



A DEFINITIONS

"Company" shall mean Novus Rail Limited (Registered in England No. 4259756) whose registered offices are situated at the Solaris Centre, New South Prom, Blackpool, Lancashire, FY4 1RW.

"Client" shall mean any person or company, partnership or trading entity that Contracts with the Company for the provision of services, goods and / or labour.

"Supplier" shall mean any person or company, partnership or trading entity that Contracts with the Company for the supply of services, goods and / or labour and shall include the Suppliers own Suppliers.

"Services" means the services, goods, labour and / or any other article the Client receives from the Company or the Company obtains from the Supplier.

"Order" means an order by the Company to the Supplier or by the Client to the Company for the supply of services, goods and / or labour, written or verbal.

"Variation" means any variation or change to the Order made subsequent to the making of a Contract, for which the Company, Client and Supplier shall be notified of immediately in writing respectively.

"Company Property" means any and all items, materials or other property of the Company provided or made available by the Company to the Client or Supplier to enable them to perform and comply with their obligations including without limitation assets, equipment, drawings, designs, specifications, data and all particulars.

"Confidential Information" means the terms of the Contract and any secret or confidential commercial, financial, marketing, technical, private or other information that is of value to the Company in any form or medium whether disclosed orally or in writing before or after the date of the Order or Contract, together with any reproductions of such information in any form or medium or any part of such information.

"Intellectual Property Rights" means copyright, design rights, know-how, utility and all other intellectual or industrial property rights subsisting in any part of the world.

"Force Majeure" means any event outside the reasonable control of the Company, Client or Supplier affecting its ability to perform any of its obligations (other than payment) including Acts of God, fire, flood, traffic delay, lighting, exceptionally bad weather, war, revolution, riot or civil commotion, strikes, lock outs or other industrial action and shall specifically include failure of equipment.

"Writing" means telex, cable, facsimile transmission, electronic transmission, mobile phone text and all other comparable means of communication.

B GENERAL CONDITIONS

- 1 The Company limits its liability in relation to errors, omissions or neglect identified during or after the services have been supplied to no greater than the maximum level of fees to be paid to the Company for the services.
- 2 Where the Company supplies employees to Client's to undertake site engineering services such as surveying, setting out, tamping, stressing, track hand-back or any other similar activities it is the Client's responsibility to ensure these services are performed adequately and the Company accepts no liability whatsoever.
- 3 The Client / Supplier agrees not to directly or indirectly offer employment to any of the Company's employees or ask them any employment related questions and also agrees not to use the services of the Company's employees either independently or via a third party for a period of 2month following the date any employees leave the Company. In the event that this agreement is breached by either party they will be liable for damages to the Company, equal to 5 times the employee(s) annual salary.
- 4 The Client may withdraw an Order at any time by giving written notice to the Company, however the Company shall be entitled to full payment from the Client for all services that the Company can demonstrate has been reasonably undertaken, irrespective of whether they have been fully completed or supplied.
- 5 The Company shall be entitled to withdraw an Order at any time to the Supplier by giving 24hrs written notice, irrespective of the order having been accepted with qualifications, and without any liability thereto.
- 6 Nothing in the Order shall create or be deemed to create a partnership, joint venture or relationship of employer / employee or principal and agent between the parties.
- 7 The Client and Company shall have the right (at its own cost, at any time) to conduct an audit on the Company and Supplier to ensure that the appropriate facilities, management system, indemnity and personnel are in place to perform the Services during normal working hours - given reasonable notice.
- 8 The Company's Policy in relation to Anti-bribery and Corruption (NR-CMS-PS-16) is applicable to all business and employee dealings.
- 9 These Conditions will not vary (expressly stated or implied) unless agreed in Writing by an authorised signatory of both the Client / Company or the Company / Supplier.
- 10 The rights and remedies of either party in respect of the Order shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by any failure of or delay by the said party in ascertaining or exercising any such rights or remedies.
- 11 The waiver by either party of any breach by the other party of any provision of the Order shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach.
- 12 The headings to these Conditions are inserted for convenience only and shall not affect the construction of the Order.
- 13 If any one or more of these Conditions or any other term of the Order (or any sub-condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Order and the validity and / or enforceability of the remaining provisions of the Order shall not in any way be affected or impaired as a result of that omission.
- 14 Any notice sent under the Order must be in Writing and may be served by postal delivery, by registered post or facsimile or electronic data transmission to the last known address of the other party. Notices shall be deemed to have been served at the expiration of 3 days after despatch of the same if delivered by post or at 12:00am local time on the next normal business day of the recipient following despatch if sent by facsimile or electronic data transmission.

