

1. **GENERAL**
  - 1.1. Unless the context otherwise requires the following words and expressions used herein shall have the meanings hereby assigned to them:  
'Conditions' means these terms and conditions for the supply of Goods.  
'Goods' means the Goods, materials, equipment and other items to be supplied by the Supplier to the Client as specified in this Order.  
'Latent Defects' means a defect or design or manufacturing issue affecting 5% or more of the Goods, or similar b-components of the Goods, delivered which have failed or are likely to fail during the thirty-five years of service life, on account of the same failure mechanism, and which negatively impact or cause failure in operation of the Goods.
  - 1.2. The expressions 'ABD' and 'Supplier' herein shall mean respectively Anthony Best Dynamics Limited, a subsidiary of AB Dynamics plc and the person, firm or company to whom the purchase order ('Order') is given.
  - 1.3. 'Party' or 'Parties' means ABD or the Supplier or both as the context requires.
  - 1.4. Delivery terms such as 'CIF', 'CIP', 'DDP' used in these Conditions or in any corresponding Request Form or Order Form shall be interpreted in accordance with the International Chamber of Commerce INCOTERMS 2020 Edition.
  - 1.5. Unless specified above, or detailed herein, all other words and expressions used in these Conditions shall have the same meanings as are respectively assigned to them in herein.
2. **PREVAILING CONDITIONS** Acceptance of this Order shall include the acceptance of these Conditions to the exclusion of any other terms and conditions submitted or proposed by the Supplier at any time. No conduct by ABD, other than ABD's express written consent, shall be deemed to constitute acceptance of any terms or conditions put forward by the Supplier.
3. **SPECIAL CONDITIONS**
  - 3.1. Where this Order quotes Special Conditions, they shall supplement these Conditions, and should this Order specify that the work shall be compliant with any specifications or conditions the Supplier shall ensure that the most recently published version of the said specifications or conditions are complied with together with all applicable laws or regulations at any time.
  - 3.2. In the event of conflict between the Conditions and the Special Conditions contained herein the Special Conditions shall prevail.
4. **AMENDMENT TO ORDER** ABD shall not be liable for any Order or amendments thereto other than those issued and agreed in writing and signed by a duly authorised representative of ABD.
5. **PACKING, MARKING AND DISPATCH OF GOODS** Unless otherwise specified in this Order: -
  - (i) All Goods shall be properly packed and secured in such manner as to enable them to reach their destination in good condition. They shall be marked and dispatched at the Supplier's expense in accordance with the requirements of ABD.
  - (ii) The Supplier shall mark the outside of each package with their name and with full details of the destination and include a Packing Note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, special storage instructions (if any), if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and clearly referencing ABD's Order number.
  - (iii) No charge shall be made by the Supplier for crating, packaging and materials or for delivery to the specified place of delivery, nor shall ABD be liable to pay for or return to the Supplier any crating, packaging and materials.
6. **INVOICING**
  - 6.1. A separate invoice for each individual consignment of Goods or work done shall be sent by the Supplier to ABD as soon as it is reasonably practicable after dispatch or performance, or in accordance with the schedule of payments in the event of part or progress payments being agreed.
  - 6.2. All prices indicated shall be exclusive of Value Added Tax (VAT). The Supplier shall, if registered for VAT, supply a VAT invoice and provide any further information reasonably required in relation to any such invoice.
7. **INSPECTION**
  - 7.1. All Goods provided and work done shall be subject to inspection and test by ABD who shall have the right at the Supplier's expense to reject such Goods or work done as shall be defective in design, materials or workmanship, or otherwise fail to meet design requirements of the relevant Order. All costs incurred by the Supplier in complying with the quality and standards required by ABD or its clients shall be borne by the Supplier.
  - 7.2. ABD's representatives, or the agent of any Government Department or other customer concerned, shall be allowed to enter the Suppliers premises where the works are being carried out, or where Goods are stored, at any reasonable time to inspect its quality systems, production methods and the progress of the work or for any other purpose in connection with this Order.
- 7.3. ABD will be entitled to inspect and test the Goods, at any time before delivery including for the avoidance of doubt; during manufacture, processing and storage and shall be entitled to give notice to the Supplier that the Goods do not comply with relevant Order where upon the Supplier will at its cost take such steps as may be necessary to ensure such compliance.
- 7.4. Such inspection will not relieve the Supplier of any liability or imply acceptance of the Goods or work relevant to this Order.
- 7.5. If the results of such inspection or testing cause ABD to be of the opinion that the Goods do not conform, or are unlikely to conform, with this Order or to any specifications supplied or advised by ABD to the Supplier, ABD shall inform the Supplier and the Supplier shall immediately at its cost take such action as is necessary to ensure conformity. Any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract or imply acceptance of the Goods pursuant to an Order.
8. **QUALITY** Without prejudice to or limitation of ABD's statutory rights, the Supplier shall ensure that the Goods and all other work to be performed under this Order shall:
  - (i) conform to the specification, drawings, samples or other description furnished, specified or approved by ABD;
  - (ii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by ABD expressly or by implication, and in this respect, ABD relies on the Supplier's skill and judgement;
  - (iii) where they are manufactured products, be free from defects in design, material and workmanship (including Latent Defects) and remain so for 24 months after delivery;
  - (iv) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
  - (v) If a standard of performance is specified the Goods should be capable of the required performance and where applicable: Test Certificates, Certificates of Conformity including EC Declarations of conformity
- regarding EMC, Low Voltage or Machinery and the relevant Installation Instructions regarding such Directives and/or material Analysis Certificates and as specified on this Order will be required.  
The Goods shall be of the best quality appropriate for the purpose specified or if not so specified reasonably applicable to the Goods.
9. **DELIVERY OR PERFORMANCE**
  - 9.1. Unless otherwise specified in this Order delivery shall be made DDP to the location specified on this Order. Any specified delivery date or time for performance stated on the relevant Order shall be of the essence of the Contract, and if the Supplier fails to deliver or perform within the specified time or by the specified date ABD shall have the right to terminate this Order and obtain the Goods from elsewhere, and the Supplier shall indemnify ABD against the extra cost incurred hereby.
  - 9.2. Where a rate of liquidated damages is stated in this Order, payment of the said damages shall be without prejudice to ABD's other rights.
  - 9.3. ABD shall be under no obligation to accept or pay for any Goods delivered in advance or in excess of the dates or quantities stipulated on this Order. Early deliveries may be returned at the Suppliers expense.
  - 9.4. Where an Order is for scheduled deliveries over a specific period, ABD reserves the right to amend the design or specification of the items ordered for any remaining deliveries, with due regard to sufficient notice being given to the Supplier.
10. **SUSPENSION OF DELIVERIES**
  - 10.1. ABD reserves the right to partially or wholly suspend the delivery of Goods or work done if due to any accident, industrial dispute, war (declared or undeclared), acts of God, environmental conditions or any restriction, regulation, order, act or omission by any local authority or Governmental authority or to any other cause whatsoever beyond the control of ABD the delivery or performance of the work be prevented.
  - 10.2. In the event of such suspension the period of delivery or performance shall be extended by an amount of time corresponding to that of the suspension period. ABD shall not be liable for any expenses or loss whatsoever incurred by the Supplier in respect of such suspension.
11. **PASSING OF TITLE AND RISK**
  - 11.1. Title in the Goods shall pass to ABD upon the earlier of delivery or payment (whether in whole or in part), without prejudice to any right of rejection which may accrue to ABD under these Conditions.

