

Revision No	3	 <b>Houghton International</b> <b>Standard Terms And Conditions For The Supply Of Goods And Services</b>	Document No	TQA 684
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**HOUGHTON INTERNATIONAL ELECTRICAL SERVICES LIMITED  
STANDARD TERMS AND CONDITIONS FOR  
THE SUPPLY OF GOODS AND SERVICES**

**Houghton International Electrical Services Limited**

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Registered in England

Reg No: 1846952

VAT Reg No: GB 40 8065663

Directors: M. R. Mitten, C. W. H. Hutton, J. Dunning, D. D'Arcy.

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the following expressions shall have the following meanings:

<b>"Associate"</b>	a company which is a holding company or a subsidiary of that party or a subsidiary of any such holding company and for the purpose of this definition "holding company" and "subsidiary" have the meanings given to them by section 1159 Companies Act 2006;
<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
<b>"Charges"</b>	the amounts payable to Houghton by the Customer for the Goods and Services calculated in accordance with Houghton's fee rates as amended from time to time;
<b>"Components"</b>	any machinery and associated products with which the Goods will be used
<b>"Conditions"</b>	these terms and conditions for the supply of Goods and Services;
<b>"Contract"</b>	the contract between the parties incorporating these Conditions and the Customer's Order and Houghton's acceptance of the Order;
<b>"Customer"</b>	the person, firm or company who purchases Goods or Services from Houghton;
<b>"Data Protection Legislation"</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
<b>"Delivery Point"</b>	the place where delivery of the Goods is to take place under <b>Clause 4</b> ;
<b>"Document"</b>	includes, without limitation, in addition to any document in writing, any drawing, plan, diagram, design or other image whether electronic or hard copy;
<b>"Force Majeure Event"</b>	any event or circumstance preventing Houghton from performing any or all of its obligations pursuant to these Conditions which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of Houghton;

<b>“Goods”</b>	any goods agreed in the Contract to be supplied to the Customer by Houghton (including any part or parts of them);
<b>“Goods Specification”</b>	any specification for the Goods, including but not limited to any relevant plans or drawings and (if applicable and only in respect of coils) coil data sheet CI333, that is agreed in writing by the Customer and Houghton;
<b>"Houghton"</b>	Houghton International Electrical Services Limited, a company incorporated in England and Wales with company number 01846952 and whose registered address is at Ronnie Mitten Works, Shields Road, Newcastle upon Tyne, NE6 2YL, UK
<b>"Houghton's Equipment"</b>	any equipment including tools, systems, cabling or facilities provided by Houghton, its agents, employees or 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;
<b>"Input Material"</b>	all Documents, information and materials provided by the Customer relating to the Services;
<b>"Intellectual Property Rights"</b>	all patents, rights to inventions, utility models, copyright and related rights, trade marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in design, database rights, rights in computer software, moral rights, rights in confidential information (including know how and trade secrets) and all 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 other similar or equivalent rights or forms of protection in any part of the world;
<b>“Order”</b>	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of Houghton's Quotation, as the case may be;
<b>"Pre-existing Materials"</b>	all Documents, information and materials provided by Houghton relating to the Services which existed prior to the commencement of the Contract;
<b>“Quotation”</b>	means Houghton's written proposal for supplying the Goods and/or Services to the Customer and setting out certain details relating to the same;
<b>"Services"</b>	the repair services to be provided by Houghton under these Conditions, together with any other services which Houghton provides, or agrees to provide, to the Customer; and
<b>“Service Specification”</b>	the description or specification for the Services provided in writing by Houghton to the Customer.

1.2 In addition, in these Conditions:

1.2.1 a reference to a statute or statutory provision includes a reference to any amendment, extension or re-enactment of it from time to time in force and includes any subordinate legislation made under it;

1.2.2 a reference to a person is a reference to any natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.3 references to Clauses are references to clauses of these Conditions; and

1.2.4 headings are for convenience only and shall not affect the interpretation of these Conditions.