C DELIVERY

- 1 Unless the Company expressly agrees otherwise in writing all services, goods and / or labour are to be delivered (carriage fully paid) by the Supplier to the Company's registered office during normal business hours.
- 2 Documented evidence must accompany each delivery of the services, goods and / or labour supplied by the Supplier, which for the avoidance of doubt shall state the appropriate Order number and the quantity / description of the services, goods and / or labour actually supplied.
- 3 It is an expressed requirement that all services, goods and / or labour supplied to the Company shall be accompanied by a certificate of conformity by the Supplier in accordance with the relevant Industry Standards and Order.
- 4 No services, goods and / or labour in excess of those ordered will be accepted from the Supplier unless agreed in Writing by the Company.
- 5 The Company shall have no responsibility or liability for services, goods and / or labour supplied by the Supplier unless delivered in accordance with the Order.
- 6 The Supplier will repair or replace any services, goods and / or labour faulty or lost in transit free of charge and compensate the Company for any losses.
- 7 The Company will not accept any services, goods and / or labour until the Company has had a reasonable time to verify them following delivery. If there are any latent defects in the services, goods and / or labour supplied to the Company it is the responsibility on the Supplier to correct them at their own cost.
- 8 The acceptance of all or any portion of the services, goods and / or labour shall not be deemed a waiver of the Company's rights to cancel or return all or any part of the services, goods and / or labour under Condition G.
- 9 The Company shall deliver services, goods and / or labour to the Client in accordance with the Order but accepts no liability in instances of Force Majeure.

D PERFORMANCE OF CONTRACT AND TIME FOR DELIVERY

- 1 Time for delivery or performance by the Company shall be as specified in the Order. Where the Client is responsible for the provision of 'Track Access' time or other information, any withdrawal of such time or failure to provide such information shall count as time spent by the Company and shall be chargeable pro-rata to the Client.
- 2 Time for delivery or performance by the Supplier shall be as specified in the Order. Where the time of delivery is to be specified after an Order is placed, the Supplier shall give the Company reasonable notice, which shall be of the essence of the Order.
- 3 If the services, goods and / or labour are not delivered or performed by the Supplier on the agreed date, the Company shall be entitled to:-
 - (i) Cancel the Order for such services, goods and / or labour;
 - (ii) Cancel the Order for any other services, goods and / or labour already delivered or performed under the Order which cannot be effectively and commercially used by reason of the non delivery or performance;
 - (iii) Recover from the Supplier any expenditure reasonably incurred by the Company in obtaining additional 'Track Access', services, goods and / or labour in replacement of those in respect of the cancelled Order and all other costs and losses sustained by the Company by reason of that breach;
 - (iv) Treat the Contract as repudiated by the Supplier at any time after the period of time specified in the Order or notice has elapsed without prejudice to any other remedy available to the Company.
- 4 Withdrawal of 'Track Access' time by the Client shall not be charged to the Company by the Supplier if this is notified within 24hrs before work is due to commence, unless these costs can be obtained from the Client.



E TITLE AND RISK

- 1 Title to and property in all goods or the product of any services shall pass to the Company on delivery without prejudice to right of rejection / non-affirmation which the Company may have under these Conditions or by law.
- 2 If the Company pays for the services, goods and / or labour prior to delivery or performance, title shall pass to the Company once payment has been made and the Goods have been appropriated to the Order.
- 3 Unless otherwise agreed in Writing, the Supplier shall bear the risk of loss, destruction or damage to any goods or the product of any services until in the case of goods the goods are delivered and until in the case of services the services are completed and, if required by the Order, the product of any Services are delivered.

