



## GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

### BETWEEN:-

- (1) **LINC International Limited trading as LINC**, a company registered in England whose registered number is 10713028 and whose registered office is at Sanseair, Frost Lane, Hythe, Southampton, Hampshire, UK, SO45 3NE ("**LINC**" or the "**Supplier**"); and
- (2) (the "**Client**");

### RECITALS

- (A) LINC is a provider of goods and services, including new build and refit installation for yachts (the "**Services**", as defined below).
- (B) LINC has agreed to provide and the Client has agreed to take certain services upon the terms and conditions of this Agreement.

### INTERPRETATION

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

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

**Client:** the person or firm who purchases the Goods and/or Services from the Supplier.

**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 21.7.

**Contract:** the contract between the Supplier and the Client for the supply of Goods and/or Services in accordance with these Conditions.

**Deliverables:** the deliverables of Goods and or Services as set out in the Proposal.

**Delivery Location:** has the meaning set out in clause 4.2.

**Expenses:** all travel, subsistence and accommodation expenses incurred by LINC and for the avoidance of doubt this includes economy flights travel where it is for a time of 4 hours of less (unless it is a LINC Director or the CEO whose travel may at times be specifically agreed be business class) and business class flights where longer than 4 hours and a good quality business hotel.

**Force Majeure Event:** has the meaning given to it in clause 18.1.

**Goods:** the goods (or any part of them) detailed in the Proposal.



**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, as set out in the Proposal.

**Group:** a holding company or subsidiary of the company where such holding company or subsidiary owns or has held at least 50% of the shares or in the case of the Supplier any company where the ultimate beneficial owners of the Supplier owns at least 50%.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

**Order:** the Client's order for the supply of Goods and/or Services, as set out in the Client's purchase order form or the Client's written acceptance of the Proposal, as the case may be.

**Payment Terms:** the payment schedule as agreed between the parties and set out in the Proposal.

**Project Schedule:** the project timetable set out and agreed between LINC and the Client.

**Proposal:** the description or specification for the Services provided in writing by the Supplier to the Client, such terms having been accepted by the Client.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Client as set out in the Proposal.

**Supplier Materials:** has the meaning set out in clause 9.1(g).

**VAT:** VAT or any other equivalent sales tax.

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 Proposal constitutes an offer by the Client to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Proposal shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (which may be done by email) at which point and on which date the Contract shall come into existence.
- 2.3 This Contract and the Proposal and Order constitutes the entire agreement between the parties. Should any part of the Proposal, or Order conflict with this Contract, this Contract shall prevail. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract (including any Schedules).
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods 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 Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Proposal is only valid for a period of 10 Business Days from its date of issue unless otherwise stated.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **3. GOODS**

- 3.1 The Goods are described in the Goods Specification.
- 3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements. This also applies in circumstances where the manufacturer no longer supplies such goods and in such circumstances the Supplier shall suggest to the Client an alternative supply of goods and the Client and the Supplier shall between them agree to such change in goods supply as well as any corresponding change in price. Where in the Supplier's opinion better quality or more suitable goods become available the Supplier reserves the right to notify the Client of this and between them they can agree on any changes should they wish.



#### 4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the type and quantity of the Goods; and
- (b) if the Supplier or the manufacturer requires the Client to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Client shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Client that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods, should this be reasonably deemed necessary the Client at least providing the Supplier with enough reasonable time to arrange for replacement goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Client fails to accept or take delivery of the Goods within 2 Business Days of the Supplier notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Client that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place and charge the Client for all related costs and expenses (including insurance).

4.7 If 5 Business Days after the Supplier notified the Client that the Goods were ready for delivery the Client has not taken or accepted delivery of them, the Supplier may in its discretion arrange to have



the goods stored and the Client shall be responsible for all such storage costs, delivery being deemed to take place when the goods go into such storage facility. Alternatively, the Supplier may decide in its discretion to resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Goods or charge the Client for any shortfall below the price of the Goods.

