RICARDO
STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES (NL)

1   Interpretation

1.1   The words and phrases used in these Conditions shall have the following meanings unless the context otherwise requires:

"Associated Company" means all group companies (as defined in section 2:24b of the Dutch Civil Code ("DCC") from time to time of Ricardo plc including, at the date of the Contract, Ricardo UK Limited, Ricardo Rail Limited, Ricardo Hong Kong Limited, Ricardo Nederland B.V. Ricardo Iberia S.L., Ricardo Danmark ApS, Ricardo Deutschland GmbH, Ricardo Japan, Ricardo S.A., Ricardo Prague s.r.o., Ricardo Shanghai Company Limited, Ricardo India Private Limited, Ricardo Inc, and Ricardo Asia Limited, Korea Branch;

"Background Information" means all knowledge and expertise including but not limited to calculation procedures, data, models, software, know-how, inventions, operation and design know-how or other Intellectual Property Rights existing prior to the date of this Contract which Ricardo and/or any Associated Companies bring to bear or provide in the course of carrying out or supplying the Services, whether or not contained in Documents or other materials, and whether or not in the public domain but not including common knowledge in the field in which the Services are provided at the date of the Proposal;

"Client" means the party named on the Proposal for whom Ricardo has agreed to provide the Services in accordance with these Conditions;

"Conditions" means the standard terms and conditions for the supply of the Services set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between Ricardo and the Client as set out in the Contract and/or the Proposal;

"Confidential Information" means any information or data relating to each party and its technology, research, business or affairs including, without limitation, the Contract, the Price, the Proposal, these Conditions and, in the case of Ricardo, the Background Information and, in the case of the Client, the Input Material, disclosed whether in writing, orally or by any other means to the other party by that party, or by a third party on that party's behalf, and whether before or after the date of the Contract;

"Confidentiality Agreement" means the confidentiality agreement (if any) entered into between the parties;

"Contract" means the contract between Ricardo and the Client for the provision of the Services incorporating these Conditions, the Proposal and the Confidentiality Agreement (if any);

"Deliverables" means the goods and other deliverables (including any instalment of them or any parts of them) (if any) which Ricardo is to supply to the Client in accordance with these Conditions as more particularly set out in the Proposal;

"Document" includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape, software, CAD data, CAD software, electronic transmission, algorithm, model or other device embodying visual images and any disc, tape or other device embodying any other data;

"Duly Authorised Officer" means, in respect of Ricardo, any Managing Director, Finance Director or Company Solicitor of any Associated Company or division of any Associated Company and, in respect of the Client, any person notified in writing by the Client to Ricardo to be considered the same;

"Engineering Design Defect" means a significant defect that is agreed by the parties, or in the absence of such agreement, is determined in accordance with Conditions 11.10 and 20.2 to have been caused by Ricardo in:

(i)   drawings including tolerances;
(ii)   material selection;
(iii)   analysis and modeling;
(iv)   written technical advice and data;
(v)   testing; and
(vi)   prototypes, demonstration vehicles, components or parts manufactured and delivered to the Client and which is not the result of a defect in the Input Material provided by the Client and/or their suppliers and/or sub-contractors;

"Force Majeure" means force majeure as set out in section 6:75 DCC including, without limitation, riots or insurrections, acts of terrorism, war (whether declared or not), civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, acts of destruction, computer failure due to software viruses and other malfunctions, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person) or other industrial disturbances, difficulties in obtaining labour or materials, breakdown of machinery, fire, flood or unavoidable accident;

"Input Material" means any Documents or other materials, and any data or other information provided by or required from the Client relating to the Services;

"Intellectual Property Rights" means all and any intellectual property rights of any kind and rights of a like nature wherever and whenever arising and whether registered or unregistered and including, without limitation, any patents, copyright, registered designs, design rights, topographic rights, database rights and rights in Confidential Information, trade marks, trade names, including without limitation the name "Ricardo", or service marks;

"Payment Schedule" means the payment schedule set out in the Proposal

for the payment of the Price and other sums due from the Client to Ricardo;

"Price" means the price for the Services as set out in the Proposal and any variations;

"Project Manager" means the individual identified by Ricardo to manage the provision of the Services under the Contract and to liaise with the Client in respect of the Contract;

"Proposal" means the document to which these Conditions are attached;

"Ricardo" means the Associated Company detailed in the Proposal as the primary contractor for the Contract; and

"Services" means the services, including any Deliverables, to be provided by Ricardo for the Client as more particularly set out in the Proposal.

1.2   Headings used in these Conditions are used for the purposes of identification and reference only and shall not constitute part of these Conditions nor be taken into account in the interpretation, construction or meaning thereof.

