

GTS Group

Terms and conditions

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF **CLAUSE 8 (LIMITATION OF LIABILITY)**.

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause **5 (Charges and payment)**.

Commencement Date: has the meaning given in clause **2.2**.

Conditions: these terms and conditions as amended from time to time in accordance with clause **15.4**.

Contract: the contract between GTS Group and the Client for the supply of Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Client: the person or firm who purchases Services from GTS Group.

Client Default: has the meaning set out in clause **4.2**.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

GTS Group: GTS Maintenance Limited, registered in England and Wales with company number 03301417, GTS Nitrogen Services Limited, registered in England and Wales with company number 07826768 and GTS Maintenance Services Limited, registered in England and Wales with company number 05844699, collectively trading as GTS Group,

all with the registered office of Suite 4 164-170 Queens Road, Sheffield, England, S2 4DH.

GTS Group Materials: shall include any and all plant, machinery, tools or equipment used by GTS Group in the course of performing the Services.

Hire Period: the period during which the Hired Plant is hired by the Client, as determined in accordance with clause 6.1.

Hired Plant: any plant, machinery, tools or equipment detailed in the Order and any and all plant, machinery, tools or equipment that GTS Group agrees to supply to the Client under the Contract but excluding (in each case) GTS Group Materials.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, 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 and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Client's order for Services as set out in the Client's purchase order form, the Client's written acceptance of a quotation by GTS Group, or overleaf, as the case may be.

Services: nitrogen purging, shrink fitting, gas freeing, dying, pressurising, hardening, refrigeration, embrittlement, ground freezing, Hired Plant and any other Services, supplied by GTS Group to the Client as set out in the Specification or from time to time.

Site: the place or places provided or made available by the Client to GTS Group for the purposes of the Services.

Specification: the description or specification of the Services provided in writing by GTS Group to the Client.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when GTS Group issues written acceptance of the Order or begins to provide the Services at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by GTS Group, and any descriptions or illustrations contained in GTS Group's catalogues or website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by GTS Group shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

3. Supply of Services

- 3.1 GTS Group shall supply the Services to the Client in accordance with the Specification in all material respects.
- 3.2 GTS Group shall use all reasonable endeavours to meet any performance dates as specified in the quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 GTS Group reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement or to undertake the Services safely, or if the

amendment will not materially affect the nature or quality of the Services, and GTS Group shall notify the Client in any such event.

3.4 GTS Group warrants to the Client that the Services will be provided using reasonable care and skill.

4. Client's obligations

4.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with GTS Group in all matters relating to the Services;
- (c) provide GTS Group, its employees, agents, consultants and subcontractors, with access to the Site and the Client's premises, office accommodation and other facilities as reasonably required by GTS Group for the purposes of providing the Services;
- (d) provide GTS Group with such information and materials as GTS Group may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) be responsible (at its own cost) for preparing and maintaining the Site for the supply of the Services;
- (f) provide all personnel employed by GTS Group in providing the Services with a full induction in relation to all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;
- (g) provide, at the Client's cost, to all personnel employed by GTS Group welfare facilities as required under the Workplace (Health, Safety and Welfare) Regulations 1992 (including, without limitation, regulations 20, 23, 24 and 25);
- (h) permit GTS Group, where required, to deliver and store any items of GTS Group Material or any other items necessary for the performance of the Services to the Site prior to the agreed date for commencement of the Services;
- (i) inspect the Services upon completion of such Services and provide a form (**Form**) that will be signed by the Client or by a person authorised on its behalf before GTS Group's technicians depart from the Site. Such signature shall constitute the Client's acceptance that the Services were acceptable. In the event that the Form is not signed and the technicians leave the Site, this shall be deemed acceptance of the Services, and the standard to which they have been provided.

- (j) ensure they have the correct tolerance for parts, inspect the substructures/parts and ensure that they are suitable for the Services.
- (k) obtain and maintain all necessary judgements, licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (l) comply with all applicable laws, including health and safety laws;
- (m) keep all materials, equipment, documents and other property of GTS Group (**GTS Group Materials**) at the Client's premises in safe custody at its own risk, maintain GTS Group Materials in good condition until returned to GTS Group, and not dispose of or use GTS Group Materials other than in accordance with GTS Group's written instructions or authorisation. This shall include but not limited to any storage canisters or containers;
- (n) comply with any additional obligations as set out in the Specification;

4.2 If GTS Group's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, GTS Group shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays GTS Group's performance of any of its obligations;
- (b) GTS Group shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from GTS Group's failure or delay to perform any of its obligations as set out in this clause 4.2;
- (c) the Client shall reimburse GTS Group on written demand for any costs or losses sustained or incurred by GTS Group arising directly or indirectly from the Client Default; and
- (d) in the event of cancellation, the Client shall pay to GTS Group the cancellation fees set out in clause 13.4.

