

Terms & Conditions of Business



The Customer's attention is particularly drawn to the provisions of clause 15.

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

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

"Commencement Date": has the meaning set out in clause 2.2.

"Conditions": these terms and conditions as amended from time to time in accordance with clause 18.8.

"Contract": the contract between KOREC and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

"Customer": the person or firm who purchases the Goods and/or Services from KOREC.

"Customer Equipment": any equipment, goods, vehicles or plant belonging to the Customer.

"Delivery Location": has the meaning set out in clause 4.2.

"Force Majeure Event": has the meaning given to it in clause 18.1(a).

"Goods": the goods (or any part of them) set out in the Order.

"Goods Specification": any specification for the Goods, including any relevant plans, drawings, data, information (including but not limited to data to be uploaded on to the Goods) provided by the Customer or by a third party on behalf of the Customer to KOREC.

"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.

"KOREC": means Precise Construction Instruments Limited trading as KOREC Group of 34 Grafton Street, Dublin 2 registered in Ireland with company number 228469..

"KOREC Equipment": means the items of equipment supplied on hire during the provision of the Services, as set out in the Order (including all replacements, renewals of such equipment and all related accessories, manuals or instructions provided for it).

"Order": 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 KOREC's quotation, or overleaf, as the case may be.

"Services": the services supplied by KOREC to the Customer as set out in the Order.

"Services Specification": any specification for the Services and / or the KOREC Equipment, including any relevant instructions, drawings, measurements, data, information (including but not limited to data to be formatted and uploaded on to the KOREC Equipment by KOREC) provided by the Customer or by a third party on behalf of the Customer to KOREC.

"Term" the period of time during which the Services and / or the KOREC Equipment are supplied to the Customer as set out in the Order.

1.2 Construction. In these Conditions, the following rules apply:

(a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(e) a reference to **writing** or **written** includes faxes.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when KOREC issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("Commencement Date").

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

2.4 Any samples, drawings, descriptive matter or advertising issued by KOREC and any illustrations or descriptions of the Services contained in KOREC's catalogues, websites 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.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

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 To the extent that the Goods are to be manufactured, adapted or modified in accordance with the Goods Specification provided by the Customer or by a third party on behalf of the Customer, KOREC shall under no circumstances whatever be liable to the Customer, or any other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Goods Specification.

3.2 The Customer shall indemnify KOREC 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 and other reasonable professional costs and expenses) suffered or incurred by KOREC in connection with any claim made against KOREC arising out of or in connection with KOREC's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 KOREC reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. Delivery of Goods

4.1 KOREC shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after KOREC notifies the Customer that the Goods are ready at the Customer's expense.

4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. KOREC shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide KOREC with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

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4.4 KOREC may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality of Goods

5.1 KOREC warrants that on delivery, and for any period allowed by the Goods' manufacturer ("Warranty Period"), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by KOREC.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing during the Warranty Period within 3 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) KOREC is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by KOREC) returns such Goods to KOREC's place of business at KOREC's cost,

KOREC shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 KOREC shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow KOREC's oral or written instructions as to the storage, installation, commissioning, calibration, use or maintenance of the Goods or (if there are none) good trade practice;

(c) the defect arises as a result of KOREC following any drawing, design or Goods Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of KOREC;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

(f) the Goods differ as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, KOREC shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by KOREC under clause 5.2.

6. Supply of Services

6.1 KOREC shall provide the Services (including any KOREC Equipment) to the Customer in accordance with the Contract and the Order in all material respects.

6.2 KOREC shall use all reasonable endeavours to meet any performance or provision dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.3 KOREC shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and KOREC shall notify the Customer in any such event.

6.4 KOREC warrants to the Customer that the Services will be provided using reasonable care and skill.

7. Software

7.1 Where the Services include software (including access to data via websites / portals) then the following terms apply to these Services:

(a) KOREC undertakes to use its best endeavours to ensure all software is error free and available without interruption. However KOREC cannot guarantee this and the Customer acknowledges this.

(b) Customers may be required to provide information including user details in order to access various software. The Customer warrants that all such information be accurate and kept up to date. Failure to keep any such information up to date may lead to Services not functioning correctly or being updated.

