

# GENERAL TERMS & CONDITIONS OF PURCHASE

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## 1. INTERPRETATION

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

**Business Day** shall mean a day (other than a Saturday, Sunday or public holiday).

**Conditions** shall mean the terms and conditions set out in this document as amended from time to time in accordance with clause 15.11.

**Contract** shall mean any Contract/Agreement between Montracon and the Supplier for the sale and purchase of the Goods or the provision of Services in accordance with these Conditions.

**Montracon** shall mean Montracon, its authorised representatives and successors in title.

**Montracon Material** shall mean all materials, parts, equipment, tools, drawings, Specifications, Software and data owned or part owned by and/or supplied by Montracon.

**Client** or **Clients** shall mean Montracon's Client(s) (including their operators and users) which will utilise the Goods or Services provided by the Supplier.

**Delivery or Deliver or Delivered** shall mean upon completion of unloading the Goods at the destination set out in the Purchase Order or acceptance of the Services as defined in clause 4.3.

**Goods** shall mean the Goods or Services (or any part of them, including without limitation Software) set out in any Purchase Order or Contract.

**Intellectual Property Rights or IPR:** all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer Software, database right, topography 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.

**Party or Parties** shall mean either Montracon, or the Supplier, as the case may be.

**Purchase Order** shall mean Montracon's Purchase Order, or any other communication (including call off schedules and agreements), that requires a delivery of Goods or Services.

**Software** shall mean all computer programs and computer operating systems supplied by the Supplier or procured by the Supplier from a third party which form part of or are necessary for the use of the Goods or Services or are required to be supplied hereunder in conjunction with the Goods or Services, together with any modifications and adaptations thereto.

**Source Code** shall mean program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to maintain, amend and enhance the Software (including the Software) in question without reference to any other person or documentation whether in eye-readable or executable code;

**Specification** shall mean the Specification(s) for the Goods or Services, including any related plans and drawings, which are agreed in writing by Montracon.

**Supplier** shall mean the person or organisation from whom Montracon purchases the Goods or Services.

1.2 **Construction of the Contract.** In these Conditions, unless the context requires otherwise, 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 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) A reference to writing or written includes faxes and electronic mail except where expressly excluded by these conditions.

## **2. BASIS OF CONTRACT**

2.1 These Conditions, and any special terms which may appear on the face of any Purchase Order, and/or separately at the foot of these Conditions, apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, save to the extent that exclusion is prohibited by law. Any special terms appearing on the face of any Purchase Order and/or separately at the foot of these Conditions, shall take precedence over these Conditions.

2.2 The Purchase Order constitutes an offer by Montracon to purchase the Goods or Services in accordance with these Conditions.

2.3 The Purchase Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing a written unqualified acceptance of the Purchase Order; and
- (b) the Supplier doing any act consistent with fulfilling the Purchase Order,

at which point the Contract shall come into existence.

## **3. THE GOODS OR SERVICES**

3.1 The Supplier shall, from the commencement and for the duration of the Contract, including but not limited to any specified warranty period, provide and ensure that the Goods or Services, including any warranty repair or activities shall, where applicable:

- (a) correspond with their description, duration and any applicable Specification(s), drawings, samples and/or other descriptions given by the Supplier; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods or Services Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Montracon expressly or by implication, and conform to the requirements of 3.1 (a) and in this respect Montracon relies on the Supplier's skill and judgement; and shall
- (c) use the best quality goods, materials, standards and techniques, and ensure that all Goods or Services supplied, used by and/or transferred to Montracon, will be free from defects in design, material and workmanship and remain so for a period of no less than (i) twelve (12) months for purchases classified as Commercial Off The Shelf (COTS) and (ii) twenty four (24) months for all other purchases in each case following Delivery, or upon being put into service, or any longer period offered by the Supplier, whichever is the later. For the avoidance of doubt classification shall be at the sole discretion of Montracon Purchasing Department; and
- (d) comply with the provisions and requirements of all applicable EU Regulations, Directives and Standards in effect from time to time including, but not limited to, EU Directives 2002/95/EC (the restriction of the use of certain hazardous substances in electrical and electronic equipment) and 2002/96/EC (waste electrical and electronic equipment). The Supplier shall provide to Montracon documentary evidence of the Goods or Services compliance with applicable EU Regulations and/or Directives and shall further ensure that the Specification complies with and reflects and references any applicable EU Regulations and/or Directives. Compliance with EU Directives shall extend beyond any subsequent enactment of the above-referenced EU Regulations and/or Directives into English Law; and
- (e) comply with all applicable statutory, regulatory and/or requirements relating to the manufacture, labelling, packaging, storage, handling and Delivery of the Goods or Services; and
- (f) if no packaging requirements are set out then this shall be retail trade pack suitable to reach its destination in a condition which renders the Goods or Services fit for purpose; and
- (g) co-operate with Montracon in all matters relating to the Goods or Services, and comply with all reasonable instructions of Montracon; and