- 11.2. Risk in the Goods shall pass to ABD upon delivery without prejudice to any right of rejection which may accrue to ABD under these Conditions.
- 11.3. Upon rejection, title and risk shall pass to the Supplier within 48 hours of notice of such rejection being given to the Supplier by ABD, regardless of whether the Goods have been returned to the Supplier. Should part or progress payments be made by ABD then title to all Goods, (completed and partially completed) and any material allocated to this Order shall vest in and become and continue to be the property of ABD though remaining at the Suppliers risk until delivery.
- 12. TERMS OF PAYMENT** Without prejudice to its rights under Clauses 5, 6, 7 and 9 ABD shall, in respect of Goods properly supplied and delivered in accordance with this Order and for which ABD has received a valid and correct invoice, pay the price stated on this Order to the Supplier within 90 days from receipt of Invoice. Unless otherwise agreed on this Order payments shall be made in pounds sterling. Payment by ABD shall not remove or limit in any way the Suppliers' obligations or liabilities.
- 12.1. **LIABILITY** The Supplier will keep ABD fully indemnified and hold ABD harmless against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) brought or made against ABD, or suffered or incurred by ABD, as a result of or in connection with in respect of or as a result of: -
- (i) Any infringement or alleged infringement of any form of intellectual property right by the Supplier or by ABD resulting from the use or sale of any article, Goods or materials supplied to ABD unless the infringement is due to the Supplier having followed ABD's designs or instructions; and
  - (ii) any injury loss or damage to persons or property caused by act, default or negligence of the Supplier, sub-contractors or agents or by faulty design, workmanship or materials unless the injury, loss or damage is caused by the negligence of ABD.
  - (ii) Any failure by the Supplier to comply with applicable laws, regulations or codes of practice.
  - (iv) All claims which at any time are made upon ABD and which arise out of accidents to the Supplier's employees or the employees of the Supplier's sub-contractors.
- (v) All liabilities of whatever nature which may at any time result from a breach of contract or the wrongful acts or omissions of the Supplier's employers or the employees of the Supplier's sub-contractors.
- 13. HEALTH AND SAFETY** The Supplier shall be responsible for the safety validation of their work and products for use in the railway environment and shall provide all safety documentation required by ABD. The Supplier shall notify ABD of all possible hazards associated with the work and products.
- 14. INSURANCE** The Supplier undertakes to effect and maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on ABD'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.
- 15. WARRANTY**
- 15.1. In the event that any Goods or work done prove defective under normal conditions of use within 104 weeks of delivery (the "Warranty Period") to ABD's customer, the Supplier on advice of such defects will with all possible speed replace such Goods, carry out such repairs as are necessary or renew such work at no cost to ABD. Goods replaced or repaired under this clause shall be subject to a Warranty Period commencing on the actual date of delivery of the repaired or replaced Goods.
- 15.2. If any Latent Defect shall appear in the Goods, or any components of the Goods, within a period of six years after the date of delivery the same shall be made good by the Supplier by modification or replacement of the Goods. If the Supplier cannot remedy the Latent Defect within a reasonable time then without prejudice to its other rights and remedies ABD may proceed to procure alternative parts to replace the rejected Goods or components. The reasonable and direct cost incurred by ABD in replacing such Goods or components may be deducted from the price and shall be recoverable from the Supplier in full.
- 16. TERMINATION OF ORDER**
- 16.1. ABD shall have the right to terminate this Order in whole or in part at any time by giving the Supplier notice in writing whereupon all work on this Order relevant to the termination instruction given shall be discontinued. ABD shall pay a fair and reasonable price for all Goods delivered and accepted or work in progress at the time of the termination and the Supplier shall afford ABD every assistance to ascertain the extent of such work in progress.
- 16.2. In the event of termination under 16.1 the Supplier shall submit a claim within two months of such termination after which time claims will only be met at ABD's sole discretion.
