

J.F. McKenna Limited - Terms and Conditions for supply of Maintenance Services

All requests or orders made by you (the “**Buyer**”) for the provision of repair and/or maintenance services by J.F. McKenna Limited, 66 Cathedral Road, Armagh, Northern Ireland, BT61 8AE (the “**Company**”) as agreed between the parties (“**Services**”), including any spare parts or goods supplied as part of the Services (“**Goods**”), are subject to the terms and conditions set out below.

The Services shall be agreed in the following manner: the Buyer shall provide the Company with a request or order for the Services, setting out the requirements and specifications of the Services which it is requesting from the Company (“**Specification**”), including a description of what work is to be done and the dates by which it is requested to be started and finished and such other information as the Company may request to allow the Company to provide the Services.

Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 days from its date of issue. Once accepted by the Company, each request or order for the provision of the Goods and Services (incorporating these terms and conditions) shall constitute a contract between the Company and the Buyer (the “**Contract**”).

GENERAL

1. (a) These terms and conditions apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties with reference to the Goods and Services with which the Contract is concerned. Without prejudice to the generality of the foregoing, the Company will not be bound by any standard or printed terms tendered by the Buyer. No terms or conditions endorsed upon, delivered with or contained in the Buyer’s order, confirmation of order,

specification or other document will form part of the Contract with the Company.

(b) No variations or additions to these terms shall have any effect unless such variations and/or additions have been agreed in writing by the Company and the Buyer. Accordingly, save as aforesaid, none of the Company’s employees or agents is authorised to vary these terms by oral agreement, representation or otherwise howsoever.

(c) Cancellation by the Buyer of any order, or part thereof, may be accepted by the Company but only before performance/delivery by agreement and on condition that the Buyer agrees to discharge, and discharges all costs and expenses incurred by the Company consequent on such cancellation.

(d) The Company 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.

PRICE

2. (a) Unless any fixed quotation is provided in writing, the price for the Services shall be invoiced by the Company on a time and materials basis at the Company’s then prevailing hourly rates (including mileage, out of hours and overnight expenses), which are available on request or on its website at <http://www.jfmckenna.com/terms.html>.

(b) The Company’s list prices for the Goods, which are available on request, current at the date of delivery will apply and shall be payable in accordance with the payment terms set out in condition 3 below.

(c) Unless otherwise stated by the Company in writing the Company’s rates and prices:

(i) are quoted exclusive of Value Added Tax (which shall be payable by the Buyer, in addition to the price for Goods or Services where applicable); and

(ii) are subject to variation without prior notice.

(d) In the event that any discounted price is offered to the Buyer for the Goods, then that discounted price shall be conditional upon receipt of payment in full for the Goods on or before the date specified by the Company as attaching to such discounted price PROVIDED THAT if payment in full is not received on or before such date, the Company reserves the right to withdraw such discounted price and to apply the Company's list prices for the Goods current at the date of delivery and seek payment in accordance with the payment terms set out in condition 3 below.

(e) Unless otherwise agreed by the Company in writing the price for the Goods excludes the cost of carriage, insurance, loading and unloading which the Buyer will pay in addition when it is due to pay for the Goods.

PAYMENT TERMS

3.(a) The price for the Goods and the Services shall be due upon completion of the Services and shall be paid by the Buyer no later than within 28 days of the date on which the Services are completed by the Company (the "**Due Date**").

(b) If payment in full is not received by Company on the Due Date, then the Buyer will be liable to pay interest to the Company on such sum from the due date at the Bank of England base rate plus 5% per annum, accruing daily, until paid in full whether before or after any judgment. The Buyer will also reimburse any bank fees and/or charges incurred by the Company in the operation of this account. The time of payment of the Company's invoice shall be of the essence.

(c) The Company reserves the right to refuse to supply the Buyer or deliver Goods on foot of orders thereof previously accepted by the Company from the Buyer, if:

(i) The Buyer's account is overdue or its general credit standing is unsatisfactory; and/or

(ii) The Buyer makes any voluntary arrangements with its creditors being a

company or (being an individual or firm) commits an act of bankruptcy or goes into liquidation (or ceases or threatens to cease to carry on business) or if an encumbrancer takes possession, or a receiver or examiner is appointed, of or over any of the property or assets of the Buyer or the Company reasonably apprehends that any of the events is about to occur in relation to the Buyer and notifies the Buyer accordingly. Furthermore, and without prejudice to the foregoing, on the happening of any such event all unpaid accounts shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

(d) The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.

BUYER'S OBLIGATIONS

4. (a) The Buyer shall:

(i) co-operate with the Company in all matters relating to the Services;

(ii) provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Buyer's premises, office accommodation, data and other facilities as requested by the Company;

(iii) provide, in a timely manner, such documents, materials and other information as the Company may request and ensure that it is accurate in all material respects;

(iv) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;

(v) inform the Company in advance of all health and safety rules and regulations and any other reasonable security requirements that apply at the Buyer's premises;

(vi) ensure that all Buyer's equipment which the Company needs to operate or use in provision of the Services is in good working

order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom and local standards or requirements;

(vii) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to receipt of the Services (if any), in all cases before the date on which the Services are to start;

(viii) ensure that all waste packaging resulting from the provision of Goods and Services under this Contract is disposed of in accordance with all local laws and regulations in force from time to time;

(ix) ensure that the terms of its order and any information it provides in the Specification are complete and accurate; and

(x) (to the extent applicable) keep and maintain all materials, equipment and tools, documents and drawings, specifications, information and data and other property of the Company ("**Company Materials**") at the Buyer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

(b) The Buyer shall not, at any time from the date of the Contract to the expiry of twelve months after the termination of the Contract, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services.