(c) If a Customer suspects that their account details have been compromised, they must notify KOREC immediately and KOREC will take steps to suspend that access until corrective action can be taken.

(d) Should a Customer fail to pay any amounts due to KOREC, KOREC has the right to suspend or cancel any software or subscription services until cleared funds have been received.

(e) Where certain software allows Customers to upload data that may then be hosted on KOREC platforms, Customers must ensure that such content is not unlawful, likely to cause offence or otherwise be deemed inappropriate (at KOREC's discretion). Any content must also be virus free and not contain any other software or programs that may disrupt KOREC's systems (or those of its third party suppliers). KOREC reserves the right to remove or delete any such content at its absolute discretion.

8. KOREC Equipment

8.1 KOREC warrants that KOREC Equipment shall substantially conform in all material respects with their description and be fit for any purpose held out by KOREC. KOREC shall use reasonable endeavours to remedy any material defects in KOREC Equipment which manifests itself during the Term, provided that:

(a) the Customer notifies KOREC immediately of any of KOREC Equipment becoming defective or faulty;

(b) KOREC is permitted to make a full examination of the alleged defect or fault;

(c) the defect or fault did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than KOREC's authorised personnel; and

(e) the defect is not attributable to Services Specification and the defect is directly attributable to defective material, workmanship or design.

8.2 Before each use the Customer shall inspect and test the KOREC equipment.

9. Title and risk

9.1 The risk in the Goods shall pass to the Customer on completion of delivery.

9.2 Title to the Goods shall not pass to the Customer until KOREC has received payment in full (in cash or cleared funds) for:

(a) the Goods; and

(b) any other Services or goods that KOREC has supplied to the Customer in respect of which payment has become due.

9.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) hold the Goods on a fiduciary basis as KOREC's bailee;

(b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as KOREC's property;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on KOREC's behalf from the date of delivery;

(e) notify KOREC immediately if it becomes subject to any of the events listed in clause 16.1(b) to clause 16.1(l); and

(f) give KOREC such information relating to the Goods as KOREC may require from time to time.

9.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 16.1(b) to clause 16.1(l), or KOREC reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy KOREC may have, KOREC may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

9.5 KOREC Equipment shall at all times remain the property of KOREC, and the Customer shall have no right, title or interest in or to KOREC Equipment (save the right to possession and use of KOREC Equipment subject to the terms of this Contract).

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9.6 The risk of loss, theft, damage or destruction of KOREC Equipment shall pass to the Customer on Delivery. KOREC Equipment shall remain at the sole risk of the Customer until such time as KOREC Equipment is redelivered to or collected by KOREC. In the event of liability under this clause, the Customer shall replace the relevant KOREC Equipment with a new replacement to KOREC's satisfaction (being full list price).