- (h) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; and
  - (i) not under any circumstances use personnel who are not authorised to work in the European Union on any Contract with Montracon; and
  - (j) use personnel who are suitably skilled experienced and, where necessary, accredited to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract; and
  - (k) where requested by Montracon, the Supplier shall inform Montracon of any critical experienced member of the Supplier employed on any Montracon work and advise of any change to that member of staff including a mitigation plan on the effect of that change.
  - (l) provide all equipment, tools and vehicles and such other items as are required to provide the Goods or Services; and
  - (m) observe all health and safety rules and regulations and any other security requirements that apply in the provisions of the Goods or Services; and
  - (n) not do or omit to do anything which may cause Montracon to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Montracon may rely or act on the Services.
  - (o) notify Montracon in a reasonable time and give Montracon, at its discretion, reasonable opportunity to make a last time buy of the Goods or the part or parts thereof affected if during the fulfilment of this Contract, and notwithstanding the completion of the Contract, the Supplier becomes aware of any obsolescence that may occur.
- 3.2 The Supplier shall not be entitled to reject any claim made in respect of any defect arising within the period stated in 3.1 (c) above on the basis that Montracon failed to make a claim during such period.
- 3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.4 Montracon and/or its Client shall, with reasonable notice, have the right to inspect and/or test the Goods or Services at the Suppliers' or his sub-contractors premises at any time before Delivery.
- 3.5 If following such inspection or testing carried out under clause 3.4, Montracon considers that the Goods or Services do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Montracon shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.6 Notwithstanding any such inspection or testing carried out under clause 3.4, the Supplier shall remain fully responsible in all respects for the Goods or Services and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Montracon shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 3.7 Where under this Contract, Montracon provides the Supplier with any Montracon Material, Montracon hereby grants the Supplier a non-exclusive, revocable on demand, non transferable licence to use the Montracon Material solely for the purpose of the Contract and such Montracon Material shall be returned to Montracon immediately on completion and/or expiry of the Contract. At Montracon's sole option the use of Montracon Software may be governed by the terms of separate Software licence and to the extent that there is any conflict between these Conditions and such Software licence, the terms of such Software licence shall prevail.
- 3.8 The Supplier shall separately store and identify any Goods and part(s) thereof and (where applicable) Services which are intended for use in the fulfilment of this Contract and/or for which completion of manufacture or productions has been effected and which await delivery to Montracon.
- 3.9 No approval by Montracon of any design furnished by the Supplier shall constitute a waiver by Montracon of the Supplier's obligations hereunder. The warranties of the Supplier, together with its service warranties and

guarantees, shall enure to the benefit of Montracon and/or its Clients, and shall survive inspections, acceptance and payment.

3.10 Where the provision of any Goods or Services requires the Supplier, its employees, agents or sub-contractors to work on Montracon's or its Clients' premises those personnel shall at all times comply with the rules and regulations of Montracon including, but not limited to Health and Safety and access requirements. Montracon reserves the right to remove any personnel from its premises in the event of misconduct or non-compliance with requirements.

#### **4. DELIVERY & ACCEPTANCE**

4.1 The Supplier shall Deliver the Goods or perform such Services at its own risk at the place and on the date(s) specified in the Purchase Order during Montracon's normal business hours, or as instructed by Montracon. Time of Delivery of the Goods or performance of the Services shall be of the essence of this Contract.