- 4.8 The Client shall not be entitled to reject the Goods if the Supplier delivers up to and including 10 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Client that the wrong quantity of Goods was delivered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.
- 4.10 Some of the equipment that LINC utilise is of a fragile and dust sensitive nature. Being subjected to inappropriate conditions can damage this equipment. LINC reserves the right to refuse to deliver equipment to a site or refuse to install the equipment if the site is deemed by LINC, acting reasonably, not to be in a suitable state to receive the equipment or the storage facilities are inadequate. In such an event we will issue written notification of the refusal and where possible provide photographic evidence to support our claim.

## 5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on delivery, and for the period of the manufacturer's warranty in respect of each good delivered (**warranty period**), the Goods shall:
- (a) conform in all material respects with their description and any applicable Goods Specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality; and
  - (d) be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
- (a) the Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Supplier shall, at its option and as agreed with the Client, repair or replace the defective Goods, or refund the price of the defective Goods in full, subject to the manufacturer agreeing to do any of these actions.



For the avoidance of doubt any warranty given in this clause is purely the manufacturer's warranty and subject to the manufacturer's warranty terms and conditions. Please note that where the Supplier repairs any defective goods or must install any replacement goods any Expenses of the Supplier shall be invoiced to the Client who agrees to pay in a timely manner according to the Supplier's normal payment terms.

5.3 Where Goods are defective and the Supplier must travel to assist with the reparation or new installation of such the Supplier's Expenses shall be invoiced to and paid for by the Client.

5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Client makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Client;
- (d) the Client alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from the Goods Specification as a result of changes made by the Client to ensure they comply with applicable statutory or regulatory standards; or
- (g) the Goods are not suitable for a marine environment or the manufacturer's warranty terms and conditions are not respected.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 5.1. It should also be noted that the Supplier has no liability for any damage occurring as a result of manufactured goods not complying with their warranty.

5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Client on delivery of the Goods.

6.2 Title to the Goods shall not pass to the Client until:

the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Client in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.



- 6.3 Until title to the Goods has passed to the Client, the Client shall:
- (a) store the Goods separately from all other goods held by the Client so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 17.2(b) to clause 17.2(m); and
  - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Client the Client becomes subject to any of the events listed in clause 17.2(b) to clause 17.2(m), then, without limiting any other right or remedy the Supplier may have:
- (a) the Client's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Client to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

## 7. SUPPLY OF SERVICES

- 7.1 The Supplier shall provide the Services to the Client in accordance with the Proposal in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Project Schedule but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier 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 the Supplier shall notify the Client in any such event.
- 7.4 The Supplier warrants to the Client that the Services will be provided using care and skill to the extent expected of a high level refitter of yachts. The Supplier warrants the quality of its Services for a period of 12 months (unless otherwise agreed) following the Client's acceptance of the Services. Any defects in the Services during this warranty period will be corrected by the Supplier at the Supplier's own cost.



Any Expenses of the Supplier for correcting defects in the Services shall be invoiced to and paid for by the Client who agrees to pay in a timely manner according to the Supplier's normal payment terms.

7.5 For the avoidance of doubt, where the Seller delivers parts and is not installing them, this installation to be carried out by third parties is not part of the Seller's installation obligations under this Contract.

7.6 There are some issues which fall outside the scope of Services. This includes but is not limited to the following:

- (a) The installation of non-vetted/approved IT equipment as this may impact on the normal operation of a yacht's or private estates IT services and email hosting.
- (b) The installation of non-vetted/approved AV, IT, security, communications, window finishing or any other equipment or system as this may impact on the normal operation of the Fusion Air App or a yacht's systems.
- (c) Where the Client finds a problem with its network or system or supported items and integrations with these. If after attempting to or resolving this issue by providing "trouble shooting services" the Supplier can reasonably show that the problem arose as a direct or indirect result of any act done or omitted to be done by the Client or a third party or otherwise not as a result of a problem occurring within the Supplier's own network or system then the Supplier will inform the Client of its findings and the time spent.

Where additional work is carried out in respect of these the Supplier may charge its normal current charge out rates as well as the additional costs of any materials used.

7.7 Where the Supplier agrees to go onboard a yacht or attend any scheduled meeting(s) or task(s) as part of any services to be carried out by the Supplier's Group, if those services are unable to be carried out the services at its agreed time as a result of any act done or omitted to be done by the Client or a related third party then unless the Client cancels 24 hours in advance, the Supplier is entitled to charge for any travel time, time and expenses. The Supplier may also charge for travel time, time and expenses occurred whilst standing by to comply with the Client(s) revised schedule(s).