10. Customer's obligations

10.1 The Customer shall:

- (a) ensure that the terms of the Order, the Goods Specification and Services Specification are complete and accurate;
- (b) co-operate with KOREC in all matters relating to the Services;
- (c) provide KOREC, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by KOREC to provide the Services;
- (d) provide KOREC with such information and materials as KOREC requires (including but not limited to the Services Specification) to supply the Services, and ensure that such information is accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (f) keep and maintain, at its own expense, all KOREC Equipment at the Customer's premises in safe custody at its own risk, maintain KOREC Equipment in good condition until returned to KOREC, use the KOREC Equipment in accordance with all of KOREC's instructions and not dispose of or use KOREC Equipment other than in accordance with KOREC's written instructions or authorisation;
- (g) at all times keep KOREC Equipment in its possession or control and keep KOREC informed of its location;
- (h) keep and maintain insurance for KOREC Equipment against all usual risks of loss, damage or destruction by fire, theft or accident and against such other or further risks relating to KOREC Equipment which may be required by law. In the event of a claim pursuant to this Contract, the Customer shall replace the relevant KOREC Equipment with a new replacement to KOREC's satisfaction (being full list price) and in the intervening period, the Customer shall continue to pay all charges in relation to KOREC Equipment which is lost, damaged or destroyed;
- (i) give immediate written notice to KOREC in the event of any loss, accident or damage to KOREC Equipment or arising out of or in connection with the Customer's possession or use of KOREC Equipment;
- (j) make no alteration to KOREC Equipment or remove any existing components without the prior written consent of KOREC;
- (k) not, without prior written consent of KOREC, part with control of, sell or offer for sale, underlet or lend KOREC Equipment or to allow the creation of a mortgage, charge, lien or other security interest in respect of it;
- (l) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of KOREC in KOREC Equipment, and when KOREC Equipment has become affixed to any land, vehicle or building the Customer must take all necessary steps to ensure that KOREC may enter such land vehicle or building and recover KOREC Equipment both during the term of this Contract and for a reasonable period thereafter;
- (m) ensure that all the times KOREC Equipment remains identifiable as being KOREC's property and wherever possible shall ensure that a visible sign to that effect is attached to KOREC Equipment; and
- (n) not suffer or permit KOREC Equipment to be confiscated seized or taken out of its possession or control under any distress, execution or other legal process, but if KOREC Equipment is so confiscated, seized or taken, the Customer shall notify KOREC and the Customer shall at its sole expense use its best endeavours to procure an immediate release of KOREC Equipment and shall indemnify KOREC on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation.

10.2 The Customer acknowledges that KOREC shall not be responsible or liable for any loss or damage caused by KOREC Equipment arising out of or in connection with any negligence, misuse, mishandling of KOREC Equipment or otherwise caused by the Services Specification, the Customer or its officers, employees, agents and contractors and the Customer undertakes to indemnify KOREC on demand against the same and against all liabilities, losses, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with the Services Specification and /or any failure by the Customer to comply with the terms

of this Contract or any applicable guidelines, regulation or industry best practice.

10.3 If KOREC's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

- (a) KOREC shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays KOREC's performance of any of its obligations;
- (b) KOREC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from KOREC's failure or delay to perform any of its obligations as set out in this clause 10.3; and
- (c) the Customer shall reimburse KOREC on written demand for any costs or losses sustained or incurred by KOREC arising directly or indirectly from the Customer Default.

11. Charges and payment

11.1 The price for Goods and the Services shall be the price set out in the Order or, if no price is quoted, the price set out in KOREC's published price list as at the date of delivery. The price of the Goods and/or the Services is exclusive of all costs and charges of packaging, insurance, transport which shall be paid by the Customer when it pays for the Goods and/or the Services.

11.2 Hire charges for KOREC Equipment are payable on a weekly basis (comprising non-divisible units of 7 days) from the date the KOREC Equipment leaves KOREC's premises until the date of their return from the Customer during normal office hours.

11.3 KOREC reserves the right to:

- (a) increase its standard fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. KOREC will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify KOREC in writing within 1 week of the date of KOREC's notice and KOREC shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 weeks written notice to the Customer; and
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to KOREC that is due to:
 - (i) any factor beyond the control of KOREC (including foreign exchange fluctuations, increases in taxes and duties, and increases in manufacturers prices or costs, labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification;
 - (iii) any request by the Customer to change the delivery date(s), quantities or types of Services ordered, or the Services Specification; or
 - (iv) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give KOREC adequate or accurate information or instructions in respect of the Goods or Services.

11.4 Where the Services consist of or relate to repairs to or servicing of any Customer Equipment KOREC shall be entitled to levy a storage fee and an inspection fee at its then standard rates whether or not the Customer Equipment is repaired or Serviced. In the event that the Customer Equipment is received by KOREC without full instructions from the Customer and such instructions are not received within 3 months, KOREC shall be entitled to dispose of the Customer Equipment at its discretion.

11.5 In respect of Goods, KOREC shall invoice the Customer on or at any time after completion of delivery.

11.6 In respect of Services, KOREC shall invoice the Customer as set out in the Order or, in the absence of such detail, in accordance with its standard policies and procedures as varied from time to time.

11.7 The Customer shall pay each invoice submitted by KOREC:

- (a) within 30 days of the date of the invoice; and

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(b) in full and in cleared funds to a bank account nominated in writing by KOREC, and time for payment shall be of the essence of the Contract.