(c) If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("**Buyer Default**"):

(i) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or

delays the Company's performance of any of its obligations; and

(ii) the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

DELIVERY

5. (a) The times and/or dates for supply of the Goods or Services specified or provided by the Company are estimates for planning purposes only and time of delivery shall not be of, or be made of, the essence by notice or otherwise.

(b) Each delivery of Goods shall be considered to be a separate and independent transaction.

(c) The Company shall deliver the Goods to the Buyer by such method of carriage as the Company shall choose.

(d) The Company shall not be liable for any direct, indirect or consequential loss, costs, damages, charges or expenses caused directly or indirectly by any delay in delivery or non-delivery or loss of the Goods (or any part thereof).

(e) In the event of the Buyer failing to accept delivery of the Goods on the date stipulated for delivery, the Company shall be at liberty to impose an additional charge for handling and storage of the Goods until such time as delivery is accepted.

(f) The Buyer shall indemnify the Company for any unusual or abnormal delivery costs incurred by the Company including (without prejudice to the generality of the foregoing) costs incurred due to delivery of the Goods having to be effected outside normal working hours, or in part loads.

(g) The Buyer will indemnify the Company against any liability (whether strict or otherwise) for any claim, loss or expense, direct or indirect, on account of any injury, disease or death of persons (including the Buyer's employees) or damage to property (including Buyer's) arising out of the Buyer's transportation, storage, handling, sale, use in any manufacturing process or disposal of the Goods.

RETURNS

6. (a) Goods supplied by the Company to the Buyer shall not be returnable by the Buyer to the Company without the Company's written consent.

(b) An application for consent to such return will be considered by the Company only if such application is received within 3 days of delivery, such application to be in writing, together with a full written explanation of the reason for the return so requested.

(c) In the event of the Company's consenting to such return, the Buyer's account will be credited by the Company at the price paid by the Buyer for the Goods less 15% handling charge, such charge (as Buyer hereby acknowledges) representing a genuine pre-estimate of the cost of the Company of accepting such return.

RISK

7. Risk of damage to or loss of Goods shall pass to the Buyer at the time of delivery of the Goods or if the Buyer wrongfully fails to take delivery of such Goods, at the time when the Company has tendered delivery of such Goods.

RESERVATION OF TITLE

8. (a) Notwithstanding delivery and passing of risk therein, or any other provision of these conditions, neither the legal nor beneficial property in Goods supplied by the Company to the Buyer shall pass from the Company to the Buyer until payment in full (in cash or cleared funds) has been received by the Company.

(b) The Buyer shall hold the Goods as bailee for the Company but, notwithstanding the foregoing, and subject to these terms and conditions, shall be at the liberty to re-sell or to use the Goods in normal course of business. The proceeds of any such sale shall be held by the Buyer for the account of the Company and, to be applied first in payment of all sums due from the Buyer to the Company and, to that end, the Buyer irrevocably appoints the Company its Attorney for the purpose of perfecting the

Company's title to any such proceeds of sale.

(c) The Buyer shall not create any charge, mortgage, lien or encumbrance adverse to the Company's title to the Goods; notwithstanding the foregoing, if the Buyer does so, all monies owing by the Buyer to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.

(d) Pending the passing of property in the Goods to the Buyer, the Goods shall be kept by the Buyer separate from those of the Buyer or of third parties and shall be properly stored, handled, protected, transported, complete, in good condition, adequately insured and in such manner as shall make them readily identifiable as the property of the Company.

(e) Until such time as property in the Goods passes to the Buyer, the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company, and if the Buyer fails to do so, forthwith to enter upon any premises of the Buyer or of any other third party where the Goods are stored or may be, and thereby to repossess the Goods.

INTELLECTUAL PROPERTY RIGHTS

9. (a) As between the Buyer and the Company, any and all intellectual property rights including patents, copyright and related rights, design rights, trade marks, service marks, trade, business and domain names, know-how and confidential information and any other intellectual property rights whether registered or unregistered which may exist anywhere in the world, and including any applications for any of the foregoing arising from or in connection with the provision of the Services shall be owned by the Company.

(b) The Buyer acknowledges that, in respect of any third party intellectual property rights, the Buyer's use of any such intellectual property rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to

the Buyer.

CONFIDENTIALITY AND THE COMPANY'S PROPERTY

10. (a) The Buyer 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 Buyer by the Company, its employees, agents or sub-contractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors or professional advisors as need to know the same for the purpose of discharging the Buyer's obligations to the Company, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Buyer. The Buyer may disclose such of the Company's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

(b) All Company Materials shall, at all times, be and remain the exclusive property of the Company.