## **8. DELIVERABLES**

8.1 The Seller shall perform its contractual works/deliver the Deliverables according to the agreed Project Schedule.

8.2 On becoming aware of any delays or as soon as possible after becoming aware of a delay, LINC is obliged to inform the Client within five business days of the start, the cause and the duration of the delay.

8.3 LINC expressly excludes liability for any delays caused due to the delivery of Goods not allowing it (using its reasonable endeavours) to meet the Project Schedule, so long as it can be shown by LINC that they have used their reasonable endeavours to obtain the delivery of the Goods in time to meet the Project Schedule.





## 9. CLIENT'S OBLIGATIONS

### 9.1 The Client shall:

- (a) ensure that the terms of the Order and (if submitted by the Client) the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services or where at a shipyard or marina or other berthing location ensure the Supplier has the same equivalent required access;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare or ensure the premises are prepared for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (h) ensure the premises comply with all applicable health and safety requirements.
- (i) LINC highly recommends that our works are built into an overall plan of works at an early stage. LINC expects to receive a project programme showing commencement and finish dates and expressly reserves that they are not liable for any delays to this which are outside their reasonable control or where the project programme makes it reasonable and practically impossible for them to meet it. In the event of delays and project overruns LINC reserve the right to review the labour charges and when necessary issue a revision.
- (j) It should be noted that a large amount of our work takes place towards the end of an overall project. It is normal that final installation, programming and commissioning will take place after the main build/refit contractors achieve practical completion and hence this should be allowed for in any programme of works. Upon request LINC can create and issue a 'Programme of Works' relating to the project being undertaken.

### 9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):



- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

## **10. CHARGES AND PAYMENT**

- 10.1 The price for Goods and Services shall be the price set out in the Proposal and Payment Terms or, if no price is quoted, the price set out in the Supplier's or Goods manufacturer's published price list as at the date of delivery. It is based on the work being carried out at the premises indicated in the Proposal. The price of the Goods (unless otherwise specified) is exclusive of all costs and charges of packaging, insurance, transport of the Goods and import taxes which shall be paid by the Client when it pays for the Goods. The Supplier shall be entitled to charge the Client for any Expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials unless otherwise specifically agreed between LINC and the Client.
- 10.2 Please note that the Contract will not commence (therefore the Supplier will not order any Goods or commence providing Services) until the Supplier has received the first staged payment into its bank account.
- 10.3 The price as set out in the Proposal is fixed for 10 Business Days from the date of the Proposal. The Supplier however reserves the right to amend the price(s) to take into account exchange rate fluctuations between the price in the Proposal and the revalidation of prices at the time the Supplier makes an order for Goods as is required/necessary under the Contract or when the Client confirms it is happy for the Supplier to proceed with the order confirmation.
- 10.4 The Supplier reserves the right to:
- (a) increase the price of the Goods, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
    - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);



- (ii) any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (iii) any delay caused by any instructions of the Client in respect of the Goods or failure of the Client to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 10.5 In respect of Goods and Services, the Supplier shall invoice the Client on or at any time as set out in the Payment Terms.
- 10.6 The Client shall pay each invoice submitted by the Supplier:
  - (a) within 15 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, andtime for payment shall be of the essence of the Contract.
- 10.7 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax or other applicable sales tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client 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 Services or Goods at the same time as payment is due for the supply of the Services or Goods. The Client is also responsible to pay for any import taxes on Goods being delivered.
- 10.8 Costs for shipping, freight, travel and subsistence expenses are not included in the Proposal and will be invoiced as incurred from time to time. Travel time will be charged at 50% discount rate.
- 10.9 If the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per annum above EURILIBOR's monthly base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 10.10 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.
- 10.11 LINC may, at any time, suspend performance of all or part of the Services and other obligations under this agreement by giving written notice to the Client in circumstances where LINC's invoices are more than 30 days overdue in being paid. In such circumstances LINC will give not less than five (5) days' notice to the Client of its intention to suspend all or part of the Services and stating the ground or grounds on which it intends to suspend performance. Consultant shall resume performance of the



Services as soon as reasonably practicable after receiving a written notice to do so from the Client, the Client having paid all invoices up to date prior to LINC resuming the Services. In these circumstances LINC shall not be liable for any delays/ late delivery or failure to perform its obligations under this Agreement as a result of the suspension of its Services and obligations.