F PRICE AND PAYMENT TERMS

- 1 The prices stated in the Order are fixed and not subject to alteration by the Supplier. Unless otherwise agreed in Writing, prices are inclusive of packaging, packing, labour, shipping, insurance, carriage charges and delivery charges to the address specified in the Order and also inclusive of value added tax and other applicable taxes, duties or levies of any kind whatsoever and any other charges for delivery, unless otherwise expressly stated.
- 2 The Company shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.
- 3 The Supplier shall only be entitled to invoice the Company on or at any time after delivery of the services, goods and / or labour and each invoice shall quote the Company's Order number, full details of services, goods and / or labour actually supplied or performed and the date despatched or performed. The Company shall pay all properly submitted invoices of the Supplier within 30days unless agreed in Writing. It is an express agreement that the Supplier agrees to defer receipt of payment for services, goods and / or labour until payment is received by the Company from the Client.
- 4 The prices stated in the Order are variable by the Company in the event that the Client requests variation of the services, goods and / or labour required to complete the Order, requests less or additional work, amendment to work or any such adjustments.
- 5 If the Supplier is in breach of any such obligation at the date for payment the Company shall be entitled to withhold payment in whole or in part until such breach has been remedied by the Supplier provided that no payment of, or on account of, the price shall constitute any admission by the Company as to the performance by the Supplier of its obligations under the Order or acceptance or approval of the services, goods and / or labour provided by the Supplier and provided that no such withholding by the Company shall entitle the Supplier to withhold payment of any monies due to the Company whether under the Order or under any other agreement.
- 6 The Client shall make payment of an invoice within 30 days of issue by the Company, without deduction or set off, unless otherwise agreed in Writing by the Company.
- 7 Where the Client calls down smaller quantities than the Order, economies of scale may not be achieved and price reductions may either not be achieved or may not reflect the percentage change in services, goods and / or labour.
- 8 The Supplier shall invoice the Company for actual hours worked only, allowing discount or deduction from any quotation or estimate where such hours were not actually worked, irrespective of the Supplier's minimum provisions for shifts at night or during the weekend.

G WARRANTY

- 1 The Supplier warrants that the services, goods and / or labour:-
 - (i) Are of satisfactory quality and fit for their intended purpose (whether such purpose is implied or expressly stated in Industry Standards or the Order);
 - (ii) Will be free from defects in materials or workmanship;
 - (iii) Will conform to quality, quantity and description with any samples provided by the Supplier, Industry Standards or the Order;
 - (iv) Will conform to all applicable laws, regulations, British or European standards, Industry Standards, the Order and all other requirements;
 - (v) Does not infringe the Intellectual Property Rights of any third party;
 - (vi) Will be properly labelled, packaged, branded, tagged, marked and described in accordance with the Order or Industry Standard and will be properly packed and secured in such a manner as to reach their destination undamaged and in good condition;
 - (vii) Will be performed with all due skill, care and attention by suitably qualified trained and competent personnel.
- 2 The Supplier warrants that they shall maintain all necessary Link Up and NCCA sponsorship arrangements throughout the duration of the Order.
- 3 Where there is any breach of the Supplier's warranty in Condition G.1 (i) to (vii) above, then the Company shall be entitled at its sole discretion to:-
 - (i) Reject the services, goods and / or labour in whole or in part and require the Supplier to repay in full the price of the services, goods and / or labour paid by the Company;
 - (ii) Require the Supplier at its sole cost to replace or repair the services, goods and / or labour so that they conform to Industry Standards, Specification or the Order within a reasonable time and to delay payment until the requirements have been entirely fulfilled;
 - (iii) Carry out, at the Supplier expense, whatever is necessary for the services, goods and / or labour to conform to Industry Standards, Specification or the Order and to delay payment until the requirements have been fulfilled.
- 4 Any services, goods and / or labour rejected or awaiting replacement, repair, reinstatement or re-performance shall be at the Suppliers risk from the time of receipt by the Supplier of notice from of the Company's rejection for the Supplier to repair, replace, reinstatement or re-perform the services, goods and / or labour.
- 5 Any services, goods and / or labour rejected shall be collected by the Supplier at the Suppliers own costs within 7days of the date of receipt of notification of rejection. In the event that the Supplier fails to collect any rejected services, goods and / or labour within such a period the Company shall be at liberty to return the same to the Supplier at the Suppliers expense and this shall include the cost of packaging, packing, labour, insurance, carriage and delivery charges.
- 6 Any money paid by the Company to the Supplier in respect of any rejected services, goods and / or labour not replaced or re-executed by the Supplier shall be paid by the Supplier to the Company within 7days of the date of the Company's notice demanding the same or at the Company's sole option shall be to deduct from the money still to be paid by the Company to the Supplier in relation to such services, goods and / or labour. The Supplier agrees to pay and reimburse to the Company all associated reasonably incurred expenses as a result of rejected services, goods and / or labour.
- 7 The Company shall have the right to assign the benefit of the warranty in this agreement to any third party.