4.2 Where applicable, the Supplier shall ensure that:

- (a) the Goods (or where the Services require parts to be Delivered, the parts) are properly packed and secured in such manner as to enable them to reach their destination in a good condition such that the Goods or Services or parts remain fit for their purpose;
- (b) any consignment of Goods or Services shall be accompanied by an Advice Note and/or Release documentation which shall show the Purchase Order number, the description, part number and quantity of the Goods or Services, special storage instructions (where applicable) and, if the Goods or Services are being Delivered by instalments, the outstanding balance of Goods or Services remaining to be Delivered; and
- (c) if the Supplier requires Montracon to return any packaging material to the Supplier, that fact is to be clearly stated on the Advice or Release note. Any such packaging material shall be returned to the Supplier at the cost and risk of the Supplier.

4.3 Acceptance of the Goods shall take place upon being put into service by Montracon or within ten (10) Business Days of receipt of the Goods or such period as may be set out in any relevant Specification whichever is the later excepting COTS purchases for which acceptance shall be within ten (10) Business Days. Acceptance of Services shall be made on approval of the associated applicable documentation resulting from the Service requirements, or where no such documentation is required acceptance of the Service shall be deemed to be made following payment of the relevant invoice(s) unless Montracon has notified the Supplier to the contrary in writing.

4.4 Should the Goods or Services or any part thereof be rejected within the acceptance period, as specified in 4.3 above, Montracon shall be entitled to withhold payment for the rejected Goods or Services. At Montracon's sole option, it may either cancel the whole of the Purchase Order, or the portion of the rejected Goods or Services, or require the Supplier to replace the rejected Goods or Services within ten (10) Business Days or such other period as stipulated by Montracon.

4.5 Rejected Goods shall be made available for the Supplier to collect or shall be returned to the Supplier at the Supplier's cost.

4.6 Any Montracon signature on any Delivery note or other completion documentation accompanying the Goods or Services will not signify acceptance of the quality or quantity of the Goods or Services stated notwithstanding any wording on the Delivery note or other documentation to the contrary.

4.7 If the Supplier Delivers less than one hundred per cent (100%), or more than one hundred per cent (100%), of the total quantity of Goods ordered, Montracon may at its discretion reject the Goods. Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier Delivers more than the quantity of Goods contracted for, and Montracon accepts the Delivery in good faith and not by error, a pro rata adjustment shall be made to the invoice for the Goods.

4.8 The Supplier shall not Deliver the Goods in instalments without Montracon's prior written consent. Where it is agreed that the Goods are to be Delivered by instalments, they may be invoiced and paid for separately in accordance with such agreement. However, failure by the Supplier to Deliver any one instalment on time or at all or any defect in an instalment shall entitle Montracon to the remedies set out in clause 5.

## **5. REMEDIES**

- 5.1 If the Goods or Services are not Delivered on the date they are due as referred to in clause 4.1, or do not comply with the Supplier's obligations set out in clause 3.1 (or clause 5.3), then, without limiting any of its other rights or remedies, Montracon shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods or Services:
- (a) to terminate the Contract;
  - (b) to reject the Goods or Services (in whole or in part) and where appropriate return them to the Supplier at the Supplier's own risk and expense;
  - (c) to require the Supplier to repair or replace the rejected Goods or Services, or to provide a full refund of the price of the rejected Goods or Services;
  - (d) to refuse to accept any subsequent Delivery of the Goods or Services which the Supplier attempts to make;
  - (e) to recover from the Supplier any costs incurred by Montracon in obtaining substitute Goods or Services from a third party; and
  - (f) to claim damages for any other costs, damage, loss or expenses incurred by Montracon which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.2 Without prejudice to the provisions of clauses 4.1, 5.1 and other relevant provisions of this Contract, if the Goods or Services are not Delivered on the due date Montracon may at its option claim or deduct one per cent (1%) of the price of the Goods or Services for each week's delay in Delivery by way of liquidated damages, up to a maximum of twenty five per cent (25%) of the total price of the Goods or Services. The Supplier agrees and acknowledges that this amount for the purposes of this clause 5.2 is a genuine pre-estimate of Montracon's loss.
- 5.3 These Conditions shall apply to any repaired or replacement Goods or Services supplied by the Supplier whether repaired or replaced under warranty or not.

