



**D C WHITE & PARTNERS LTD**

*Consultants in Applied Mechanics*

**DATED**

**2009**

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**TERMS AND CONDITIONS  
FOR THE SUPPLY OF SERVICES**

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## DC WHITE & PARTNERS LTD

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### AGREED TERMS

#### 1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

<b>DC White &amp; Partners Ltd</b>	- Hereafter referred to as DCW&P
<b>Contract</b>	the Customer's purchase order and DCW&P' acceptance of it, or the Customer's acceptance of a quotation for Services by DCW&P under condition 2.2.
<b>Customer</b>	the person, firm or company who purchases Services from DCW&P.
<b>Customer's Equipment</b>	any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.
<b>Deliverables</b>	all Documents, products and materials developed by DCW&P or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts) or the deliverables specified in our proposal.
<b>Document</b>	includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
<b>In-put Material</b>	all Documents, information and materials provided by the Customer relating to the Services including (without limitation), computer programs, data, reports and specifications or product or the in-put materials specified in our proposal .



- Intellectual Property Rights** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- Pre-existing Materials** all Documents, information and materials provided by DCW&P relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications, product or samples supplied by the Customer.
- Services** the services to be provided by DCW&P under the Contract as set out in DCW&P's formal quotation, tender or proposal (where the terms differ between the quotation, tender or proposal, the latest version will take precedent).
- Supplier's Equipment** any equipment, including tools, systems, cabling or facilities, provided by DCW&P or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.
- VAT** value added tax chargeable under English law for the time being and any similar additional tax.
- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of the Contract.



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- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to **writing** or **written** includes faxes and e-mail.
- 1.7 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8 References to conditions and schedules are to the conditions and schedules of the Contract.

### **2. Application of conditions**

- 2.1 These Conditions shall:
  - 2.1.1 apply to and be incorporated into the Contract; and
  - 2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by DCW&P, constitutes an offer by the Customer to purchase the Services specified in these Conditions. No offer placed by the Customer shall be accepted by DCW&P other than:
  - 2.2.1 by a written acknowledgement issued and executed by DCW&P;
  - or
  - 2.2.2 (if earlier) by DCW&P starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

- 2.3 Quotations are given by DCW&P on the basis that no Contract shall come into existence except in accordance with condition 2.2.

### **3. Commencement and duration**

- 3.1 The Services supplied under the Contract shall be provided by DCW&P to the



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Customer from the date of acceptance by DCW&P of the Customer's offer in accordance with condition 2.2.

### **4. Supplier's obligations**

- 4.1 DCW&P shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with DCW&P's formal quotation, tender or proposal (where the terms differ between the quotation, tender or proposal, the latest version will take precedent).
- 4.2 DCW&P shall use reasonable endeavours to meet any performance dates specified in DCW&P's formal quotation, tender or proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 DCW&P shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under condition 5.1.5, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 4.4 In the event that such health and safety rules and regulations, and any other reasonable security requirements, or any communication from the Customer results in a delay. DCW&P shall be entitled to charge the Customer for all reasonably incurred costs, charges, expenses or materials associated with the required actions or delay. Further, DCW&P shall be entitled to charge the Customer at the variable rate agreed within the Contract for the additional work to be performed or associated with the delay and at an additional rate, which will be calculated pro-rata for the additional work to be performed or associated with the delay.

### **5. Customer's obligations**

- 5.1 The Customer shall:
  - 5.1.1 co-operate with DCW&P in all matters relating to the Services;
  - 5.1.2 provide DCW&P, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, data and other facilities as required by DCW&P;
  - 5.1.3 provide to DCW&P, in a timely manner, such In-put Material and other information as DCW&P may require and ensure that it is accurate in all material respects;



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- 5.1.4 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing DCW&P of all of the Customer's obligations and actions under this condition 5.1.4;
- 5.1.5 inform DCW&P of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
- 5.1.6 ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms, at least, to all relevant United Kingdom standards or requirements and, if work is being performed outside of the United Kingdom, to all relevant standards and requirements of the jurisdiction of the country in which the work is being performed, if this is higher than the relevant United Kingdom standards or requirements;
- 5.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of DCW&P's Equipment, the use of In-input Material and the use of the Customer's Equipment in relation to DCW&P's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
- 5.1.8 keep, maintain and insure DCW&P's Equipment in good condition or in accordance with DCW&P's instructions as notified in writing from time to time, and shall not dispose of or use DCW&P's Equipment other than in accordance with DCW&P's written instructions or authorisation; and
- 5.2 If DCW&P's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, DCW&P shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 5.3 The Customer shall be liable to pay to DCW&P, on demand, all reasonable costs, charges or losses sustained or incurred by DCW&P (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere)



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arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to DCW&P confirming such costs, charges and losses to the Customer in writing.

