation or maintenance of any Ex Equipment otherwise than in accordance with the Conformity Documentation and the Applicable Ex Legislation, or the continued use, sale or supply of any Ex Equipment in respect of which the Declaration of Conformity has ceased to apply under clause 13.8. This clause 11 shall survive cancellation, termination or expiry of the Contract.

12 Construction (Design and Management) Regulations 2015

12.1 To the extent the Construction (Design and Management) Regulations 2015 ("**CDM**") apply to the Contract and/or the work conducted under or pursuant to the Contract and any work related thereto (the "**Work**"), the parties shall comply with this clause 12, in addition to their obligations set out in the remainder of the Contract.

12.2 Both parties shall (i) comply with the CDM and their duties thereunder; (ii) make suitable arrangements for managing the Work to ensure, including by the allocation of sufficient time and other resources, that the Work can be carried out, so far as reasonably practicable, without risks to the health and safety of any person; (iii) maintain and review these arrangements throughout the duration of the Work; and (iv) cooperate with each other and ensure all persons engaged by them cooperate with the other party to the Contract so as to meet the requirements of and duties imposed by the CDM.

12.3 The Customer shall (i) prior to the commencement of the Work, familiarise itself with the CDM, including by reviewing the material available at https://www.hse.gov.uk/construction/cdm/2015/index.htm, and inform the Supplier if it does not understand any part thereof, the Customer acknowledging and agreeing that the Supplier may withhold from commencing the Work or any part thereof if it is not satisfied that the Customer is aware of its obligations and/or duties under the CDM or if it suspects that the CDM may not be complied with; (ii) unless agreed otherwise with the Supplier, provide such information to the Supplier or persons designated by it or to whom information provision is required under the CDM prior to the commencement of the Work or during the course of the Work as the Supplier or CDM may require (for example, existing structural drawings or asbestos surveys) to every contractor and designer; (iii) prepare and maintain a health and safety file in relation to the Work, updating the same on a regular basis in accordance with the CDM; (iv) take reasonable steps to ensure that any other person engaged by the Customer or who has an interest in the Work complies with their duties under the CDM and cooperates with the Supplier as required by the Supplier including to ensure performance of the Contract and adherence to the CDM; (v) where required by the Supplier confirm in writing to the reasonable satisfaction of the Supplier whom is to be treated as the client for the purposes of the CDM; (vi) notify the Health and Safety Executive of the Work if the Work consists of construction work and is scheduled to last longer than 30 working days and have more than 20 workers on site at any point or it is scheduled to exceed 500 person days and ensure a copy of the notification is displayed in the construction site office; (vii) if the Work involves construction works to a railway, tramway or other guided transport system, notify the Office of Rail and Road; (viii) if the Work affects a nuclear site notify the Office for Nuclear Regulation; (ix) appoint a principal designer and principal contractor where there are persons other than the Supplier involved in the Work; (x) where a principal designer or principal contractor is appointed (and these are not the Supplier), ensure that such persons promptly provide all such information and assistance to the Supplier to enable the Supplier to meet its duties under, and achieve the aims of, the CDM; (xi) where the Supplier is the principal contractor or principal designer, ensure all other persons engaged by the Customer in relation to the Work comply at all times with any directions given by the Supplier and that such persons have the required skills, knowledge and training required and are appropriately supervised instructed and informed; (xii) ensure that any site at which the Work is to be performed is secured against unauthorised access and that emergency procedure information is clearly displayed at that site; (xiii) report any danger, risks, unsafe practices or concerns it becomes aware of in relation to the Work as soon as possible to the Supplier; (xiv) ensure any other work taking place at the site at which the Work is to be performed does not present a risk to the safety of the Supplier or any other persons engaged at the site; and (xv) unless agreed otherwise with the Supplier make available toilets, washing facilities, drinking water, changing rooms and lockers at all sites from which the work is to be performed.

12.4 Where the Customer is a domestic (not business) customer, the Customer shall (i) provide all information and assistance to the Supplier, as requested by the Supplier, to enable it to perform to the extent required by the CDM, the duties of the Customer on its behalf; (ii) appoint and notify to the Supplier the identity of the principal designer and principal contractor for Work.

13 Conformity Assessment, Certification and Ex Equipment

13.1 This clause 13 applies where the Contract includes Conformity Assessment Services, in addition to the remainder of the Contract. In the event of any conflict between this clause 13 and any other provision of these Conditions, this clause 13 shall prevail.