## 2 APPLICATION OF THESE CONDITIONS

2.1 These Conditions shall:

2.1.1 apply to and be incorporated into the Contract;

2.1.2 prevail over any inconsistent terms and conditions contained, or referred to, in the Customer's Order, confirmation of Order, acceptance of a Quotation, or specification or any other Document supplied by the Customer or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. No offer placed by the Customer shall be accepted by Houghton other than:

2.2.1 by a written acceptance of Order issued by Houghton; or

2.2.2 (if earlier) by Houghton starting to provide the Services and/or delivering the Goods, when a contract for the purchase and supply of Goods or Services on these Conditions will be established.

2.3 The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any Order or any Document shall not govern the Contract and Houghton expressly rejects them. 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 Houghton which is not set out in the Contract.

2.4 Quotations are given by Houghton on the basis that no Contract shall come into existence except in accordance with **Clause 2.2**. A Quotation shall not constitute an offer and is only valid for a period of 10 (ten) Business Days from its date, provided always that Houghton has not previously withdrawn it.

2.5 Any samples, drawings, descriptive matter or advertising issued by Houghton and any descriptions of the Goods or illustrations or descriptions of the Services contained in Houghton's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3 GOODS**

- 3.1 The quantity and description of the Goods to be supplied to the Customer shall be as set out in the Quotation.
- 3.2 All performance data, specifications and schedules of tolerances of the Goods are based on testing carried out in specified conditions determined by Houghton. It is the Customer's sole responsibility to ascertain the suitability of the Goods for use in the conditions in which the Customer intends to use the Goods and/or the Components with which the Customer intends the Goods to be used.
- 3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Houghton against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Houghton arising out of or in connection with any claim made against Houghton for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Houghton's use of such Goods Specification. This clause shall survive termination of the Contract.
- 3.4 Houghton reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement to do so, and Houghton shall notify the Customer, but shall not require the Customer's consent, in any such event. For the avoidance of doubt, should the Customer object to such amendments to the Goods Specification being made by Houghton, Houghton shall cancel any Order(s) to which the relevant Goods Specification applies without incurring any liability whatsoever to the Customer.

### **4 DELIVERY OF GOODS**

- 4.1 Delivery of the Goods shall be on the terms set out in the Quotation. Unless otherwise agreed in writing or specified in the Quotation delivery of the Goods shall be DAP INCOTERMS 2010 to the relevant delivery location as follows (Delivery Point):
- 4.1.1 for delivery in the UK Goods shall be delivered to the Customer's registered office address or principal address, or such other location specified in the Quotation or as otherwise agreed between the parties in writing; and
- 4.1.2 for delivery outside the UK Goods shall be delivered to the named location set out in the Quotation.
- 4.2 Unless otherwise agreed by Houghton (at its sole discretion, acting reasonably), any dates specified by Houghton for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates are so specified, delivery shall be within a reasonable time.
- 4.3 If Houghton fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Houghton shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Houghton with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.4 If for any reason the Customer fails to accept delivery of any of the Goods when they

are ready for delivery, or Houghton is unable to deliver the Goods because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- 4.4.1 risk in the Goods shall pass to the Customer;
  - 4.4.2 the Goods shall be deemed to have been delivered on the date that Houghton attempted, but was unable, to deliver the Goods to the Customer;
  - 4.4.3 Houghton may store the Goods until delivery takes place and/or arrange for the return of the Goods to Houghton's UK premises whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage, transportation, redelivery costs and insurance); and
  - 4.4.4 if within 10 (ten) Business Days after the day on which Houghton first attempted delivery of the Goods at the Delivery Point the Customer has not accepted physical delivery of them, Houghton may resell or otherwise dispose of part or all of the Goods and may charge the Customer for any shortfall below the price of the Goods in addition to any storage, handling, insurance and related costs incurred prior to the date of resale or disposal. For the avoidance of doubt Houghton shall not be obliged to make more than one redelivery attempt where the Customer has failed to accept physical delivery of the Goods on the first attempted delivery.
- 4.5 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods. Delivery is complete upon the Goods' arrival at the Delivery Point.
  - 4.6 Houghton may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
  - 4.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment. In the event of payment for a consignment remaining outstanding, without prejudice to any other remedies, Houghton shall be entitled to suspend delivery of any remaining consignments under the Contract.
  - 4.8 Delivery of Goods shall be made on an order by order basis and Goods shall not be held as consignment stock unless agreed in advance between Houghton and the Customer and in the event that Goods are to be held as consignment stock then the basis and terms of delivery of such consignment stock shall be set out in Houghton's acceptance of Order.