## **6. TITLE AND RISK**

- 6.1 Unless otherwise stated in this Contract, risk in the Goods or Services shall pass to Montracon on completion of Delivery or signature of any relevant agreed acceptance document whichever first occurs.
- 6.2 Title shall pass to Montracon upon receipt of the Goods or upon payment whichever first occurs. Where any Goods are retained by the Supplier for and on behalf of Montracon, title shall pass upon receipt of the Goods at the premises or stored place of the Supplier.

## **7. PRICE AND PAYMENT**

- 7.1 The price of the Goods or Services shall be the agreed price set out in the Contract, or Purchase Order. If no price has been previously quoted, the price shall be agreed, between Montracon and the Supplier prior to the commencement of any activity relating to the supply of Goods or Services.
- 7.2 The price of the Goods or Services is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance, all duties and levies payable and carriage of the Goods or Services to the destination specified by Montracon. No extra charges shall be effective unless agreed in writing by Montracon.
- 7.3 Montracon shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services.
- 7.4 The Supplier shall invoice Montracon after acceptance of the Goods or Services as set out in clause 4.3.
- 7.5 Montracon shall pay correctly rendered invoices within sixty (60) days of the end of the month following receipt of the invoice and any required documentation. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.6 Montracon may, without limiting any other rights or remedies it may have, set off any amount owed to Montracon by the Supplier against any amounts payable by Montracon to the Supplier or any parent or subsidiary or associated entity of the Supplier, whether under this Contract or otherwise.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 Ownership of Background Intellectual Property shall remain unaffected by this Contract. Background IPR shall mean any Intellectual Property Rights which at the outset of this Contract or thereafter are developed by, or become owned by, or otherwise are or come into the possession of either party independently of its activities under this Contract or which are licensed to a party by a third party for the purposes of complying with its obligations under this Contract.
- 8.2 Ownership of any and all Foreground Intellectual Property shall vest exclusively in Montracon and/or its Clients. Foreground IPR shall mean any Intellectual Property Rights generated during the course of the Supplier's activities in the provision of the Goods or Services hereunder. From the moment of its creation, the Supplier hereby undertakes to do all acts and things necessary at its own cost to vest and perfect the vesting of Foreground Intellectual Property in Montracon and/or its Clients, as the case may be.
- 8.3 In respect of any Goods or Services that are Delivered to Montracon under this Contract, the Supplier warrants that it has clear and unencumbered title to all such items, and that at the date of Delivery of such items to Montracon, it will have full and unrestricted rights to transfer all such items to Montracon.
- 8.4 The Supplier hereby assigns to Montracon, with effect from the date hereof, and with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Goods or Services, including for the avoidance of doubt any deliverables.
- 8.5 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt any deliverables, of the Goods or Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 8.6 The Supplier shall, promptly at Montracon's request, do (or procure to be done) all such further acts and things and shall execute all such other documents as Montracon may from time to time reasonably require for the purpose of securing for Montracon the full benefit of the Contract, including but not limited to all rights, title and interest in and to the Intellectual Property Rights assigned to Montracon in accordance with clause 8.4.
- 8.7 The Supplier hereby grants to Montracon, a royalty-free and (save as expressly provided herein) irrevocable, non-exclusive, perpetual licence ("the Supplier licence"), with the power to grant sub-licences to any persons providing services to Montracon and/or its Clients, to use the Background IPR including the associated documentation supplied by the Supplier under this Contract solely for the purposes of using and operating the Goods and Services to the extent necessary to enable Montracon (or such third party to whom this Contract or the rights and obligations hereunder may be assigned, novated or otherwise transferred in compliance with clause 15.1) and its Clients to enjoy full and unrestricted use and benefit of the Goods and Services.
- 8.8 Subsequent to the occurrence of an event listed in 8.9 below, Montracon may sub-licence use of the Supplier's Background IP to any third party solely for the purposes of enabling the third party to provide to Montracon the same or similar Goods and/or Services as the Supplier provided under this Contract to Montracon.
- 8.9 Montracon may take the benefit of the right referred to in 8.8 above on the occurrence of any of the following events: a) should termination of this Contract occur earlier than its expiry date for any reason specified in clause 12.1 or clause 12.2, subject to the sub-licence being for a period not exceeding five (5) years or the Contract expiry date.
- 8.10 The Supplier where applicable and to the extent reasonably possible, shall procure at its cost the grant from such third parties as may be necessary to Montracon of a perpetual, royalty free, non-exclusive, licence to use, access and modify such third party Software and related documentation and all Intellectual Property Rights therein for the purposes of Montracon and its Clients using and enjoying the full benefit of the Goods and the Services and to operationally maintain and operate the Goods and the Services.