13.2 The Customer acknowledges that, where the Supplier undertakes conformity assessment and issues a Declaration of Conformity in respect of Ex Equipment, the Supplier thereby assumes the role of manufacturer in respect of that equipment as assessed and certified for the purposes of the Applicable Ex Legislation, notwithstanding that the Supplier is not the original equipment manufacturer. The Supplier's responsibility as manufacturer extends only to the assessment, modification and certification actually undertaken by the Supplier, and does not extend to the original design, construction, prior condition, installation, integration, commissioning, use or continued maintenance of the Ex Equipment.

13.3 The Supplier's performance of the Conformity Assessment Services is based upon documentation, drawings, records and information provided by the Customer or by third parties, and upon physical survey and engineering assessment of the Ex Equipment. Where original equipment manufacturer documentation is unavailable, incomplete or unreliable, the Customer acknowledges that the Supplier shall be entitled to reconstruct the relevant technical information on the basis of such documentation, survey and engineering assessment as is reasonably available to it. The Supplier accepts no liability for any inaccuracy, omission or deficiency in information provided to it, for information withheld from it, or for latent defects in the Ex Equipment which were not reasonably ascertainable by the survey and assessment undertaken.

13.4 Where information provided to the Supplier proves materially inadequate, or where survey or assessment reveals the condition, construction or configuration of the Ex Equipment to be materially different from that anticipated, the Supplier shall be entitled to amend the Price and the Delivery Dates and to submit a variation to the scope of the Services accordingly, and clause 8.2 shall apply.

13.5 The Technical File and the Ignition Hazard Assessment, and all intellectual property rights in them, are and shall remain the exclusive property of the Supplier. The Supplier shall retain the Technical File and a copy of the Declaration of Conformity for a period of not less than ten (10) years from the date upon which the Ex Equipment is placed on the market, as required by the Applicable Ex Legislation. The Customer shall have no right to possession of the Technical File or the Ignition Hazard Assessment, and payment of the Price does not operate to transfer ownership of them to the Customer.

13.6 Subject to payment of the Price in full, the Supplier grants to the Customer a perpetual, non-exclusive, royalty-free licence to retain, copy and use the Conformity Documentation solely for the purposes of the operation, maintenance, inspection, lawful sale or lawful disposal of the Ex Equipment identified in the Contract, which licence may be transferred to a purchaser of that Ex Equipment. That licence does not extend to the use of the Conformity Documentation, the Technical File or the Ignition Hazard Assessment, in whole or in part, for the assessment, certification, modification or reclassification of any other equipment, whether by the Customer or by any third party, or for the purpose of obtaining any competing quotation for such work.

13.7 The Supplier shall make the Technical File available to any market surveillance or enforcement authority upon request as required by the Applicable Ex Legislation, and shall provide the Customer with such access to, or extracts from, the Technical File as the Customer reasonably requires in order to satisfy a request from a regulatory authority, certifying authority or classification society. In the event that the Supplier ceases to trade, the Supplier shall use reasonable endeavours to procure that a copy of the Technical File is released to the Customer.

13.8 Each Declaration of Conformity applies only to the Ex Equipment in the configuration assessed and certified by the Supplier and identified in the Contract. Without prejudice to clause 4, the Declaration of Conformity shall cease to apply in respect of any item of Ex Equipment which is, without the prior written agreement of the Supplier: (i) modified, altered, added to or repaired; (ii) fitted with components other than those specified in the bills of material forming part of the Conformity Documentation; (iii) installed, operated, inspected or maintained otherwise than in accordance with the user manual issued by the Supplier and the Applicable Ex Legislation; or (iv) used in an area, zone, gas group, equipment protection level or temperature class other than that for which it is certified. The Customer shall notify the Supplier in writing before undertaking or permitting any such act.

13.9 The Customer shall not apply, or permit to be applied, any nameplate, marking or Declaration of Conformity prepared or supplied by the Supplier to any equipment, nor represent any equipment as conforming to the Applicable Ex Legislation on the basis of work carried out by the Supplier, unless and until the Price has been paid in full and the Supplier has issued the Declaration of Conformity. Any marking applied in breach of this clause shall be removed by the Customer immediately upon demand.

13.10 Where the Contract is cancelled or terminated for any reason prior to the issue of the Declaration of Conformity, the Supplier shall be under no obligation to issue the Declaration of Conformity or to deliver any part-completed Conformity Documentation, Technical File or Ignition Hazard Assessment, in each case without prejudice to the Supplier's right to payment for Services supplied up to the date of cancellation or termination.