## **5 RISK/TITLE**

- 5.1 The Goods are at the risk of the Customer from the time of completion of delivery in accordance with **Clause 4.4 or clause 4.5** (as applicable).
- 5.2 Title to the Goods shall not pass to the Customer until Houghton has received in full (in cash or cleared funds) all sums due to it in respect of:
  - 5.2.1 the Goods; and
  - 5.2.2 all other sums which are or which become due to Houghton from the Customer on any account.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - 5.3.1 hold the Goods on a fiduciary basis as Houghton's bailee;

- 5.3.2 store the Goods (at no cost to Houghton) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as Houghton's property;
  - 5.3.3 not destroy, remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.4 maintain the Goods in satisfactory condition and keep them insured on Houghton's behalf for their full price against all risks to the reasonable satisfaction of Houghton. On request the Customer shall produce the policy of insurance to Houghton;
  - 5.3.5 notify Houghton immediately if it becomes subject to any of the events listed in **Clause 15.1.3** to **Clause 15.1.7** (both inclusive); and
  - 5.3.6 give Houghton such information relating to the Goods as Houghton may require from time to time.
- 5.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- 5.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and
  - 5.4.2 any such sale shall be a sale of Houghton's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale and not as Houghton's agent.
- 5.5 The Customer's right to possession of the Goods shall terminate immediately if:
- 5.5.1 the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
  - 5.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Houghton and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
  - 5.5.3 the Customer encumbers or in any way charges any of the Goods.
- 5.6 Houghton shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Houghton.
- 5.7 The Customer grants Houghton, its agents and employees an irrevocable licence at

any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them at the Customer's sole cost and expense.

- 5.8 On termination of the Contract, howsoever caused, Houghton's (but not the Customer's) rights contained in this **Clause 5** shall remain in effect.

## **6 SUPPLY OF SERVICES**

- 6.1 The Customer agrees to purchase and Houghton agrees to provide the Services in accordance with these Conditions and, in particular, in accordance with any Service Specification.
- 6.2 Houghton warrants to the Customer that the Services will be provided using reasonable care and skill.
- 6.3 Houghton shall use reasonable endeavours to meet any performance dates agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 6.4 Houghton shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been previously communicated to it under **Clause 7.1.7**, provided that Houghton 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.

## **7 THE CUSTOMER'S OBLIGATIONS**

- 7.1 The Customer shall:
- 7.1.1 ensure that the terms of the Order and any information it provides (if any) in the Service Specification and/or the Goods Specification are complete and accurate;
  - 7.1.2 co-operate with Houghton in all matters relating to the Services;
  - 7.1.3 provide Houghton, 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 reasonably required by Houghton to provide the Services;
  - 7.1.4 provide to Houghton in a timely manner such Input Material and other information as Houghton may reasonably require in order to supply the Goods and/or Services and ensure that such Input Material and other relevant information is accurate in all material respects;
  - 7.1.5 where the Services are supplied at the Customer's premises, be responsible (at its own cost) for preparing and maintaining the premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises;
  - 7.1.6 before the date on which the Services are due to start obtain, and for the duration of the Contract maintain, all necessary licences, permissions and consents which may be required for the provision of the Services; and



- 7.1.7 where the Services are supplied at the Customer's premises, inform Houghton of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customers' premises.
- 7.2 If Houghton'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 (**Customer Default**):
- 7.2.1 Houghton 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;
- 7.2.2 the Customer shall be liable to pay to Houghton on demand all reasonable costs, charges or losses sustained or incurred by Houghton (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) directly or indirectly arising from the Customer Default or the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Houghton confirming such costs, charges and losses to the Customer in writing; and
- 7.2.3 without limiting or affecting any other right or remedy available to it, whether under the Contract or otherwise, Houghton shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Houghton's performance of any of its obligations.