H INDEMNITY

- 1 The Supplier shall keep the Company indemnified in full and on demand against all liability, loss, proceedings, demands, damages, costs and expenses (including without limitation legal and other professional advisers fees) and all economic and consequential loss whether direct or indirect (including any loss of profit, future revenue, reputation or goodwill and anticipated savings) awarded against or incurred or suffered or agreed to be paid on settlement by the Company as a result of any of the events listed below:-
 - (i) Any claims for infringement of any Intellectual Property Rights of any third party by reason of the use or purchase by the Company of the services, goods and / or labour (save to the extent the same have been supplied in accordance with Industry Standards, Specification or the Order) and against all costs, losses, damages and expenses which the Company may suffer or incur as a result (directly or indirectly) of any claims for any such infringement; and
 - (ii) Any royalties being payable to any third party in respect of the services, goods and / or labour or their use by the Company; and
 - (iii) Any breach of the Supplier warranty in Condition G above or any other warranty whether express or implied by statute or otherwise; and
 - (iv) Any other breach of the Order by the Supplier, its employees, agents or sub-suppliers (including any failure to comply with any provision as to time) or any defect in the services, goods and / or labour for which the Supplier is responsible; and
 - (v) Any liability incurred under the Consumer Protection Act 1987 in respect of the services or goods and any recall of any services or goods already sold by the Company to its Client; and
 - (vi) Any actions, proceedings, claims and demands by any person, persons or corporation in respect of any damage to property or injury to or death of persons arising out of or in connection with the execution of the Order by the Supplier (or the Supplier's sub-suppliers) provided always that nothing herein contained shall render the Supplier liable for any damage to property or injury to or death of any person which arises by reason of the negligence of the Company its employees or agents; and
 - (vii) Arising from the use or operation of any of the Company's Property whilst it is in the Supplier possession or control; and
 - (viii) Any loss or damage to any of the Company's Property whilst it is in the Supplier possession or control.
- 2 The Supplier shall provide all facilities, assistance and advice required by the Company or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Suppliers performance, or purported performance of, or failure to perform, the Order.



I INSURANCE

- 1 The Supplier shall maintain in force with a reputable insurer such insurance policies (including public and employers liability and professional indemnity) with such levels of cover and against such risks as are appropriate and adequate having regard to its obligations and liabilities under the Order and the Supplier shall provide the Company with evidence of such insurance policies when they are renewed without being requested.
- 2 For professional services the Supplier shall maintain at least £10m professional indemnity cover.

J WORK ON SITE

- 1 The Supplier undertakes that in performing the Order it (and its sub-suppliers) and their respective employees and agents will:-
- (i) Commit no act or omission which will render the Company liable as occupier to any person either at common law or by virtue of any statute in respect of any injury, loss or damage that person may sustain; and
 - (ii) Observe and comply with all relevant legislation including the Health & Safety at Work Act 1974, Industry Standards, Infrastructure Controller requirements, Specification, Order, management system requirements of the Company and any other requirements of any relevant body and any reasonable instructions or guidelines issued from time to time by any of the aforesaid; and
 - (iii) Maintain all necessary Link Up / NCCA sponsorship arrangements throughout the duration of the Order.
- 2 If the Supplier and / or any of its employees or agents do not comply with Condition J 1 (i) to (iii) above, the Company shall be entitled to request the Supplier and its employees or agents to immediately postpone the Order until the situation is rectified.

K HEALTH, SAFETY AND HAZARDOUS MATERIALS

- 1 The attention of the Supplier is drawn to the provisions of the Health and Safety at Work etc Act, 1974 as amended. The Supplier shall make available such information and revisions thereof as are appropriate relating to the services, goods and / or labour supplied under this Order as are in its possession to ensure that as far as is reasonably practicable the same are safe and without risks to health for use at work at all times.
- 2 The Supplier shall notify the Company of the identity of any materials contained in the services and / or goods supplied which are hazardous or injurious to the health or physical safety of persons (notwithstanding that such hazard or injury may only occur as a result of mishandling or misuse of such) and the effects of such on persons and the physical manifestations resulting from them and product data safety sheets shall be provided with every delivery of such in compliance with all applicable regulations.
- 3 The Supplier shall provide the Company with such warning labels or instructional material as may be appropriate to warn persons who may come into contact with the hazardous materials referred to in Condition K.2 of the hazard and its effect. The Supplier shall use its reasonable endeavours to comply with all hazardous materials directives or regulations issued from time to time by the Health and Safety Executive or other such body.