13.11 Any indication given by the Supplier as to the reduced scope or price of Conformity Assessment Services in respect of further items of equipment is given on the basis that such equipment is of identical build and configuration to Ex Equipment already assessed by the Supplier. Any variation in build or configuration shall require re-assessment and shall be the subject of a separate Quotation.

13.12 The Supplier does not warrant that any Ex Equipment, Declaration of Conformity or Conformity Documentation will be accepted by any third party, end user, certifying authority or classification society, and gives no warranty as to the suitability of the Ex Equipment for any particular installation, hazardous area classification, process or duty.

13.13 Clauses 13.2 and 13.5 to 13.9 shall survive the cancellation, termination or expiry of the Contract.

14 General

14.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are disclosed to it by the Supplier, its employees, agents or subcontractors, and any other confidential information concerning the Supplier's business, its products or its services which it has obtained or may obtain. The Customer shall only disclose such confidential information to those of its employees who need to know the same for the purpose of discharging the Customer's obligations under the Contract, and shall ensure that such employees shall keep such information confidential. The provisions of this clause 14 shall survive the cancellation, termination or expiry of the Contract. Nothing in this clause shall prevent the Customer from disclosing information where required to do so by law or by any market surveillance, enforcement, regulatory or certifying authority, provided that the Customer notifies the Supplier promptly of any such requirement.

14.2 The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond the Supplier's reasonable control which by its nature could not have been foreseen or, if it could have been foreseen was unavoidable, and shall include strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, import, export and other trade restrictions, sanctions, action or likely action of any governmental or regulatory authority, action or likely action of any pressure group, lobbying group or other organised or disparate coalition of persons which may (through proposed activities) have a detrimental impact upon the business of the Supplier, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or adverse weather conditions, or default of suppliers or subcontractors.

14.3 The Supplier may at any time assign, novate, transfer, charge, subcontract or otherwise deal in any other manner with all or any of its rights or obligations under the Contract without a requirement of prior notice to the Customer. The Customer may not assign, novate, transfer, charge, subcontract or otherwise deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier. The Supplier's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law. Any provision the Contract which is intended either expressly or by implication to enter into upon or continue in force following the cancellation, termination or expiry of the Contract shall (as appropriate) enter into or continue in force accordingly.

14.4 In order to be validly served any notice or other communication given to a party under or in connection with the Contract is required to be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause and shall be delivered personally or sent by commercial courier. A notice or other communication shall be deemed to have been received if delivered personally when left at the address referred to in clause 14.4, or if sent by commercial courier on the date and at the time that the relevant delivery receipt is signed by or on behalf of the relevant party. The provisions of this clause 14.4 shall not apply to the service of any proceedings or other documents in any legal action.

14.5 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were modified, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable. A waiver of any right or remedy of the Supplier under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy by the Supplier shall preclude or restrict the further exercise of that or any other right or remedy. A person who is not a party to the Contract shall not have any rights under or in connection with it. Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by authorised representatives of the parties.

14.6 Subject to the foregoing, the Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with Scots law, and in respect of the determination of which the parties submit to the exclusive jurisdiction of the courts of Scotland. Notwithstanding the foregoing the Supplier shall be entitled to seek enforcement of any judgement of the courts of Scotland in such jurisdiction(s) as it may in its sole discretion determine.

14.7 All works we undertake are based on being present on site from start to finish in one continuous schedule of works, any delays during the works due to other trades, sub-contractors, client requirements, or other site-specific constraints which cause us to stop or delay works for any reason, may incur additional labour costs, final Labour costs will be submitted at

project completion to the client.

14.8 Save where a Quotation is expressly stated by the Supplier to be a Fixed Price Quotation, all pricing and quotations we provide are budgetary only, and the Supplier reserves the right to update and amend its costs and the Price in accordance with clause 8.9.

14.9 Any copper/aluminium cable which we supply/price on, is only valid for 24 hours from date of submitting budget quotations/estimates, suppliers will invoice true cost and we will pass on the difference in cost upon project completion.

14.10 Orders cannot be amended or combined with previous or existing orders once confirmed, and any additional items will be treated as a new order subject to the minimum order value.

14.11 A minimum order value of £250 applies, and orders below this value may incur a minimum order charge.