## **8 INSPECTION CHARGE**

Houghton provides Quotations and enters into the Contract on the basis that repair services are reasonably capable of being carried out. If, on Houghton's inspection of the relevant goods, Houghton, at its sole discretion acting reasonably, determines that (a) repairs are not reasonably capable of being carried out or, (b) in the case of a warranty claim under **Clause 10**, that no such warranty claim is valid, then:

- 8.1 Houghton shall inform the Customer of this fact as soon as reasonably practicable;
- 8.2 Houghton shall incur no liability for any direct or indirect loss and/or damage suffered by the Customer as a consequence of repairs not being carried out; and
- 8.3 for UK inspections only, the Customer shall pay Houghton a minimum inspection fee of two hundred and fifty pounds (£250.00) for each inspection, the total amount for which shall be determined by Houghton acting reasonably ("**Inspection Charge**").

## **9 PRICE AND PAYMENT**

- 9.1 In consideration of Houghton providing the Goods and/or Services, the Customer agrees to pay the Charges. Unless otherwise notified by Houghton in writing, the Charges for the Goods and/or Services shall be the charges set out in the Quotation.
- 9.2 Houghton reserves the right to adjust the price for the Goods and/or Services, by giving notice to the Customer at any time before delivery to reflect the increase in the cost of

the Goods and/or Services to Houghton due to:

- 9.2.1 any factors beyond the reasonable control of Houghton including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs;
  - 9.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Services ordered;
  - 9.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Houghton adequate or accurate information or instructions;
  - 9.2.4 any change to any applicable law or regulation;
  - 9.2.5 any breach of these Conditions by the Customer; or
  - 9.2.6 any other reason beyond the control of Houghton.
- 9.3 In respect of Goods, Houghton shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Houghton shall invoice the Customer on completion of the Services or at such times or intervals and/or in such instalments as may be set out in the Quotation or otherwise agreed in writing between the parties.
- 9.4 All Charges (including the Inspection Charge) are exclusive of value added tax and all other applicable taxes, duties and levies and the costs of packaging, insurance and carriage (which may be charged where applicable by Houghton in addition).
- 9.5 Payment of the Charges shall be in such currency and on such terms as are set out in Houghton's acceptance of Order. Payment of the Inspection Charge shall be in pounds sterling and shall be paid within 30 (thirty) days of the date of Houghton's invoice or at any other time Houghton at its sole discretion determines. Time of payment shall be of the essence.
- 9.6 All payments due under these Conditions shall be paid in full and in cleared funds to a bank account nominated in writing by Houghton unless otherwise agreed by the parties and each party shall bear its own related bank charges.
- 9.7 Houghton shall be entitled at its sole discretion to charge for the storage of any of the Customer's property that is in Houghton's possession at any time in accordance with Houghton's standard storage charges as amended from time to time.
- 9.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Houghton on the due date, Houghton may:
- 9.8.1 charge interest on such sum from a due date for payment at the annual rate of 8 % (eight per cent) above 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; and/or
  - 9.8.2 suspend all Services and delivery of Goods until payment of all sums due to Houghton (including any interest accrued or accruing) from the Customer on any account with Houghton has been received in full.
- 9.9 Houghton may, without prejudice to any other rights or remedies it may have, set off any liability of the Customer to Houghton against any liability of Houghton to the Customer (whether arising under the Contract or any other agreement between the parties). The Customer shall have no right to set off any liability of Houghton to the

Customer against any sums which the Customer may owe to Houghton under the Contract.

- 9.10 Houghton shall have a general lien (together with a general power of sale) on all property owned by the Customer in Houghton's possession in satisfaction of any payment due or arising from the Customer (including interest accrued or accruing) on any account with Houghton.

## 10 QUALITY

- 10.1 Houghton warrants that (subject to the other provisions of these Conditions), on delivery and for a period of 12 (twelve) months from the date of delivery, the Goods shall be:

10.1.1 free from material defects in design, material and workmanship; and

10.1.2 if applicable, conform in all material respects with any Goods Specification.