- 16.3. In the event that the Supplier commits a material breach or series of breaches of these Conditions and fails to remedy such breach(es) within 14 days of being given notice to do so; or if the Supplier fails to perform its obligations with due diligence or to comply with the specified delivery dates, ABD may forthwith terminate this Order by written notice and shall be thereupon entitled to: (i) return to the Supplier at the Supplier risk and expense all Goods already delivered but which effectively or commercially used by reason of the Suppliers subsequent non delivery and to recover any payment made to the Supplier in respect of the Goods so returned, and (ii) recover from the Supplier additional cost reasonably incurred by ABD in obtaining other Goods in lieu of those returned and/or not delivered because of the termination of this Order.
- 16.4. ABD shall not be liable for loss of anticipated profits or for any indirect or consequential loss whatsoever.
- 17. DAMAGES OR LOSS IN TRANSIT**
- 17.1. The Supplier on advice by ABD will at all possible speed replace or repair free of charge Goods damaged or lost in transit and, delivery shall not be deemed to have taken place until replacement or repaired Goods have been delivered.
- 17.2. ABD reserves the option to hold such Goods at the Supplier's risk and disposal or to return the said Goods at the risk and expense of the Supplier.
- 18. LICENCE TO USE EMBEDDED SOFTWARE/INTELLECTUAL PROPERTY RIGHTS**
- 18.1. Any software or firmware incorporated into Goods is supplied under licence for the use of the software only, and all other rights are retained by the Supplier. The Supplier grants to ABD a licence to use such software or firmware only in connection with those Goods and only to the extent required to use the Goods for their intended purposes. The licence shall include a right to grant sub licences to the extent required lawfully to sell the Goods. The duration of this licence shall be the life of the Goods into which the software or firmware is incorporated.
- 18.2. To the extent that any Goods are created or modified in accordance with Company's specific requirements and/or technical or functional specifications then any intellectual property arising out of or created during the performance of this Order shall be the property of ABD. The Supplier shall execute such documents as are required to give effect hereto and shall assist in the defence of any proceedings against ABD claiming infringement of any third-party intellectual property rights.
- 19. DRAWINGS, SPECIFICATIONS, ETC.**
- 19.1. All specifications, patterns, drawings, photography, samples and information provided by ABD to the Supplier shall remain the property of ABD to whom they shall be returned within one month of completion of this Order unless otherwise agreed.
- 19.2. The Supplier shall not disclose any information or intellectual property right relating to this Order to any third party without the express written consent of ABD.
- 20. TOOLING**
- 20.1. All tools, jigs, dies, fixtures, moulds, patterns, plant or other equipment (hereinafter called "Tooling") supplied by ABD or paid for in full by the terms of an Order shall remain the property of ABD. The Supplier shall ensure that all Tooling is marked or labelled in a clearly legible manner as being the property of ABD.
- 20.2. Risk in the Tooling shall remain with the Supplier until such Tooling has been returned to ABD.
- 20.3. All Tooling shall be maintained and kept in good repair and replaced when necessary by the Supplier and shall not be used by the Supplier other than for ABD's benefit, nor removed from the Supplier's premises, without the prior written consent of ABD.
- 20.4. Upon request by ABD the Supplier shall promptly return all Tooling, or if required by ABD, allow ABD and/or ABD's Representatives to enter the Supplier's premises to collect any or all Tooling.
- 21. HAZARDOUS GOODS** Hazardous Goods must be marked by the Supplier with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include a declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. Suppliers shall observe the requirements of UK and International Agreements relating to the packing, labelling and carriage of Hazardous Goods. All information held by, or reasonably available to the Supplier regarding any potential hazards known or believed to exist in the transport, handling or use of the Goods supplied shall be promptly communicated to ABD.
- 22. SUB-CONTRACTING/ASSIGNMENT** Neither the whole or part of this Order shall be sub-contracted or