5. Provision of Facilities and Site

5.1 The Client warrants that the Site is safe for GTS Group to carry out the Services and in particular, but without limitation, they comply with all relevant UK health and safety legislation. The Client will indemnify and keep indemnified GTS Group against any losses it may incur or suffer in connection with any death or physical injury suffered by

any of GTS Group's employees, agents, consultants and subcontractors from the unsafe state of the Site.

- 5.2 GTS Group reserves the right to refuse to provide the Services where, in the opinion of GTS Group, performance of the Services would pose a risk to the health and safety of any person including, without limitation, as a result of the Site and, any facilities of the Client failing to comply with any of its obligations under the Contract.

6. Hired Plant

6.1 Hire Period

- (a) Unless otherwise agreed in writing by GTS Group the hiring by the Client of the Hired Plant will commence on:
 - (i) the date upon which GTS Group has notified the Client that the Hired Plant will be available for collection; or
 - (ii) where GTS Group has agreed to deliver the Hired Plant to the Client, the date that the Hired Plant is despatched to the Client.
- (b) Certain items of Hired Plant are subject to minimum hire periods as notified by GTS Group to the Client and unless otherwise notified by GTS Group, the minimum period of hire shall be five days.
- (c) Subject to the minimum hire period specified in clause 6.1 (b) and the terms of the Contract, the Hired Plant remains on hire until returned or collected from the Client in accordance with clause 6.3.
- (d) GTS shall undertake to supply with the Hired Plant adequate information as to their design and conditions of and instruction for operation for compliance with its obligations under section 6(1)(c) of the Health and Safety at Work Act 1974.
- (e) The Client undertakes that all necessary steps will be taken to ensure that the Hire Plant will be safe and without risk to health when properly used in accordance with Clause 6(8) of the Health and Safety at Work Act 1974.
- (f) The Hired Plant is hired on the basis of only being used for its designated function within the limits of design and all information as detailed in the operating instructions supplied.
- (g) Any Hired Plant is to be used for commercial purposes only and may not be used for personal or consumer use.

6.2 Delivery

- (a) Delivery of the Hired Plant shall be made either:

- (i) by the Client collecting the Hired Plant from GTS Group's premises; or
 - (ii) if GTS Group has agreed to deliver the Hired Plant, by GTS Group's delivering the Hired Plant (at the Client's cost) to the Site or such other location as GTS Group may agree.
- (b) GTS Group will prepare a delivery and acceptance form for each item of Hired Plant which will specify the precise details of the Hired Plant. At the time of delivery or collection of the Hired Plant the said form will be signed by the Client or by a person authorised on its behalf, and such signature shall constitute the Client's acceptance that the Hired Plant is in good working order upon delivery.

6.3 Return

- (a) On the termination or expiry by effluxion of time of the Hire Period the Client, shall unless agreed otherwise by GTS Group in writing, return the Hired Plant at its own risk and expense to GTS Group at such place in the United Kingdom as GTS Group requires. The Hired Plant shall be returned in a good, safe and serviceable condition and state of repair (fair wear and tear excepted) and otherwise in the condition required under the Contract.
- (b) In the event that GTS Group agrees in writing pursuant to clause 6.3 (a) to collect the Hired Plant from the Client it shall do so at the expense of the Client and subject to such terms and conditions as GTS Group may notify the Client.

6.4 Risk and Property

- (a) Risk of damage to or loss of the Hired Plant shall pass to the Client upon delivery and shall remain with the Client until the Hired Plant is returned by or collected from the Client in accordance with clause 6.3.
- (b) The Hired Plant shall at all times remain the property of GTS Group and the Client shall have no rights to the Hired Plant other than as hirer and the Client shall not do or permit or cause to be done any matter or thing whereby the rights of GTS Group in respect of the Hired Plant are or may be prejudicially affected.

6.5 Use

- (a) The Client may use the Hired Plant for the purposes of its business. The Hired Plant is not to be used and the Client will not permit it to be used, for any purposes for which it is not expressly designed.
- (b) The Client shall during the continuance of the Hire Period:

- (i) ensure that the Hired Plant is in good working order and advise GTS Group immediately on taking possession of any shortage, damage or faults relating to the Hired Plant;
- (ii) ensure that the Hire Plant is operated properly and safely by personnel who are properly trained so to do;
- (iii) indemnify GTS Group against all fines, penalties and liabilities imposed on GTS Group or arising in respect of any non-compliance or contravention of any law or regulation in the un-authorized use of the Hired Plant together with any cost or expense relating thereto incurred by GTS Group;
- (iv) bear the cost of the repair or rectification of any damage to the Hired Plant resulting from negligence or improper use of the Hired Plant by the Client or any person permitted by the Client to use the Hired Plant;
- (v) keep the Hired Plant at the Site;
- (vi) in respect of the condition and maintenance of the Hired Plant, be solely responsible at its own cost for using, cleaning, tuning and adjusting the Hired Plant solely in accordance with the operating instructions provided by GTS Group; and
- (vii) not to use or permit the Hired Plant to be used or operated in a manner contrary to any statutory provision or regulation or in any way contrary to law, having regard in particular (but without prejudice to the generality of the foregoing) to the regulations affecting maintenance and usage thereof.

7. Charges and payment

- 7.1 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of GTS Group in respect of the performance of the Services. Unless otherwise agreed in writing by the Client, the charges shall include every cost and expense of GTS Group directly or indirectly incurred in connection with the performance of the Services.
- 7.2 GTS Group shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom GTS Group engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by GTS Group for the performance of the Services, and for the cost of any materials.

- 7.3 GTS Group reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 7.4 Charges in regard to the Hired Plant shall accrue and be payable by the Client from the date of delivery or collection of the Hired Plant in accordance with clause 6.2 and until the date of return or collection of the Hired Plant in accordance with clause 6.3. GTS Group shall invoice the Client on completion of the Services. New Clients may be requested to pay on proforma invoice at GTS's discretion.
- 7.5 The Client shall pay each invoice submitted by GTS Group :
- (a) within 30 days of the date of the invoice [or in accordance with any credit terms agreed by GTS Group and confirmed in writing to the Client; and
 - (b) in full and in cleared funds to a bank account nominated in writing by GTS Group, and
- time for payment shall be of the essence of the Contract.
- 7.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by GTS Group to the Client, the Client shall, on receipt of a valid VAT invoice from GTS Group, pay to GTS Group such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.7 The Client shall be liable for all administration fees, legal fees, court fees and all other professional costs incurred in the recovery of any late payment and GTS Group shall be entitled to seek recovery of such costs in addition to default interest as set out in clause 7.8.
- 7.8 If the Client fails to make any payment due to GTS Group under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 8% per annum above Barclay's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

7.9 Without prejudice to GTS Group's other rights and remedies under these Conditions, it shall be entitled to seek statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

7.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Insurance

8.1 The Client will throughout the continuance and force of the Contract without prejudice to the liability of GTS Group keep the Hired Plant insured with an insurance company of good repute against loss or damage from all risks including third party risk in an amount equal to the new replacement value of the Hired Plant. The Client shall notify its insurers that the Hired Plant is on hire from GTS Group and request the insurers to endorse a notice that shall rest on the policy of insurance naming GTS Group as loss payee. The Client shall indemnify GTS Group against all loss or damage to the Hired Plant not recoverable under the policy of insurance.

8.2 GTS Group may at its absolute discretion:

- (a) terminate the Contract in relation to the affected item of Hired Plant with immediate effect by giving written notice to the Client; or
- (b) replace the affected item of Hired Plant for the remainder of the Hire Period, subject to these terms and conditions.

9. Intellectual property rights

9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by GTS Group.

9.2 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 1.1.

9.3 The Client grants GTS Group a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to GTS Group for the term of the Contract for the purpose of providing the Services to the Client.

10. Data protection

10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a

party's obligations or rights under the Data Protection Legislation. In this clause 10, **Applicable Laws** means (for so long as and to the extent that they apply to GTS Group) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.

- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and GTS Group is the processor.
- 10.3 Without prejudice to the generality of clause 10.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to GTS Group for the duration and purposes of the Contract.
- 10.4 Without prejudice to the generality of clause 10.1, GTS Group shall, in relation to any personal data processed in connection with the performance by GTS Group of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Client unless GTS Group is required by Applicable Laws to otherwise process that personal data. Where GTS Group is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, GTS Group shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit GTS Group from so notifying the Client;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

- (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or GTS Group has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) GTS Group complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) GTS Group complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
- (e) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a personal data breach; and
- (g) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data.

10.5 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

11. Confidentiality

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party, except as permitted by clause 11.2.

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

- (a) To its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

- (b) As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.4 Subject to clause 12.3, GTS Group's total liability to the Client shall not exceed 100% of the Charges in relation to the particular breach. GTS Group's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

12.5 This clause 12.5 sets out specific heads of excluded loss:

- (a) Subject to clause 12.3, the types of loss listed in clause 12.5(c) are wholly excluded by the parties.
- (b) If any loss falls into one or more of the categories in clause 12.5(c) and also falls into a category, or is specified, in clause 1.1, then it is not excluded.
- (c) The following types of loss are wholly excluded:
 - (i) Loss of profits
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.