- 10.2 Houghton shall not be liable for a breach of the warranty in **Clause 10.1** unless Houghton is given a reasonable opportunity after receiving notice from the Customer of the fault to examine such Goods. Subject always to **Clause 10.7** and **Clause 10.8**, Houghton shall, at the Customer's initial cost and expense, either (a) attend the Customer's premises to examine such Goods or (b) require the Customer to return such Goods and associated goods to Houghton's place of business for the examination to take place there.

- 10.3 Houghton shall not be liable for a breach of the warranty in **Clause 10.1** if:

10.3.1 the Customer makes any further use of such Goods after giving notice of a fault to Houghton;

10.3.2 the defect arises because the Customer failed to follow Houghton's oral or written instructions (including but not limited to Houghton's test criteria) as to the storage, use, installation, maintenance or processing of the Goods or (if there are none) good trade practice;

10.3.3 the defect arises as a result of Houghton following any drawing, design or Goods Specification supplied by the Customer;

10.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, the acts or omission of the Customer, its employees and/or sub-contractors;

10.3.5 the Goods differ from any Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;

10.3.6 the Customer alters or repairs such Goods without the written consent of Houghton; or

10.3.7 the Customer has failed to ascertain the suitability of the Goods for use in the conditions in which they are to be used or in conjunction with Components or other associated goods not supplied by Houghton.

- 10.4 Subject to **Clause 10.2** and **Clause 10.3**, if any of the Goods do not conform with the warranty in **Clause 10.1** Houghton shall at its sole option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if Houghton so requests, the Customer shall, subject always to **Clause 10.8**, either return the Goods or the part of such Goods which is defective to Houghton or arrange for such Goods to be destroyed and confirm that such destruction has taken

place to Houghton in writing.

- 10.5 If Houghton complies with **Clause 10.4** and **Clause 10.8** it shall have no further liability whatsoever, howsoever arising, for a breach of the warranty in **Clause 10.1** in respect of such Goods.
- 10.6 Any Goods replaced shall belong to Houghton and any repaired or replacement Goods shall be guaranteed on the terms of these Conditions.
- 10.7 If, following Houghton inspecting the Goods in accordance with **Clause 10.2**, Houghton determines, at its sole discretion acting reasonably, that the Customer does not have a valid warranty claim, then:
  - 10.7.1 provided that all Inspection Charges have been paid in full by the Customer, Houghton shall notify the Customer that the Goods are available for collection (**Notification Date**) and, from the Notification Date, the Customer shall be entitled, at its own cost and expense, to collect the Goods from Houghton's premises. Houghton shall, from the Notification Date, be entitled to charge the Customer for storage of the Goods in accordance with **Clause 9.7**; and
  - 10.7.2 the Customer shall be liable for all costs incurred by it and/or Houghton in relation to Houghton inspecting the Goods in accordance with **Clause 10.2**, including but not limited to the costs incurred by the Customer (a) when returning the Goods to Houghton's premises for inspection or (b) for the travel, subsistence and other reasonable costs associated with a Houghton engineer attending the Customer's premises to inspect the Goods.
- 10.8 Notwithstanding **Clause 10.2**, if, following Houghton inspecting the Goods in accordance with **Clause 10.2**, Houghton determines, at its sole discretion acting reasonably, that the Customer does have a valid warranty claim, then Houghton shall reimburse the Customer for all of the Customer's costs actually incurred in relation to Houghton inspecting the Goods, including but not limited to the costs incurred by the Customer (a) when returning the Goods to Houghton's premises for inspection or (b) for the travel, subsistence and other reasonable costs associated with a Houghton engineer attending the Customer's premises to inspect the Goods.

## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 Other than Intellectual Property Rights in any Input Materials or other materials provided by the Customer, all Intellectual Property Rights created, devised, developed or discovered during the provision of the Services and in Houghton's Equipment and the Pre-existing Materials shall belong to and remain the absolute property of Houghton.
- 11.2 Houghton grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free license during the term of the Contract to use the Pre-Existing Materials solely for the purpose of receiving and using the Services.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by **Clause 11.2**.
- 11.4 The Customer grants Houghton a fully paid-up, non-exclusive, royalty-free non-transferrable license to copy and modify any Input Materials and other materials provided by the Customer to Houghton for the term of the Contract for the purpose of providing the Services to the Customer.