## **9. MONTRACON MATERIALS**

9.1 The Supplier acknowledges that all Montracon Material supplied by Montracon to the Supplier and all rights in Montracon Material are and shall remain the exclusive property of Montracon. The Supplier shall keep Montracon Materials in safe custody at its own risk, maintain them in good condition, fair wear and tear excepted, until returned to Montracon, return Montracon Material to Montracon promptly upon Montracon's request and shall not dispose or use the same other than in accordance with Montracon's written instructions or authorisation.

9.2 The licencing provisions of clause 3.7 of this Contract shall apply in respect of Montracon Material.

## **10. INDEMNITY & INSURANCE**

10.1 The Supplier shall indemnify and shall keep Montracon indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Montracon as a result of or in connection with:

- (a) any claim made against Montracon by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (b) any claim brought against Montracon for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Goods or Services to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against Montracon by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or Services, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

10.2 During the term of the Contract and (unless otherwise agreed in writing by Montracon) for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on Montracon's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10.3 Montracon's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **11. CONFIDENTIAL INFORMATION**

11.1 Each Party shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives including all contracts between the Parties which are disclosed to a Party (known as the receiving Party) by the other Party (known as the disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing Party's business, its products or its services which the receiving Party may obtain. The receiving Party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

11.2 Neither party may advertise or in any way publicise any details of this Contract or any dealings between the parties without the prior written agreement with the other party.

11.3 Where any Supplier has signed a separate confidentiality agreement with Montracon for the scope of this Contract, the NDA shall take precedence over this clause.

11.4 This clause 11 shall survive the termination of this Contract for a period of no less than six (6) years.

11.5 Both Montracon and the Supplier shall adhere to the most relevant General Data Protection Regulation or Data Protection Act.



## **12. TERMINATION**

- 12.1 Montracon may at its sole discretion terminate the Contract in whole or in part at any time with immediate effect by giving the Supplier thirty (30) days written notice, whereupon the Supplier shall discontinue all work on the Goods or Services that were intended for the benefit of the Contract. Montracon shall pay for reasonable demonstrable costs paid and committed but shall not be liable for compensation including, but not limited to costs, expenses loss of anticipated profits, loss of anticipated contracts or opportunity, or any indirect or consequential losses.
- 12.2 Montracon may terminate the Contract in the event that the Supplier is in breach of any material obligation under the Contract and if the breach is capable of remedy, the Supplier has failed to remedy such breach within thirty (30) days of written notice to the Supplier requiring remediation of the breach. In such event Montracon shall not be liable for any compensation whatsoever to the Supplier or to any other person or entity including, but not limited to, costs, loss of anticipated profits or any consequential losses
- 12.3 Montracon may at its sole discretion terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:
- (a) the Supplier ceases or threatens to cease or suspend to carry on its business; or
  - (b) the Supplier or its agents, suppliers, employees, sub-contractors commits any act of fraud or falsification of data or the persistent supply of materially inaccurate data for whatever reason or performs a prohibited act; or
  - (c) any distress, execution or other process is levied or enforced upon the whole or any part of the assets or undertaking of the Supplier; or
  - (d) the Supplier commences or enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company except as provided in clause 12.4 below) or if a petition is presented to court, or if a receiver and/or manager, administrative receiver, administrator or liquidator is appointed in respect of the whole or any part of the Supplier's undertaking or assets; or
  - (e) the financial position of the Supplier, including but not limited to its ability to pay its debts, deteriorates to such an extent that in the sole opinion of the Montracon the capability of the Supplier to fulfil its obligations under the Contract has been placed in jeopardy.
- 12.4 Should the ownership or the majority ownership of the Supplier change, Montracon reserves the right to terminate the Contract forthwith.
- 12.5 Termination of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **13. CONSEQUENCES OF TERMINATION**