assigned without the prior written approval of ABD and any subcontract or assignment shall be subject to the same terms and conditions as this Order.

### 23. BANKRUPTCY OR LIQUIDATION

23.1. If a receiving order is made against the Supplier or if the Supplier shall enter into an arrangement or composition with Creditors or if being a company the Supplier shall go into liquidation whether voluntary or otherwise (except for the purpose of amalgamation or reconstruction) or if a receiver or Manager on behalf of a Creditor shall be appointed then ABD shall be entitled by written notice to cancel this Order forthwith without compensation to the Supplier and thereupon any property ABD had loaned to the supplier or any free issue of material supplied to the Supplier in connection with this Order (whether worked upon or not) shall be returned to ABD on demand.

23.2. The exercise of the right of cancellation shall be without prejudice to any action or remedy which shall have accrued or shall accrue thereafter to ABD.

### 24. GDPR & PRIVACY

24.1. In this condition, the expressions "Controller", "Data Subject", "Personal Data", Personal Data Breach and "Processor" shall have the same meanings as in Article 4 of the [UK] GDPR.

24.2. Data Protection Legislation means:

(i) (Retained EU Legislation) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance); and

(ii) the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy; and

(iii) all applicable laws about the processing of personal data and privacy.

24.3. Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of the Contract. The incidental exchange of Personal Data for the purpose of communication to give effect to the Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.