2   Application of these Conditions

2.1   Ricardo shall provide and the Client shall purchase the Services in accordance with any Proposal of Ricardo which is accepted by the Client, or any written order of the Client which is accepted by Ricardo, subject in either case to these Conditions which shall govern, apply to and be incorporated into the Contract for the supply of the Services and/or sale of the Deliverables between the Client and Ricardo.

2.2   These Conditions supersede and shall govern the Contract to the exclusion of all other terms and conditions contained in any purchase order or any other document submitted by the Client or in any catalogue, advertisement or other publication or subject to which any Proposal is accepted or purported to be accepted by the Client. No other terms or conditions shall be valid or binding upon Ricardo unless specifically agreed to in writing by a Duly Authorised Officer of Ricardo.

2.3   The Client acknowledges and agrees that it shall be deemed to have accepted these Conditions if the Client requests Ricardo to provide the Services.

2.4   Unless specified to the contrary in the Proposal, each Proposal submitted by Ricardo to the Client shall be open for acceptance for a period of thirty days from the date of the Proposal. Ricardo may withdraw any Proposal at any time prior to acceptance without giving any reason therefor. If the Client requests Ricardo to provide the Services outside the validity period stated in the Proposal, Ricardo shall be entitled to vary the Proposal including the Price, the estimated timetable and the scope of work to be carried out.

2.5   No order submitted or Proposal accepted by the Client shall be deemed to be accepted by Ricardo unless and until confirmed in writing by a Duly Authorised Officer of Ricardo.

2.6   These Conditions may only be modified by a variation expressed in writing and signed by a Duly Authorised Officer of Ricardo and no other action on the part of Ricardo (whether delivery of the Deliverables, performance of the Services or otherwise) shall be construed as an acceptance of any other conditions. No other employee, representative or agent of Ricardo has any authority to amend, modify or vary these Conditions or to make any representations concerning the Deliverables or the Services. Ricardo shall not be bound by any such amendment, modification, variation or representation unless such amendment, modification or variation is specifically confirmed in writing by a Duly Authorised Officer of Ricardo.

3   Services

3.1   Ricardo will perform the Services subject to these Conditions using reasonable skill and care and in accordance with good engineering practice.

3.2   The extent and scope of the Services and any assumptions on which the Services are to be provided by Ricardo to the Client are detailed in the Proposal. The Client acknowledges and agrees that it is its sole responsibility to ensure that the assumptions made in the Proposal are correct and to advise Ricardo of any incorrect assumptions prior to the commencement of the Services. In the event that any of the assumptions are incorrect, Ricardo reserves the right to make such amendments to the Proposal (including without limitation the scope of work, the Price, timetable and any other matters) as it deems appropriate.

3.3   Ricardo may at any time make changes to the Services which are necessary to comply with applicable safety and/or other statutory requirements.

4   Timetable

4.1   Ricardo shall not be obliged to commence work in respect of the Services until:

4.1.1   Ricardo has received and accepted, in accordance with Condition 2.5, the Client's purchase order for the Services to signify the Client's acceptance of the Proposal and these Conditions; and

4.1.2   Ricardo has received from the Client all appropriate and necessary Input Material to commence the Services as identified in the Proposal free of all charges.

4.2 All dates and periods of time referred to in the Proposal are approximate only and shall not be regarded as firm dates under section 6:83a DCC, unless expressly stated otherwise in the Proposal.

5 Payment

5.1 The Proposal shall specify the Price for the provision of the Services. The Price quoted shall be exclusive of all taxes including VAT and duties including export and/or import duties which shall be additionally paid by the Client. The Price shall include all administrative charges including inter alia postage, telephone, fax and similar expenses together with all travel, accommodation and subsistence costs of Ricardo personnel specifically identified as being part of the Price in the Proposal. All other costs and expenses not so identified, including inter alia shipping, freight, packaging, transport, spare and replacement parts, equipment and materials, shall be invoiced separately by Ricardo to the Client and shall include a handling charge of 10 per cent. All travel and subsistence costs of the Client's personnel are the sole responsibility of the Client.

5.2 Ricardo shall invoice the Client for the Price and other sums payable in accordance with the Payment Schedule set out in the Proposal. In the absence of a Payment Schedule in the Proposal Ricardo shall be entitled to invoice the Client for all work undertaken on a monthly basis.