L INTELLECTUAL PROPERTY RIGHTS

- 1 The Company shall retain ownership of the Intellectual Property Rights in the Company's Property and nothing in the Order shall be deemed to give the Client or Supplier any right, title or interest whatsoever in the Intellectual Property Rights in the Company's Property unless agreed otherwise in writing.
- 2 In consideration of the Company entering into the Order, the Supplier irrevocably and unconditionally assigns to the Company:-
- (i) By present assignment of future copyright effective immediately upon the works coming into existence the entire copyright; and
 - (ii) All other Intellectual Property Rights; and
 - (iii) In any services, goods and / or labour specially commissioned by the Company shall have the sole right to seek appropriate registration and other protection of such Intellectual Property Rights and the Supplier agrees that the part of the price paid under the order which relates to this assignment shall be the sum of £1 exclusive of value added tax.
- 3 The Supplier shall at the Company's request (and notwithstanding any termination of the Order) sign and execute and procure the signature and execution of all such documents and do all such acts as the Company may reasonably require to vest the legal title in the Intellectual Property Rights in any services and / or goods specially commissioned by the Company or supplied to the Company's Specification and in any improvements made to such services and / or goods or to the Company's Property.
- 4 The Supplier irrevocably undertakes that it will not assert and waives (and shall procure that its employees, agents and sub-suppliers shall not assert and waives) as against the Company or any third party any moral rights in or relating to the Intellectual Property Rights in any services and / or goods specially commissioned by the Company or supplied to the Company's Specification and in any improvements made to such services and / or goods or to the Company's Property.
- 5 The Company reserves the right to reproduce any services and / or goods and copyright in any such reproduction will remain with the Company.

M PUBLICITY OR CONFIDENTIALITY

- 1 The Client and Supplier shall keep and procure to be kept secret and confidential all Confidential Information and shall not use nor disclose the Confidential Information save as envisaged in the Order or with the written consent of the Company. Where disclosure is made to any employee, director, consultant, agent, Client or Supplier whose duties cannot be fulfilled without such disclosure, it shall be done subject to obligations equivalent to those set out in Condition M and the Client and Supplier shall use its best endeavours to procure that any such employee, consultant, agent, Client or Supplier complies with such obligations. The Client and Supplier shall be responsible to the Company in respect of any disclosure or use or misuse of the Confidential Information by a person to whom disclosure is made.
- 2 The obligations of confidentiality in Condition M shall not extend to any matter which the Client or Supplier can show:-
- (i) Is in or becomes part of the public domain other than as a result of a breach of the obligations of confidentiality under the Order; and
 - (ii) Was in its written records prior to the date of disclosure by the Company under the Order; and
 - (iii) Was independently disclosed to it by a third party entitled to disclose the same; and
 - (iv) Is required to be disclosed under any applicable law or by order of a court or governmental body or authority of competent jurisdiction.
- 3 The Client and Supplier shall immediately upon receipt of a request in Writing from the Company to do so, deliver to the Company all written Confidential Information (including any copies, analyses, memoranda or other notes on or concerning the Confidential Information made by the Client or Supplier or in the Client or Supplier's possession or under the Client or Supplier's custody and control) and so far as is practicable to do so, expunge any Confidential Information from any computer, server, storage device or any other device in the Client or Supplier's possession or under the Client or Supplier's control.
- 4 The Client or Supplier shall not publicise or otherwise make any commercial use of the connection established between the Client or Supplier and the Company without the prior written consent of the Company.

N FORCE MAJEURE

- 1 The Company may by notice in Writing to the Supplier cancel any Order (notwithstanding that the Supplier has accepted it) or delay delivery of any services, goods and / or labour and shall not incur any liability to the Supplier if owing to any cause beyond the Company's reasonable control that the Company no longer requires the services, goods and / or labour or some part of them or is unable to accept delivery of them or to provide the Supplier with access to the site where the services, goods and / or labour are to be supplied. In such event the Company shall not be liable to the Supplier for the Supplier's costs and expenses.

O TERMINATION AND SUSPENSION

- 1 Without prejudice to any other rights or remedies available to the Company which may have accrued, the Company may at its option cancel any Order and / or terminate or suspend performance of the Order in respect of the whole or any part of the services, goods and / or labour with immediate effect or by such period of notice as is convenient to the Company without liability or compensation to the Supplier by giving notice in Writing to the Supplier if one or more of the following events occurs:-
- (i) The Supplier commits a serious breach of any of its obligations under the Order which it is incapable of remedying; and
 - (ii) The Supplier fails to remedy, where it is capable, or persists in any breach of any of its obligations under the Order after having been required in Writing to remedy or desist from such breach within a period of 7days or such longer period as the Company may specify in the notice; and
 - (iii) The Supplier undergoes a Change of Control with the effect that it comes under the control of a competitor of the Company and for the purposes of this Condition, "Control" has the meaning specified in Section 416 the Income and Corporation Taxes Act 1988; and
 - (iv) The Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); and
 - (v) An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier; and
 - (vi) The Supplier ceases, or threatens to cease, to carry on business; and
 - (vii) The Company reasonably believes that any of the events specified in Condition O.1 (i) to (vi) inclusive above is about to occur in relation to the Supplier and notifies the Supplier accordingly.