(vii) Indirect or consequential loss.

- 12.6 GTS Group has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.7 Unless the Client notifies GTS Group that it intends to make a claim in respect of an event within the notice period, GTS Group shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire once GTS Group have left the Site. GTS Group must be informed by the Client of any event before they leave Site.
- 12.8 GTS Group are only responsible for the Services and any testing whilst on Site and at the time of the relevant test. The test shall only be accurate at the point of testing. GTS Group shall have no liability once the relevant test has been performed and the Client's equipment handed back to/control of the equipment is passed back to the Client.
- 12.9 GTS Group shall not be liable for any delay or non-performance of its obligations which is caused wholly or partly by reason of an act of God, delay in transportation, labour disputes, fire, flood, war, accident, government action, inability to obtain adequate labour, materials, manufacturing facilities, or energy or any other cause beyond GTS Group's control or that of its servants or agents, and if the delay or failure has continued for a period of three months than either party may terminate the Contract without prejudice to any rights which may have accrued prior to such termination.
- 12.10 GTS Group shall have no liability to the Client for any loss, damage, cost, expense or other claims for compensation arising from any information, documents, materials or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, arising from their late arrival or non-arrival or any other fault by the Client.
- 12.11 GTS Group shall have no liability for any damage caused after GTS Group's technicians have departed from the Site and the Client has provided them with the signed Form after inspection.
- 12.12 The Client acknowledges that:
- (a) the Hired Plant was selected by the Client; and
 - (b) each item of the Hired Plant is satisfactory to the Client and for any intended use of each item of Hired Plant by the Client.

12.13 The Client shall be solely responsible for and hold GTS Group fully indemnified against all claims, demand, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by GTS Group as a result of:

- (a) the use or operation (or attempted operation) of the Hired Plant (other than death or personal injury resulting from the negligence of GTS Group, its employees or agents);
- (b) any breach or default on the part of the Client of its obligations under the Contract;
- (c) loss of or damage to the Hired Plant at any time whilst it is in the possession of or under the control of the Client;
- (d) loss of or damage to GTS Group Materials at any time whilst it is located at the Site or at any time whilst it is in the possession of or under the control of the Client.

12.14 The Client shall be solely responsible and GTS Group shall have no liability to the Client for:

- (a) any damage caused to the substructures/parts as a result of the Services pursuant to clause 4.1(i);
- (b) the substructures/parts being damaged, rotten, brittle or any other underlying fault or problem prior to GTS Group providing the Services;
- (c) inspecting the tolerance of the substructures/parts and ensuring that it is fit for purpose prior to GTS Group providing the Services;
- (d) positioning, locating, seating, assembling the substructures/parts after GTS Group have provided the Services;

12.15 This clause 12 shall survive termination of the Contract.

13. Termination and cancellation

13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one month written notice.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.3 Without affecting any other right or remedy available to it, GTS Group may terminate the Contract with immediate effect by giving written notice to the Client if:
- (a) the Client fails to pay any amount due under the Contract on the due date for payment.
- 13.4 Without affecting any other right or remedy available to it, GTS Group may suspend the supply of Services under the Contract or any other contract between the Client and GTS Group if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(d), or GTS Group reasonably believes that the Client is about to become subject to any of them.
- 13.5 The Client shall pay to GTS Group a percentage of the Charges if the Services are cancelled as follows:
- (a) 100% of the Charges payable, if the Services are cancelled by GTS Group due to the Site being unsafe or unavailable or there is no-one to accept delivery of the Services;
 - (b) 100% of the Charges payable, if the Services are cancelled by the Client 24 hours prior to the Commencement Date;
 - (c) 75% of the Charges payable, if the Services are cancelled by the Client within 24 – 36 hours prior to the Commencement Date;
 - (d) 50% of the Charges payable, if the Services are cancelled by the Client within 36 – 48 hours prior to the Commencement Date.

14. Consequences of termination

- 14.1 On termination of the Contract:

- (a) the Client shall immediately pay to GTS Group all of GTS Group's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, GTS Group shall submit an invoice, which shall be payable by the Client immediately on receipt;
 - (b) the Client shall return all of GTS Group Materials and any Plant Hire which have not been fully paid for. If the Client fails to do so, then GTS Group may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 15. General**
- 15.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 15.2 Assignment and other dealings.**
 - (a) GTS Group 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.
 - (b) The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of GTS Group.
- 15.3 Entire agreement.**
 - (a) 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.
 - (b) 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 misstatement based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

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

15.5 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15.6 Severance. 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.

15.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

15.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

15.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.