

KERLOCH OIL TOOLS LIMITED STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

The Customer's attention is particularly drawn to the provisions of clause 8.

1. INTERPRETATION

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

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

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 11.7.

Contract: the contract between Kerloch and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from Kerloch.

Deliverables: the deliverables set out in the Order to be produced by Kerloch for the Customer.

Goods: any goods belonging to a Customer on, or in relation to which, Kerloch is to provide Services.

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.

Kerloch: Kerloch Oiltools Limited, a private limited company registered in Scotland with company number SC395299.

Order: the Customer's order for Services as set out in the Customer's purchase order form and accepted by Kerloch in writing.

Premises: Kerloch's premises at Woodside Road, Bridge of Don, AB23 8EF or such other premises as Kerloch may indicate to the Customer in writing.

Scrap Material: any off-cuts or scrap material derived from Goods in the process of performing the Services.

Services: the services, including the Deliverables, supplied by Kerloch to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by Kerloch to the Customer.

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 personal representatives, 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 and e-mails.

2. BASIS OF CONTRACT

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

2.2 The Order shall only be deemed to be accepted when Kerloch 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 Kerloch which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by Kerloch, and any descriptions or illustrations contained in Kerloch's catalogues or brochures, 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.

2.5 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 Any quotation given by Kerloch shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. SUPPLY OF SERVICES

3.1 Kerloch shall supply the Services to the Customer in accordance with the Specification in all material respects.

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

3.3 Kerloch 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 Kerloch shall notify the Customer in any such event.

3.4 Kerloch warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer 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 Kerloch in all matters relating to the Services;
- (c) provide Kerloch with such information and materials as Kerloch may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) arrange for delivery of the Goods to the Premises and be responsible in all respects for any costs associated therewith.
- (e) Arrange for uplift of Goods from the Premises within a maximum of 7 days from the date of receipt of Kerloch's invoice in respect of the Services relating to those Goods or any notification of termination in accordance with clause 9 of these conditions. Where the Customer fails to uplift the Goods within such 7 day period Kerloch shall be entitled to, in its sole discretion, either:
 - (i) arrange, at the cost and expense of the Customer, for removal of the Goods from the Premises and storage at a

third party site until such time as the Customer collects the goods therefrom. The Customer agrees to pay all charges associated with such uplift and storage of the Goods together with a commercially reasonable service charge (payable to Kerloch) in respect of the arrangement of the same and which shall not exceed 20% of the storage and uplift costs; or

- (ii) Charge a daily storage rate for the storage of the Goods at the Premises.
 - (f) Arrange for uplift of Scrap Materials from the Premises within a maximum of 14 days from the date of receipt of Kerloch's invoice in respect of the Services relating to those Scrap Materials. Where the Customer fails to uplift the Scrap Materials within such 7 day period the Scrap Materials shall be deemed to be forfeited to Kerloch and the Customer agrees that Kerloch shall be entitled, in its sole discretion, to dispose of such Scrap Materials in such manner as it sees fit, without any obligation to account to the Customer for any proceeds arising from such disposal.
- 4.2 If Kerloch's performance of any of its obligations under the Contract 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) Kerloch 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 Kerloch's performance of any of its obligations;
 - (b) Kerloch shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Kerloch's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Customer shall reimburse Kerloch on written demand for any costs or losses sustained or incurred by Kerloch arising directly or indirectly from the Customer Default (including, without limitation, any losses arising from a failure to arrange timeous collection of Goods in accordance with clause 4.1 (f)).

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be calculated, as set out in the Order;
- 5.2 Kerloch shall invoice the Customer on completion of the Services.
- 5.3 The Customer shall pay each invoice submitted by Kerloch:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Kerloch, and

time for payment shall be of the essence of the Contract.

- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Kerloch to the Customer, the Customer shall, on receipt of a valid VAT invoice from Kerloch, pay to Kerloch 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.
- 5.5 Without limiting any other right or remedy of Kerloch, if the Customer fails to make any payment due to Kerloch under the Contract by the due date for payment (**Due Date**), Kerloch shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Clydesdale Bank plc 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 monthly.
- 5.6 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 Kerloch in order to justify withholding payment of any such amount in whole or in part. Kerloch may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Kerloch to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Kerloch.
- 6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Kerloch obtaining a written licence from the relevant licensor on such terms as will entitle Kerloch to license such rights to the Customer.

7. 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 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 8.1 Nothing in these Conditions shall limit or exclude Kerloch'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; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

- 8.2 Subject to clause 8.1:
- (a) Kerloch shall under no circumstances whatever be liable to the Customer, whether in contract, delict (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 Contract; and
 - (b) Kerloch's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the Charges in respect of the Services giving rise to the Liability.

- 8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 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 the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- 9.2 Without limiting its other rights or remedies, Kerloch may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, Kerloch may terminate the Contract with immediate effect by giving written notice to the Customer if following inspection at the Premises, in Kerloch's reasonable opinion, the Goods do not conform to the specification previously notified to Kerloch for the purposes of estimating the Charges. In such circumstances the Customer shall be liable for all costs associated with uplifting the Goods from the Premises and Kerloch shall be entitled to charge an inspection fee per item.
- 9.4 Without limiting its other rights or remedies, Kerloch shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and Kerloch if the Customer becomes subject to any of the events listed in clause 9.1 or Kerloch reasonably believes that the

Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Kerloch all of Kerloch's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Kerloch shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or 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
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. GENERAL

11.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Kerloch including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Kerloch or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) Kerloch 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 Kerloch from providing any of the Services for more than four weeks, Kerloch shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11.2 Assignment and subcontracting:

- (a) Kerloch 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 or agent.

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

11.3 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 the address referred to above or, if sent by pre-paid 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 11.3 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.

11.4 Waiver:

- (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 do not exclude rights provided by law.

11.5 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.

- 11.6 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.
- 11.7 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 Kerloch.
- 11.8 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, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.