- 13.1 On termination of the Contract for any reason the Supplier shall immediately return all Montracon's Material at the Supplier's expense. If the Supplier fails to do so, then Montracon may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose. Any licence granted by Montracon under clause 3.7 shall automatically terminate.
- 13.2 On termination of the Contract for any reason Montracon may, at its sole option either:
- (a) require the Supplier to immediately refund all monies which may have been paid in or as an advance; or
  - (b) return to the Supplier all Goods or Services previously supplied under the Purchase Order and the Supplier shall immediately refund to Montracon all monies paid by Montracon for the Goods or Services; or
- 13.3 The Supplier shall immediately Deliver to Montracon all deliverables, whether or not then complete, for which Montracon has paid and which are deemed acceptable by Montracon as fit for the purpose for which it has contracted. The price (or any part thereof) paid for those Goods or Services not deemed as acceptable, shall immediately be refunded to Montracon.

13.4 If any of the events described in clause 12.3 occurs, Montracon may, at its sole discretion, consider the purchasing for fair and reasonable consideration any of the Goods or Services which may be available from the Supplier at the time of termination and the Supplier hereby grants Montracon for good consideration, receipt of which is acknowledged, a right of first refusal in respect of any such purchases.

13.5 Where Montracon accepts or purchases any Goods or Services, the Goods or Services shall be immediately Delivered to Montracon as required under the terms of the Purchase Order. If the Supplier fails to do so, then Montracon may enter the Supplier's premises and take possession of them. Until they have been returned or Delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose. The accrued rights, remedies, obligations and liabilities 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.

#### **14. FORCE MAJEURE**

14.1 Neither Party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, not as a result of any action or in-action by that Party, and which by its nature could not have been foreseen or could not have been avoided by proper planning by such Party, or whose effect is otherwise required to avoid or provide against (other than by way of insurance), if it could have been foreseen, was unavoidable, provided that the Supplier has and/or shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. A Force Majeure event may be, but not limited to, any of the following, war or civil war, civil unrest, any act of terrorism or a specific threat of terrorism, lightning, earthquake or extraordinary storm, fire or flooding.

14.2 If any events or circumstances prevent either Party from carrying out its obligations under the Contract for a continuous period of more than ninety (90) days or such other time as may be agreed by Montracon, Montracon may terminate this Contract immediately by giving written notice to the Supplier.

#### **15. GENERAL**

##### **15.1 Assignment and Sub-contracting.**

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

##### **15.2 Notices.**

- (a) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office or its principal place of business or such other address as that Party may have specified to the other Party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or electronic mail. Notwithstanding the foregoing, termination notices and other formal notices, for example with respect to any breach or non-compliance with these Contract Conditions, shall not be sent by electronic mail unless at the same time notice is given in another manner permitted by this clause 15.2(a).
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 a.m. on the second Business Day after posting; 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 or electronic mail, one (1) Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action which shall be delivered to the registered office of either Party.

15.3 **Disputes.** If any dispute arises out of or in connection with this Contract the Parties undertake that, prior to the commencement of any legal proceedings, they will seek to have the dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either Party will be entitled to initiate the process by written notice to the other. If the dispute has not been resolved to the satisfaction of either Party

within thirty (30) days of initiation of the procedure pursuant to this clause or if either Party fails or refuses to participate in or withdraws from participating in the procedure then either Party may deal with the dispute through legal proceedings.

**15.4 Severance.**

- (a) If any court or 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 to be 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.

**15.5 Montracon's Personnel.** The Supplier undertakes during the term of the Contract and for twelve (12) months after completion or earlier determination of the Contract not to solicit or make an offer of employment (or an offer for services) to any Montracon director, employee, officer, agent or contractor whether self-employed or otherwise, engaged in performance of the work under this Contract.

**15.6 Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.

**15.7 Third Party Rights.** A person who is not a party to the Contract shall not have any rights under or in connection with the Contract except as may be expressly set out in this Contract.

**15.8 Survival.** Any clauses which expressly or by implication have effect after termination shall continue in full force and effect thereafter.

**15.9 Entire Agreement.** This Contract constitutes the entire agreement between the Parties and there are no agreements or understandings between them other than those set out herein.

**15.10 No Partnership.** Nothing in this Contract is intended to, or shall be deemed to neither constitute a partnership or joint venture of any kind nor constitute any Party being the agent of the other for any purpose. No Party shall have the authority to act as agent for, or to bind, the other Party in any way.

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

**15.12 Governing Law and Jurisdiction.** The 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, English Law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.