- 5.4 The Customer shall not, without the prior written consent of DCW&P, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services or termination of the Contract, solicit or entice away from DCW&P or employ (or attempt to employ) any person who is, or has been, engaged as an employee consultant or subcontractor of DCW&P in the provision of the Services.
- 5.5 Any consent given by DCW&P in accordance with condition 5.4 shall be subject to the Customer paying to DCW&P a sum equivalent to 25 % of the then current annual remuneration of DCW&P's employee, consultant or subcontractor or, if higher, 25% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

### **6. Charges and payment**

- 6.1 In consideration of the provision of the Services by DCW&P, the Customer shall pay the charges as set out in the DCW&P proposal, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Condition 6.2 shall apply if DCW&P provides Services on a time and materials basis. Condition 6.3 shall apply if DCW&P provides Services for a fixed price. The remainder of this condition 6 shall apply in either case.
- 6.2 Where Services are provided on a time and materials basis:
- 6.2.1 the charges payable for the Services shall be calculated in accordance with DCW&P' standard daily fee rates, as set out in DCW&P' proposal.
- 6.2.2 DCW&P' standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.30 am and 5.30 pm on weekdays (excluding public holidays);
- 6.2.3 DCW&P shall be entitled to charge an overtime rate of 50% above the daily or hourly fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 6.2.2;
- 6.2.4 all charges quoted to the Customer shall be exclusive of VAT, which DCW&P shall add to its invoices at the appropriate rate;
- 6.2.5 DCW&P shall ensure that every individual whom it engages on



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the Services completes time sheets recording time spent on the Services, and DCW&P shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 6.2.6; and

- 6.2.6 DCW&P shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) and on completion, calculated as provided in this condition 6.2.
- 6.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in DCW&P's formal quotation, tender or proposal (where the terms differ between the quotation, tender or proposal, the latest version will take precedent). The total price shall be paid to DCW&P (without deduction or set-off) in instalments, as set out in DCW&P's formal quotation, tender or proposal (where the terms differ between the quotation, tender or proposal, the latest version will take precedent). At the end of a period specified in DCW&P's formal quotation, tender or proposal, DCW&P shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in condition 6.4. DCW&P reserve the right to seek payments on account, or in advance, of work to be performed on behalf of the Customer.
- 6.4 Any fixed price and hourly or daily rate contained in DCW&P' formal cost quotation, tender or proposal excludes:
- 6.4.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom DCW&P engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by DCW&P for the supply of the Services. Such expenses, materials and third party services shall be invoiced by DCW&P with a 10% markup or as agreed in DCW&P's proposal.
- 6.4.2 VAT, which DCW&P shall add to its invoices at the appropriate rate.
- 6.4.3 Overnight accommodation will be charged at a rate of £150 per person per night within the United Kingdom and at a rate of £200 per person per night outside of the United Kingdom.
- 6.5 The parties agree that DCW&P may review and increase its standard daily fee rates or the charges set out in DCW&P formal quotation, tender or proposal.
- 6.6 The Customer shall pay each invoice submitted to it by DCW&P, in full and in cleared funds, within 30 days of receipt to a bank account nominated in



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writing by DCW&P.

- 6.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay DCW&P on the due date, DCW&P may:
  - 6.7.1 charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England Base Rate, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. DCW&P may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - 6.7.2 suspend all Services until payment has been made in full.
- 6.8 Time for payment shall be of the essence of the Contract.
- 6.9 All sums payable to DCW&P under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.9 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.10 DCW&P may, without prejudice to any other rights it may have, set off any liability of the Customer to DCW&P against any liability of DCW&P to the Customer.