- 2 If the Supplier is unable to deliver the services, goods and / or labour or where the Supplier is unable to comply with all its obligations under the Order at any time for any reason, without prejudice to any other remedy which the Company may have, the Supplier shall take all such steps as may be necessary to minimise the effect of such failure on the Company.
- 3 If the Company elects in the first instance to suspend performance of the Order pursuant to Condition O.1:-
- (i) This shall not prevent it from subsequently terminating the Order; and
 - (ii) The Supplier shall reinstate its performance as soon as possible after the Company lifts suspension.
- 4 Upon the termination of the Order pursuant to Condition O.1, the Supplier shall promptly on the Company's request supply to the Company such services, goods and / or labour as have been finished against payment by the Company for them in accordance with the Order, the Company being entitled to deduct from any sums due to the Supplier under this Condition the amount of any additional costs and expenses incurred or to be incurred by the Company in completing the services, goods and / or labour in substitution for those which were the subject of but not supplied by the Supplier.

P SET OFF AND LIEN

- 1 The Company shall be entitled to apply any monies due to the Supplier under the Order in or towards payment of any sum owing by the Supplier to the Company in relation to any matter whatsoever.
- 2 The Supplier shall not be entitled to exercise any right of lien, general or otherwise and howsoever arising, over any of the Company's Property or any other property of the Company in its possession (whether worked on or not) in respect of any sums owed by the Company to the Supplier under the Order or otherwise.

Q ASSIGNMENT AND THIRD PARTY RIGHTS

- 1 The Order is personal to the Supplier and the Supplier shall not assign or transfer or purport to assign or transfer the benefit of any Order to a third party nor sub-contract the performance of any of the Supplier's obligations under any Order to any third party without the prior written consent of the Company. The Company may assign the benefit of the Order to a third party at any time.
- 2 Notwithstanding that the Supplier having obtained the prior written consent of the Company assigns the Order the performance of any of the Supplier obligations under the Order, the Supplier shall remain solely responsible to the Company for the performance of such obligations in accordance with the Order. The Company shall not be under any duty to enquire as to the competence of any sub-suppliers and it shall not be a defence for the Supplier to any claim by the Company that the Supplier has employed a competent sub-supplier nor that the Company consented to such sub-supply.
- 3 No third party to the Order (including without limitation to any employee, officer, agent, representative or sub-supplier of either the Company or the Supplier) shall have any right to enforce any obligation accepted or to take advantage of any benefit given under the Order without the express prior agreement in Writing of the parties.

S GOVERNING LAW AND JURISDICTION

- 1 The Order shall be governed by and construed in accordance with the laws of England and Wales, together with Industry practices and standards. All disputes arising out of or relating to the Order which amount to a sum not in excess of the Small Claims Track limit shall be subject to the exclusive jurisdiction of the English Courts to which the Supplier irrevocably submits. Disputes in excess of the Small Claims Track limit shall be exclusively governed by the following (dispute resolution):-
- (i) The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Order through negotiations between the respective representatives of the parties having authority to settle the matter, which attempts may include the use of any Alternative Dispute Resolution (ADR) procedure on which the parties may agree.
 - (ii) In the event that the dispute or claim is not resolved by negotiation, or where the parties have agreed to use an ADR procedure, by the use of such procedure, the dispute shall, unless it is a question to be referred to arbitration.
 - (iii) The party initiating the Arbitration shall give a written Notice of Arbitration to the other party giving 14days clear notice prior to the initiation of the procedure. The Notice of Arbitration shall specifically state:-
 - a. That the dispute is to be referred to arbitration after the 14days notice; and
 - b. The particulars of the Order in relation to which the dispute arises.
 - (iv) Unless otherwise agreed in writing by the parties, the arbitration and this Condition shall be governed by the provisions of the Arbitration Act 1996.
 - (v) It is agreed between the parties that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.
 - (vi) For the avoidance of doubt it is agreed between the parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential as between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the parties, their legal representatives and any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.