5.3 All payments from the Client to Ricardo are due within 30 days of the date of Ricardo's invoice and shall be paid (in full without set off (*verrekening*) or other deduction) in such currency as may be specified in the Proposal. Payment shall be made direct to Ricardo's Bank Account with Lloyds TSB Bank plc at 55 Corn Street, Bristol, BS99 7LE, England ("the Bank"), sort code 30-00-01 for the credit of Ricardo's relevant account numbers:

5.3.1 For payments in Pounds Sterling: 02704911

5.3.2 For payments in US Dollars: 11434691

5.3.3 For payments in Euros: 86182643

5.4 In the event that payment is not received within 30 days of the date of the Ricardo's invoice then Ricardo shall be entitled in its sole discretion to:

5.4.1 charge commercial statutory interest rate on the outstanding amount from day to day as set out in sections 6:119a and 6:120 DCC applying from time to time both before and after judgement in respect of all invoices outstanding from their due date until payment is actually received;

5.4.2 suspend provision of the Services without liability to the Client until the outstanding amount is paid in full and the timetable and any other times agreed for the provision of the Services shall be amended accordingly; and/or

5.4.3 terminate the Contract in accordance with Condition 14.2.2.

5.5 If, by reason of any rise in costs beyond Ricardo's reasonable control (including, without limitation, the cost of materials, fuel, transport, shipping, insurance or the cost of complying with any statutory provision or order, regulation or by-law), the cost to Ricardo of providing the Services shall increase Ricardo shall, in its sole discretion, be entitled to pass a fair and reasonable element of such increased cost on to the Client to be paid by the Client in addition to and with the Price in accordance with this Condition 5.

6 Client's Responsibilities

6.1 The Client shall:

6.1.1 Supply to Ricardo, at its own expense, all Input Material necessary for the execution of the Services, within sufficient time to enable Ricardo to provide the Services in accordance with the Contract as set out in the Proposal and otherwise from time to time as requested by Ricardo or as otherwise required to maintain the progress of the Services including, where appropriate and without limitation, data, operating manuals and safety information;

6.1.2 be responsible for ensuring that any Input Material supplied is accurate, in working order and free from defects of any kind;

6.1.3 supply and/or deliver spares and service replacements for any Input Material as required by Ricardo free of all charges throughout the Services in a timely manner;

6.1.4 ensure that any Input Material supplied to Ricardo for the performance of the Services complies with the requirements of the relevant customs and any other costs (including tax) suffered or incurred by Ricardo resulting from any non-compliance shall be charged to and payable by the Client in addition to the Price;

6.1.5 provide or procure the provision of technical support in respect of any Input Material or components thereof from time to time as required in order to support the Services;

6.1.6 provide instructions and feedback when requested to in a timely manner and, in the event of suspension of the Contract due to lack of instructions, any extra costs and expenses suffered or incurred by Ricardo will be charged to and payable by the Client in addition to the Price;

6.1.7 provide Ricardo's employees, contractors and such other personnel involved in performing the Services, as identified by Ricardo, with training in the Client's systems and equipment, including without limitation software, procedures, working methods and product introduction processes, as required for the satisfactory delivery of the Services. Such training will take place at Ricardo's or the Client's premises, as reasonably determined by Ricardo, at times agreed between the parties to meet the Services requirement and will be given in English, unless agreed otherwise. Any training materials and appropriate manuals will only be provided in English, unless agreed otherwise;

6.1.8 ensure and be responsible for the health and safety of Ricardo's employees, contractors and personnel whilst on the Client's premises and whilst using any of the Client's employees, contractors and personnel whilst on the Client's premises and whilst using any of the Client's systems or equipment, including without limitation Input Materials, and whether on or off the Client's premises; and

6.1.9 notify Ricardo promptly of any risk, safety issues or incidents arising in respect of the Input Material or in any processes or systems used at the Client's premises.

7 Project Management

7.1 Ricardo shall appoint a Project Manager to manage the provision of the Services and liaise with the Client as necessary by appropriate means. The Client shall identify a representative to liaise with the Project Manager in respect of the provision of the Services. Any instruction given by the Client's representative shall be binding on the Client.

8 Deliverables

8.1 The Deliverables shall be as specified in the Proposal and, unless otherwise specified in the Proposal, the Deliverables will be delivered ex works at Ricardo's premises.

8.2 Any tests, designs, analysis, results, reports, prototypes, demonstration vehicles, parts or models delivered to the Client or issued to the Client during the course of the Services do not constitute complete designs or production validation of any component, part, engine, transmission or vehicle.

9 Risk and Property

9.1 Risk in the Deliverables shall pass to the Client immediately upon notification from Ricardo to the Client that the Deliverables are available.

9.2 Notwithstanding delivery and/or the passing of risk in the Deliverables or any other provision in these Conditions, property in the Deliverables shall not pass to the Client (*eigendomsvoorbehoud*) until Ricardo has been paid in full for the Services including the Deliverables.

10 Rights

10.1 Upon payment by the Client of the total Price due to Ricardo and any other costs and expenses provided for under the Contract, all Deliverables, but excluding any Intellectual Property Rights therein, shall become the sole property of the Client. For the avoidance of doubt the Price does not include the cost of searches in third party indexes to identify any existing third party rights and Ricardo shall not be obliged to carry out any such searches unless specifically requested to do so by the Client at the Client's sole cost.