## 12 DATA PROTECTION

The parties agree to comply with all applicable requirements of the Data Protection Legislation and/or all applicable requirements under any similar or equivalent data protection and privacy legislation set out in the data protection regimes in their respective jurisdictions where applicable (and where there is any restricted transfer of personal data to or from a party, the parties shall ensure there are in place before any such transfer appropriate safeguards as required by the Data Protection Legislation).

## 13 CONFIDENTIALITY

- 13.1 The Customer shall, at all times, 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 Houghton, its employees, agents, consultants or subcontractors and any other confidential information concerning Houghton's business which the Customer may obtain ("**Confidential Information**").
- 13.2 The Customer may disclose Confidential Information:
- 13.2.1 to its employees, officers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract;
- 13.2.2 as may be required by law or any regulation.
- 13.3 The Customer may not use any Confidential Information for any purpose other than to perform its obligations under the Contract.

## 14 HOUGHTON'S EQUIPMENT

All materials, documents, equipment and tools, drawings, specifications and data supplied by Houghton to the Customer (including any Pre-existing Materials and Houghton's Equipment) shall, at all times, be and remain the exclusive property of Houghton, unless they are subject to a separate agreement whereby title passes to the Customer, and 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 Houghton, and shall not be disposed of or used other than in accordance with Houghton's written instructions or authorisation.

## 15 TERMINATION

- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 1 months' written notice provided that if the Customer terminates the Contract it shall comply with clause 15.4.
- 15.2 A party ("**the Non-Defaulting Party**") shall be entitled, without prejudice to any other rights or remedies available to it under or in connection with these Conditions, to terminate the Contract immediately by notice in writing to the other party ("**the Defaulting Party**") for any of the following reasons:
- 15.2.1 the Defaulting Party is in material breach of any of its obligations under these Conditions and that breach cannot be remedied;
- 15.2.2 the Defaulting Party is in material breach of any of its obligations under these

Conditions which can be remedied, but the Defaulting Party fails to do so within 30 (thirty) days starting on the day after receipt of notice from the Non-Defaulting Party;

- 15.2.3 the Defaulting Party is unable to pay its debts as they fall due or is insolvent;
- 15.2.4 the Defaulting Party suspends making payments on any of its debts or announces its intention to do so;
- 15.2.5 the Defaulting Party ceases or threatens to cease to carry on its business or a substantial part of its business;
- 15.2.6 the Defaulting Party is dissolved or struck off;
- 15.2.7 any action, legal, proceedings or any other procedure or step is taken by any person in any jurisdiction in relation or with a view to:
  - 15.2.7.1 the winding up, dissolution, administration or reorganisation of the Defaulting Party;
  - 15.2.7.2 a composition, assignment or arrangement with any creditor of the Defaulting Party;
  - 15.2.7.3 the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Defaulting Party of any of its assets;
  - 15.2.7.4 the enforcement of any security over the assets of the Defaulting Party; or
  - 15.2.7.5 the commencement of any analogous procedure or step in relation to the Defaulting Party in any jurisdiction other than England and Wales.
- 15.3 Any expiry or termination of the Contract for whatever reason shall not affect any rights or liabilities which have accrued on or before the date of termination or expiry and the termination or expiration of the Contract shall not relieve any party of any obligation under these Conditions which is expressed or which by implication is intended to continue after such termination or expiration.
- 15.4 On termination of the Contract for any reason:
  - 15.4.1 the Customer shall immediately pay Houghton all of Houghton's outstanding unpaid invoices relating to the Charges (including the Inspection Charge) and interest and, in respect of Goods or Services supplied but for which no invoice has been submitted, the Houghton may submit an invoice for Goods acquired or ordered or Services performed up to the point of termination, which shall be payable immediately on receipt; and
  - 15.4.2 the Customer shall return all of Houghton's Equipment and Pre-Existing Materials. If the Customer fails to do so, then Houghton 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.

