

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

The Customer's attention is particularly drawn to the provisions of clause 10.

### 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 6.

**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 13.8.

**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 Oil Tools Ltd, 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 20 Business 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. RISK IN GOODS**

- 4.1 The risk in the Goods shall:
- (a) remain with the Customer until full delivery of the Goods to the Premises, including during the act of delivery;
  - (b) be the responsibility of Kerloch only whilst in Kerloch's sole care, custody and control; and
  - (c) pass back to the Customer at the time of full uplift of the Goods from the Premises, including during the act of uplift.
- 4.2 Kerloch shall not be liable for and the Customer shall indemnify Kerloch 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 professional costs and expenses) suffered or incurred by Kerloch in connection with:
- (a) the transit, uplift or delivery of the Goods;
  - (b) the risk in the Goods when they are not in the sole care, custody and control of Kerloch;
  - (c) any licence, permit or other regulatory approval or consent required in connection with the Goods or the transit, uplift or delivery of the Goods;
  - (d) any costs, fees, levies, charges or other similar amounts payable in respect of the Goods or the transit, uplift or delivery of the Goods;

- (e) any direct, indirect or consequential losses relating to the Goods or the transit, uplift or delivery of the Goods; or
- (f) claims in respect of third party loss or damage relating to the Goods or the transit, uplift or delivery of the Goods.

## **5. CUSTOMER'S OBLIGATIONS**

### **5.1 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 5 Business 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 11 of these Conditions. Where the Customer fails to uplift the Goods within such period of 5 Business Days 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 10 Business 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 5 Business 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.

### **5.2 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 5.2; 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 5.1(e)).

## **6. CHARGES AND PAYMENT**

- 6.1 The Charges for the Services shall be calculated, as set out in the Order;
- 6.2 Kerloch shall invoice the Customer on completion of the Services.
- 6.3 The Customer shall pay each invoice submitted by Kerloch:
- (a) within 30 calendar 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.
- 6.4 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.
- 6.5 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.
- 6.6 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.

- 6.7 The parties agree that Kerloch may review and increase the Charges, provided that such Charges cannot be increased more than once in any 12 month period. Kerloch shall give the Customer written notice of any such increase 20 Business Days before the proposed date of that increase. If such increase is not acceptable to the Customer, it may, within 10 Business Days of such notice being received or deemed to have been received in accordance with clause 13.3, terminate the agreement by giving 20 Business Days written notice to Kerloch.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Kerloch.
- 7.2 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.
- 7.3 The Customer shall indemnify Kerloch 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 professional costs and expenses) suffered or incurred by Kerloch in connection with any claim made against Kerloch for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the provision of the Services and the use of the Goods by Kerloch. This clause 7 shall survive termination of the Contract.

## **8. 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 8 shall survive termination of the Contract.

## **9. COMPLIANCE WITH RELEVANT REQUIREMENTS**

- 9.1 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 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 the [Kerloch's ABC policy] (annexed to this Contract as a schedule) as Kerloch may update them from time to time (**Relevant Policies**);
- (d) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 9.1(b), and will enforce them where appropriate;
- (e) promptly report to Kerloch any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this Contract;
- (f) immediately notify Kerloch (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 direct or indirect owners, officers or employees at the date of this Contract); and
- (g) within 20 Business Days of the date of this Contract, and annually thereafter, certify to Kerloch in writing signed by an officer of the Customer, compliance with this clause 9 by the Customer and all persons associated with it under clause 9.2. The Customer shall provide such supporting evidence of compliance as Kerloch may reasonably request.

9.2 The Customer shall ensure that any person associated with the Customer who is providing the Goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 9 (**Relevant Terms**). The Customer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Kerloch for any breach by such persons of any of the Relevant Terms.

9.3 The Customer warrants and represents that:

- (a) neither the Customer nor any of its officers, employees or other persons associated with it:
  - (i) has been convicted of any offence involving bribery or corruption, fraud or dishonesty;
  - (ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements;or

- (iii) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

9.4 Breach of this clause 9 shall be deemed a material breach under clause 11.

9.5 For the purpose of this clause 9, 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 9 a person associated with the Customer includes but is not limited to any subcontractor of the Customer.

9.6 The Customer shall indemnify Kerloch against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, Kerloch as a result of any breach of this clause 9 by the Customer.

9.7 Regardless of any other provision in this agreement, Kerloch shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Requirements.

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

10.1 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).

10.2 Subject to clause 10.1:

- (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.



- (c) Kerloch do not take liability for costs in relation to rejected torque/make-up of the customers equipment unless Kerloch's work scope was to machine both threads being torque/make-up together. This is due to Kerloch not being able to fully validate previous manufacture or handling during the life of the part.

10.3 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.

10.4 This clause 10 shall survive termination of the Contract.

## **11. TERMINATION**

11.1 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 5 Business 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;
- (f) 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);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

- (i) 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 the other party's assets and such attachment or process is not discharged within 10 Business Days;
  - (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 11.1(b) to clause 11.1(i) (inclusive); or
  - (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 11.2 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.
- 11.3 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.
- 11.4 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 11.1(b) to clause 11.1(i), 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.

## **12. 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.

### 13. GENERAL

#### 13.1 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.

#### 13.2 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.

#### 13.3 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 13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 Third party rights: Save to the extent expressly set out in this Contract, this Contract is not intended nor shall it create any rights, entitlement, claims or benefits enforceable by any person other than the parties and their permitted successors or assignees.

13.8 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 Kerloch.

13.9 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, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.