### **7. Intellectual Property and Property rights**

- 7.1 As between the Customer and DCW&P, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by DCW&P. Subject to condition 7.2, DCW&P licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract terminates, this licence shall automatically terminate.
- 7.2 The Customer acknowledges that, where DCW&P does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on DCW&P obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle DCW&P to license such rights to the Customer.
- 7.3 DCW&P acknowledges that the conditions of this section 7 may be superseded by the signing of a Confidentiality Agreement.



**8. Confidentiality and DCW&P's property**

- 8.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by DCW&P, its employees, agents, consultants or subcontractors and any other confidential information concerning DCW&P's business or its products which the Customer may obtain.
- 8.2 The Customer may disclose such information:
- 8.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
- 8.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 8.
- 8.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract and as a strict condition of this Agreement, the Customer its employees, officers, representatives, agents or subcontractors shall not use any such information for it or their own gain.
- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by DCW&P to the Customer (including Pre-existing Materials and DCW&P's Equipment) shall, at all times, be and remain as between DCW&P and the Customer the exclusive property of DCW&P, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to DCW&P, and shall not be disposed of or used other than in accordance with DCW&P's written instructions or authorisation.

**9. Limitation of liability**

- 9.1 This condition 9 sets out the entire financial liability of DCW&P (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- 9.1.1 any breach of the Contract;
- 9.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and



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- 9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of DCW&P:
  - 9.3.1 for death or personal injury resulting from negligence; or
  - 9.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by DCW&P; or
  - 9.3.3 for any liability incurred by the Customer as a result of any breach by DCW&P of the condition as to title or the warranty as to quiet possession implied by Schedule 2 of the Supply of Goods and Services Act 1982.
- 9.4 Subject to condition 9.2 and condition 9.3
  - 9.4.1 DCW&P shall not be liable for:
    - (a) loss of profits; or
    - (b) loss of business; or
    - (c) depletion of goodwill and/or similar losses; or
    - (d) loss of anticipated savings; or
    - (e) loss of goods; or
    - (f) loss of contract; or
    - (g) loss of use; or
    - (h) loss of corruption of data or information; or
    - (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
  - 9.4.2 DCW&P's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.



**10. Data protection**

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency.

**11. Termination**

11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than one month written notice or immediately on giving notice to the other if:

11.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen days after being notified in writing to make such payment; or

11.1.2 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

11.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or 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 a natural person) 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; or

11.1.4 the other party 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; or

11.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or

11.1.6 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 other party; or

11.1.7 a floating charge holder over the assets of that other party has



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- become entitled to appoint or has appointed an administrative receiver; or
- 11.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- 11.1.9 a creditor or encumbrancer of the other party 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 and such attachment or process is not discharged within 14 days; or
- 11.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1.3 to condition 11.1.9 (inclusive); or
- 11.1.11 there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).
- 11.2 On termination of the Contract for any reason:
- 11.2.1 the Customer shall immediately pay to DCW&P all of DCW&P's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, DCW&P may submit an invoice, which shall be payable immediately on receipt;
- 11.2.2 the Customer shall, within a reasonable time, return all of DCW&P' Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then DCW&P may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- 11.2.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 11.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:
- 11.3.1 condition 7;
- 11.3.2 condition 8;



- 11.3.3 condition 9;
- 11.3.4 condition 11; and
- 11.3.5 condition 18.

**12. Force majeure**

DCW&P shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of DCW&P or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**13. Variation**

- 13.1 DCW&P may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. DCW&P may, from time to time and subject to Customer's prior written consent, which shall not be unreasonably withheld or delayed, change the Services,.
- 13.2 Subject to condition 13.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**14. Severance**

- 14.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.



**15. Assignment**

- 15.1 The Customer shall not, without the prior written consent of DCW&P, assign, transfer, charge, mortgage, subcontract, or deal in any manner with all or any of its rights or obligations under the Contract.
- 15.2 DCW&P may at any time assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 15.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

**16. No partnership or agency**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**17. Rights of third parties**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

**18. Governing law and jurisdiction**

- 18.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.
- 18.3 Technical disputes shall firstly be addressed between the Customer and DCW&P, and if an agreement is not reached, subsequently shall be addressed with the Institution of Mechanical Engineers or their designated representative.