- 10.12 Where payment of a final account is only due upon handover of documentation and/or after training as expressly agreed and the Client or its representative is not available to attend the handover as reasonably proposed by the Supplier the Supplier reserves the right to invoice for such final amount under these payment terms and the Client expressly agrees to make such payment.
- 10.13 Any variations to contract will also contain agreed payment amount, payment terms and delivery schedules.
- 10.14 Where incomplete information is available at the time of pricing a project, the Supplier will insert Provisional Sums arising from Lack of Information Available (**PS-LIA**). Provisional Sums arising from Lack of Information Available will be marked PS-LIA on Quotations and Variations. Once suitable information is provided a variation will be issued for approval by the Client/ appointed representative to replace the PS-LIA with a firm costing.
- 10.15 Where the Supplier is costing a project prior to carrying out a Detailed Design, the Supplier may insert Provisional Sums Pending Detailed Design (**PS-PDD**). Provisional Sums Pending Detailed Design will be marked PS-PDD on Quotations and Variations. Once suitable information is available a variation will be issued for approval by the Client/ Appointed Representative to replace the PS-PDD with a firm costing.
- 10.16 Whilst reasonable effort is always made to attempt to ensure that PS-LIAs and PS-PDDs are accurate the Supplier is unable to guarantee the accuracy of PS-LIAs and PS-PDDs values.

## 11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 Intellectual Property Rights in all Software, documents and any other material created and supplied or developed by LINC in the course of providing the Services under this Agreement ("Developed Material") shall automatically vest in LINC absolutely or than the source code as set out in clause **Error! Reference source not found.** and 11.9 below.
- 11.2 LINC hereby grants to the Client a non-exclusive, non-transferable, royalty-free, worldwide licence to use the Developed Material for an unlimited term.
- 11.3 In relation to the Developed Material that is licensed to the Client by LINC ("Licensed Rights"), the Client agrees that it shall:
  - (a) not supply, disclose, make available or sub-license to any other person any of the Developed Material nor permit any of the foregoing by any person;



- (b) only use the Developed Material for the purposes and in the manner contemplated by this Agreement;
- (c) not deal, sell, distribute or, commercially exploit the Developed Material;
- (d) not amend, modify or otherwise alter the Developed Material for the duration of the Term; and
- (e) not remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in any Developed Material.

11.4 The Intellectual Property Rights of whatever nature in the Developed Material are, and shall remain, the property of LINC, and LINC reserves the right to grant a licence to use the Developed Material to any other party or parties, subject to LINC hereby undertaking that any grant of such licence will not in any way whatsoever result in the breach of any part of the confidentiality provisions contained in Clause 23 hereof.

11.5 Each Party's Intellectual Property Rights shall remain the property of that Party and nothing in this Agreement shall transfer either Party's Intellectual Property Rights to the other Party.

11.6 Each Party agrees that it shall not breach any Intellectual Property Right of any third party.

11.7 All Supplier Materials are the exclusive property of the Supplier.

## **12. SUBCONTRACTORS**

12.1 LINC shall be entitled, at its own cost to sub-contract any of its obligations under this Agreement as it deems necessary in order to provide the Services.

## **13. WARRANTY**

13.1 LINC hereby warrants to the Client that it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement has been duly authorised by LINC.

13.2 The Client hereby warrants to LINC that it has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement has been duly authorised by the Client.

13.3 Except as expressly provided in this Agreement both Parties exclude all warranties, conditions or other terms, express or implied, by statute collaterally or otherwise regarding the Services or otherwise contemplated by this Agreement.

## **14. INSURANCE**

14.1 Each Party shall ensure that it has taken out and undertakes to maintain, for the duration of the Term, appropriate insurance cover with a reputable insurance company against liabilities that may arise



under this Agreement, in this case LINC agreeing to take out public insurance at a level of not less than €5,000,000 (five million euros). Written evidence of such insurance shall be provided upon request to the other Party.