15.5 On termination of the Contract (howsoever arising) **Clauses 11,13,14,15 and 16** shall survive and continue in full force and effect.

## **16 LIABILITY**

16.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

16.2 Nothing in these Conditions limits or excludes the liability of Houghton for:

16.2.1 death or personal injury resulting from negligence; or

16.2.2 any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation; or

any other matter in respect of which it would be unlawful for Houghton to exclude or limit liability.

16.3 Subject to clause 16.2, Houghton's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or non-performance or contemplated performance, of the Contract shall be limited to the sum of £20,000 (twenty thousand pounds) or the price paid under the specific Contract in question, whichever is the lower.

16.4 Subject to clause 16.2, the following kinds of loss are wholly excluded:

16.4.1 loss of profits;

16.4.2 loss of sales or business;

16.4.3 loss of goods;

16.4.4 loss of use;

16.4.5 loss of agreements or contracts;

16.4.6 loss of anticipated savings;

16.4.7 loss of use or corruption of software, data or information;

16.4.8 loss of or damage to goodwill; and

16.4.9 special, indirect and consequential loss.

## **17 FORCE MAJEURE**

If Houghton is prevented or delayed in its performance of any of its obligations under the Contract by Force Majeure, it may notify the Customer of the circumstances giving rise to Force Majeure. Houghton shall not be in breach of the Contract nor be liable for delay in performing or failure to perform its obligations under the Contract if such a delay or failure results from Force Majeure. The time for Houghton's performance shall be extended for as long as the Force Majeure continues or by a reasonable period agreed between the parties.

## 18 GENERAL

- 18.1 Delay in exercising, or a failure to exercise, any right or remedy in connection with the Contract shall not operate as a waiver of that right or remedy. A single or partial exercise of any right or remedy shall not preclude any other or further exercise of that right or remedy, or the exercise of any other right or remedy. A waiver of a breach of the Contract shall not constitute a waiver of any subsequent breach.
- 18.2 All notices (and all other documents) to be served under the Contract (in addition to any requirements as to notices set out in the latter) shall be in writing and shall be delivered or sent, in the case of Houghton, to its registered office and, in the case of the Customer, to its registered office or principal address, as applicable, or to such other addresses as a party may have notified in writing to the other.
- 18.3 A notice shall be delivered by hand or sent by e-mail or post.
- 18.4 A notice shall be deemed to have been received:
- 18.4.1 if delivered by hand between 9.00 am and 5.00 pm on a Business Day (such time period being referred to in this **Clause 18** as "**Business Hours**") when so delivered, or if delivered by hand outside Business Hours, at the next start of Business Hours;
- 18.4.2 if sent by e-mail on transmission (if transmission is completed in Business Hours or at the next start of Business Hours if transmission is outside Business Hours);
- 18.4.3 if sent by pre-paid UK first class post 2 (two) Business Days from the date of posting; or
- 18.4.4 if sent by airmail 10 (ten) Business Days from the date of posting.
- 18.5 In proving service of a notice, it shall be sufficient to prove that delivery was made or that the envelope containing that notice was properly addressed and posted.
- 18.6 No amendment or variation of the Contract shall be valid unless it is previously agreed in writing between Houghton and the Customer.
- 18.7 Nothing in the Contract shall constitute or be deemed to constitute a partnership or other form of joint venture between the parties or constitute or be deemed to constitute either party the agent or employee of the other for any purpose whatsoever.
- 18.8 No person who is not a party to the Contract is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 18.9 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.10 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.



- 18.11 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 18.12 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Contract shall be personal to the Customer. The Customer shall not assign, novate, subcontract or otherwise dispose of the Contract or any part thereof without the prior written consent of Houghton which may be withheld at Houghton's discretion. Houghton shall be entitled to assign the Contract. Houghton shall give notice of any such assignment to the Customer.
- 18.13 These Conditions shall be interpreted in accordance with the law of England. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts of England in relation to all matters arising out of or in connection with these Conditions.