24.4. The Supplier shall notify the ABD promptly if it considers that any of the ABD's instructions obligate the Supplier to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated in clause 24.3.

24.5. Where the Contract is amended to include processing of Personal Data as a Joint Controller, the Parties agree that they shall amend the Conditions to include appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.

24.6. Notwithstanding clause 24.3, each Party undertakes to comply with its obligations as Controller under the Data Protection Legislation.

### 25. LAW

25.1. Any proposal or tender made by the Supplier and any contract resulting therefrom shall be governed only by these Conditions unless expressly otherwise agreed in writing by ABD's Authorised Representative. No conduct by ABD, other than the express written consent of ABD's Authorised Representative, shall be deemed to constitute acceptance of any terms put forward by the Supplier.

25.2. This Order and these Conditions shall operate and be construed in all respects in accordance with English law and the parties hereby agree to submit to the non-exclusive jurisdiction of the English courts.

25.3. The governing language of this Order shall be English. All correspondence, notices and summonses shall only be deemed effective or served if made in English.

26. **CONFIDENTIALITY** All information obtained by the Supplier in the course or conduct of this Order, including without limitation any information relating to designs, patterns, Tooling, manufacturing information, technical processes or specifications, pricing, financial or commercial information shall be held in strict confidence and shall not be divulged to any third party without the prior written permission of ABD and then only on the basis that the recipient of such information shall be bound by similar confidentiality obligations to those undertaken by the Supplier.

27. **SPARE PARTS** The Supplier shall supply ABD with spare parts for the Goods, or provide equivalent sources of supply, for a period of 35 years.

28. **REMEDIES** Without prejudice to any other right or remedy which ABD may have and regardless whether or not any part of the Goods have been accepted/received by ABD; if the Goods are not delivered on the delivery date, or do not comply with the undertaking set out in Clause 8 regarding Quality, or the Supplier fails to comply with any of the terms of this Order, ABD at its discretion is entitled to avail itself of any one or more of the following remedies: (i) terminate the Contract; (ii) to require the Supplier to

repair the Goods or to supply replacement Goods (at Supplier's cost and expense) within 14 days of receipt of notice from ABD; (iii) to refuse to accept any further deliveries of the Goods but without any liability to the Supplier; (iv) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier; and (v) to claim damages for any other costs, loss or expenses incurred by ABD (which may include the losses of its clients) which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

### 29. MODERN SLAVERY

29.1. In performing its obligations under the Contract, the Supplier shall:

(i) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

(ii) not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015;

(iii) include in contracts with its direct subcontractors and suppliers' provisions which are at least as onerous as those set out in this Clause 29.

(iv) notify ABD as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

29.2. The Supplier represents and warrants that at the date of this Contract it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

### 30. ANTI-BRIBERY

30.1. The Supplier shall:

(i) 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 or Foreign Corrupt Practices Act (FCPA) of the USA (Relevant Requirements);

(ii) not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements;

(iii) comply with the ABD's Anti-bribery Policy as may be amended from time to time (Relevant Policy);

(iv) have and shall maintain in place throughout the term of this Contract its own policies and procedures to

ensure compliance with the Relevant Requirements, the Relevant Policy and Clause 30.1(ii), and will enforce them where appropriate;

(v) notify ABD (in writing) if it becomes aware of any breach of Clause 30.1(i) or Clause 30.1(ii), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage;

30.2. The Supplier shall ensure that any person associated with the Supplier who is performing services 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 Supplier in this Clause 30 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to ABD for any breach by such persons of any of the Relevant Terms.

30.3. Breach of this Clause 30 shall be deemed a breach of a material clause under Clause 16.

### 31. AUDIT

31.1. ABD shall be entitled at all reasonable times to audit; (i) all records held in relation to the Goods as well as (ii) the performance of the Supplier to ensure that such performance complies with the requirements of this Order.

31.2. To supporting any audit under Clause 31.1, the Supplier shall maintain all records and correspondence in its possession or control pertaining to the Goods for a minimum period of 6 years from completion of this Order or such longer period as may be agreed in respect of this Order.

31.3. **SEVERABILITY** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.