## 15. CONFIDENTIALITY

- 15.1 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 15 shall survive termination of the Contract.
- 15.2 The Proposal and this Contract is being provided to you in strictest confidence. It is copyright protected by the Supplier and more importantly contains LINC's commercially sensitive information. Should anyone pass the Proposal or this Contract or any part of them whatsoever to any third parties (using any form of dissemination including copying, email, phone or discussion) then the Supplier is likely to suffer loss including business loss, loss of opportunity and loss of profit. Any such breach of confidentiality may result in the Supplier bringing proceedings against such breaching party either via their corporate entity or personally where it is found they have been acting outside the scope of their employment or any implied authority. The Supplier will pursue breaches of this confidentiality obligation and damages may be substantial.

## 16. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 16.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
  - (b) fraud or fraudulent misrepresentation;
- 16.2 Subject to clause 16.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of use, cyber attack losses, loss of revenue or any indirect or consequential loss arising under or in connection with the Contract; and



- (b) the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of fees for the Services (not the Goods) paid by the Client to the Supplier in connection with a particular Order.

16.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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.

16.4 This clause 16 shall survive termination of the Contract.

## **17. TERMINATION**

17.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than three (3) months' written notice.

17.2 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 its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (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 or limited liability partnership) 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 the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the 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) 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 its assets and such attachment or process is not discharged within 14 days;
- (g) 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);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (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 17.2(b) to clause 17.2(m) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

17.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

17.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount due under this Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 17.2(b) to clause 17.2(m), or the Supplier reasonably believes that the Client is about to become subject to any of them.

17.5 On termination of the Contract for any reason:

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





- (b) the Client shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies 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 or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 18. FORCE MAJEURE

- 18.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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.
- 18.2 The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 18.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than sixty (60) days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

## 19. TESTING

- 19.1 Please note the provisions of this clause are only applicable in whole or in part where specifically agreed between LINC and the Client in the Proposal.
- 19.2 In sufficient time prior to delivery of the Deliverables a factory acceptance test ("**FAT**") shall be carried out on the place of delivery premises according to a test procedure developed by LINC and accepted by the Client. The test parameters and general procedures will be set out and agreed between the parties.
- 19.3 If the Deliverables pass the FAT (such pass not to be unreasonably withheld or delayed by the Client's representative) the Client's representative shall sign the test protocol as a proof of the successful FAT. If the Deliverables do not pass the FAT, new FATs have to be carried out to the reasonable satisfaction of the Client's representative and at LINC's reasonable cost. To the extent a FAT is required, delivery of Deliverables shall be subject to successfully passing of the FAT.



19.4 LINC's personnel shall participate in harbour (HAT) and sea acceptance trials (SAT) at the Buyer's reasonable request this having been agreed between the parties. The cost LINC may incur in this respect for FAT, HAT and SAT (other than the Expenses which are for the Client's account) are for LINC's account. The test parameters and general procedures for the HAT and SAT will be set out and agreed between the parties. The Buyer and Seller shall agree upon an appropriate procedure for harbour- (HAT) and sea acceptance test (SAT) of the Deliverables.

## **20. ANTI-BRIBERY**

20.1 LINC and the Client shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption as is relevant in this Agreement under the EU anti-bribery legislation.

20.2 LINC and the Client shall have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to procedures under the Bribery Act 2010 (or the equivalent in their jurisdiction), to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

20.3 The Supplier does not accommodate any main contractors payments, discounts or retentions unless specifically agreed in advance in writing.

## **21. GENERAL**

### **21.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

### **21.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) 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 by commercial courier.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally or by courier, when left at the address referred to in clause 4.2 on the date and at the time that the delivery receipt is signed if within usual business hours in that jurisdiction.



- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

21.3 **Severance.**

- (a) If any provision or part-provision of the 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.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.4 **Waiver.** A waiver of any right under the Contract or law 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

21.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

21.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

21.8 **Governing law.** This agreement 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 the law of England and Wales.

21.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).



21.10 **VAT.** All amounts expressed in this Agreement as being payable by either Party are expressed exclusive of any VAT or other equivalent charge which may be chargeable thereon and the amount of any such VAT or other equivalent charge shall be payable in addition thereto.