WARRANTIES AND LIABILITY - THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11. (a) The Company shall not be liable to the Buyer for any direct, indirect, special or consequential loss or damage incurred by the Buyer or any third party, or, be deemed to be in breach of the Contract, by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to supply of the Goods or Services if the delay or failure was due to the act or omission of the Buyer (or any third party engaged by the Buyer) or any other cause beyond the Company's reasonable control (including without limitation, on-site delays or inclement weather or site conditions).

(b) The Company warrants to the Buyer that:

(i) it will perform the Services with reasonable care and skill; and

(ii) subject to the provisions of condition 11(c) below, the Company warrants that the Goods will at the time of delivery be free from defects in materials and workmanship.

(c) The warranty in condition 11(b) (ii) is given by the Company subject to the following conditions:

(i) The Company shall be under no liability in respect of any defect in the Goods or Services arising from any drawing, design or specification supplied by the Buyer, or otherwise arising from any Buyer Default.

(ii) The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods or Services without the Company's approval.

(iii) The Company shall be under no liability under the warranty in condition 11(b) (ii) (or any other warranty, condition or guarantee) if the total price for the Goods or Services has not been paid by the Due Date.

(iv) The warranty in condition 11(b) (ii) does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

(d) Subject as expressly provided in these terms and conditions, and except where the Goods or Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the full extent permitted by law, including without limitation terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982.

(e) A claim by the Buyer which is based on any defect in the quality or condition of the Goods or Services or their failure to correspond with any specifications shall

(whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or where the defect or failure was not apparent on reasonable inspection within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

(f) Where a valid claim in respect of any of the Goods or Services which is based in a defect in the quality or condition of the Goods or Services or their failure to meet any specification, is notified to the Company in accordance with these terms, the Company may replace the Goods or re-perform the Services (or the part in question) free of charge or at the Company's sole discretion refund to the Buyer the price of the Goods or Services (or a proportionate part of the price) in which case the Company shall have no further liability to the Buyer.

(g) Nothing in these terms and conditions limits or excludes the liability of the Company for:

(i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
(ii) fraud or fraudulent misrepresentation; or
(iii) any other liability which cannot be excluded or limited by law, including breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

(h) The Company shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses arising out of or in connection with supply of the Goods and the Services, including without limitation, any delay in performing or failure

to perform the Services or supply the Goods.

(i) Other than in relation to Condition 11(g), the entire liability of the Company in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with the Contract shall not exceed an amount equal to the amount due by the Buyer for supply of the Goods and the Services.

TERMINATION

12. (a) The Contract shall terminate automatically on completion of the Services by the Company as agreed between the parties.

(b) Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

(i) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

(ii) an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or documents are filed with the Court for the appointment of an administrator, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder (as defined in the Insolvency (Northern Ireland) Order 1989), or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt; or

(iii) the other party ceases to trade or threatens to cease to trade.

(c) Any termination of the Contract shall be

without prejudice to the Company's right to payment under condition 3(a).

CONSEQUENCES OF TERMINATION

13. On termination of the Contract for any reason:

(a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;

(b) the Buyer shall return all of the Company Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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 survive termination shall continue in full force and effect, including without limitation conditions 1, 4(b), 10, 11(a), 11(d) – 11(f) (inclusive) and 13 to 23 (inclusive).

DESCRIPTIVE MATERIAL AND ILLUSTRATIONS

14. All illustrations, drawings, catalogues, directories and other descriptive material issued by the Company are of a generally informative nature only and do not form part of any specification or description of Goods or Services (or the Contract) or have any contractual force except to the extent expressly incorporated therein in writing. For the avoidance of doubt, the Buyer hereby affirms that it did not in any way rely on any such material when entering into the Contract.

COMMUNICATIONS

15. (a) All communications between the parties about the Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

(i) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(ii) (in the case of the communications to the Buyer) to such address as is notified to the Company by the Buyer.

(b). Communications shall be deemed to have been received by the Buyer:

(i) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

(ii) if delivered by hand, on the day of delivery; and

(iii) if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

SEVERABILITY

16. In the event any one of the provisions contained in the Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Contract but the Contract shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the Contract shall be carried out as nearly as possible according to its original terms and intent.

WAIVER

17. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

ASSIGNMENT AND OTHER DEALINGS

18. (a) The Company may at any time assign, transfer, mortgage, 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 Buyer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

RIGHTS OF THIRD PARTIES

19. The parties to the Contract do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999, or otherwise, by any person that is not a party to it.

ENTIRE AGREEMENT

20. The Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes all prior agreements, negotiations and discussions between the parties relating to it. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

FORCE MAJEURE

21. (a) For the purposes of this Contract,

“Force Majeure Event” means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company 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) The Company shall not be liable to the Buyer 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 the Company from providing any of the Services or Goods for more than 2 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

NO PARTNERSHIP OR AGENCY

22. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

LAW

23. These terms and conditions will be construed in accordance with the laws of Northern Ireland. The parties submit to the jurisdiction of the courts of Northern Ireland.