11.8 All amounts payable by the Customer 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 KOREC to the Customer, the Customer shall, on receipt of a valid VAT invoice from KOREC, pay to KOREC such additional amounts in respect of VAT as are chargeable on the supply of the Services and/or Goods at the same time as payment is due for the supply of the Services and/or Goods.

11.9 Without limiting any other right or remedy of KOREC, if the Customer fails to make any payment due to KOREC under the Contract by the due date for payment ("Due Date"), KOREC shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Barclay's Bank plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

11.10 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against KOREC in order to justify withholding payment of any such amount in whole or in part. KOREC may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by KOREC to the Customer.

12. Intellectual property rights

12.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall be owned by KOREC.

12.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on KOREC obtaining a written licence from the relevant licensor on such terms as will entitle KOREC to license such rights to the Customer.

12.3 All KOREC Equipment are the exclusive property of KOREC.

13. Confidentiality

A party ("Receiving Party") 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 Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13 shall survive termination of the Contract.

14. Anti-Bribery

14.1 The Customer shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 ("**Relevant Requirements**");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with KOREC's Ethics, Anti-bribery and Anti-corruption Policies and the relevant industry codes on anti-bribery, as KOREC or the relevant industry body may update them from time to time ("**Relevant Policies**");
- (d) promptly report to KOREC any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract; and
- (e) immediately notify KOREC (in writing) if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract);

14.2 Breach of this clause 14 shall be deemed a material breach of this Contract and KOREC shall be entitled to terminate the contract immediately.

14.3 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 14 a person associated with the Customer includes but is not limited to any Subcontractor of the Customer.

15. Limitation of liability:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 15.1 Nothing in these Conditions shall limit or exclude KOREC's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

15.2 Subject to clause 15.1 KOREC shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of goodwill or any indirect or consequential loss arising under or in connection with;

- (a) the Contract;
- (b) incorrect or incomplete data provided by the Customer or its contractor (including but not limited to the data provided in the Goods Specification and the Service Specification) to KOREC;
- (c) the Customer's use of the Goods and/or KOREC Equipment in/on an unsuitable environment (whether foreseen by the Customer or not) or otherwise against the advice of KOREC, any applicable regulation, guidance or good industry practice; and
- (d) KOREC's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid by the Customer to KOREC for the Goods and/or Services which give rise to the claim, plus any costs incurred in respect of delivery and insurance.

15.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

15.4 This clause 15 shall survive termination of the Contract.

16. Termination

16.1 Without limiting its other rights or remedies, each 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 its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing of the breach;
- (b) 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 an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) 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;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

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- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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;
- (g) 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 (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) 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 clause 16.1(b) to clause 16.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

16.2 Without limiting its other rights or remedies, KOREC may terminate the Contract:

- (a) by giving the Customer 1 months' written notice for the supply of Goods; or
- (b) with immediate effect for the supply of Services; or
- (c) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract or any other contract on the due date for payment.

16.3 Without limiting its other rights or remedies, KOREC shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and KOREC if:

- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 16.1(b) to clause 16.1(l), or KOREC reasonably believes that the Customer is about to become subject to any of them.

17. Consequences of termination

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to KOREC all of KOREC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, KOREC shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of KOREC Equipment. If the Customer fails to do so, then KOREC may enter the Customer's premises or vehicles and take possession of them. Until they have been returned, the Customer shall continue to be liable for all charges payable for the KOREC Equipment under the Contract and be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

18. General

18.1 Force majeure:

- (a) For the purposes of this Contract, "Force Majeure" **Event** means an event beyond the reasonable control of KOREC including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of KOREC or any third 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 KORECs or subcontractors.

- (b) KOREC shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents KOREC from providing any of the Services and/or Goods for more than 4 weeks, KOREC shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

18.2 Assignment and subcontracting:

- (a) KOREC may at any time assign, transfer, charge, 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.
- (b) The Customer shall not, without the prior written consent of KOREC, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 18.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

18.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

18.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.6 No partnership: 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.

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

18.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by KOREC.

18.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Irish law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Ireland.