10.2 The Client accepts that, during the performance of the Services, Ricardo may use and/or apply its Background Information. The Client shall not obtain or have any rights in such Background Information or any development, modification, improvement or variation thereof made by Ricardo or on Ricardo's behalf or any representation of the same whether developed or made by Ricardo or on Ricardo's behalf in connection with the performance of the Services or otherwise. All title, rights and Intellectual Property Rights in the Background Information, and any development, modification, improvement or variation thereof made by Ricardo or on Ricardo's behalf, is the sole and exclusive property of Ricardo provided that the Client may request the right to use such Background Information for the purposes of exploiting the Deliverables but such right will only be granted for internal use within the Client's business.

10.3 Any Input Material provided by the Client shall belong to the Client subject to Ricardo's right to use such Input Material as it requires in the performance of the Services and as otherwise provided for in the Contract.

10.4 Any background information developed by either party outside the scope of the Services shall belong to the party developing it.

10.5 Any know-how arising during the provision of the Services shall belong solely and exclusively to Ricardo and Ricardo shall be entitled to use such know-how as it determines in its sole discretion.

10.6 Subject to Condition 10.5, any inventions, designs and similar which the parties may develop or create during the execution of the Services shall belong to the party employing (whether as an employee, contractor or otherwise) the inventor, designer or author thereof. The parties shall notify each other of any proposed application for any Intellectual Property Rights protection or registration in respect of any such invention or design and shall keep each other informed in respect of progress.

10.7 Upon the passing of property in the Deliverables to the Client in accordance with Condition 10.1, Ricardo shall grant the Client a non-exclusive, non-transferable, perpetual, royalty free license, but without the right of sub-license (save in accordance with this Condition), to use the Intellectual Property Rights in the Deliverables solely for the purpose of and in connection with the Deliverables and not for any other purpose without Ricardo's express prior written consent. The rights granted by this Condition may only be sub-licensed to such of the Client's production suppliers who have a need to know and solely on the basis that (i) such sub-license is only for use in connection with the Deliverables and (ii) notice and details of such sub-license, including without limitation the name of the sub-licensee, are promptly given to Ricardo.

10.8 Notwithstanding any other provision of the Contract, the Client shall not be entitled to use in any way the name "Ricardo" without the express prior written consent of a Duly Authorised Officer to the specific use.

10.9 Ricardo shall be entitled to use all Intellectual Property Rights (including without limitation any patents) belonging to the Client for its own internal research and development work and for other work for the Client.

11 Warranties and Liability

11.1 Ricardo warrants (*garandeert*) that:

11.1.1 it will perform the Services using all reasonable skill and care in accordance with good engineering practice;

11.1.2 unless expressly indicated to the contrary any design, analysis, research and support are the property of Ricardo and/or one or more Associated Companies;

11.1.3 no third party rights are known to Ricardo at the date of the Proposal which may be infringed by the Deliverables;

11.1.4 Ricardo or one of the Associated Companies is the owner of the rights in the Background Information and the Deliverables and is free to transfer the Deliverables to the Client as indicated in the Contract save for those instances when, at the Client's request, Ricardo has been asked to include third party proprietary products and information.

11.2 In the event of a breach of the warranty at Condition 11.1.3 above, Ricardo shall be entitled at its own expense and sole option and as the Client's sole remedy for such breach either to:

11.2.1 procure the right for the Client to continue using the Deliverables; or

11.2.2 make such alterations, modifications or adjustments to the Deliverables so that they become non-infringing without incurring a material diminution in performance or function; or

11.2.3 replace the Deliverables with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

11.3 The Client warrants that it is the owner of the beneficial rights in the Input Material and the Input Material, and its use by Ricardo for the purpose of providing the Services, will not infringe the copyright or any other rights or Intellectual Property Rights of any third party.

11.4 In the event of a breach of the warranty at Condition 11.3 above, Ricardo shall be entitled, at its sole option and without prejudice to any other right or remedy it may have, to suspend provision of the Services without liability to the Client to allow the Client a maximum of 14 days to:

11.4.1 procure the right for Ricardo to continue using the Input Material; or

11.4.2 make such alterations, modifications or adjustments to the Input Material so that it becomes non-infringing without incurring a material diminution in performance or function; or

11.4.3 replace the Input Material with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

Provided that any times agreed for the provision of the Services shall be amended accordingly, the Client shall be additionally liable for Ricardo's costs incurred during the period of suspension and, if the Client is unable to rectify the infringement in accordance with Condition 11.4.1, 11.4.2 or 11.4.3, Ricardo shall be entitled to terminate the Contract in accordance with Condition 14.2.1.

11.5 Ricardo warrants that the Deliverables will generally meet the objectives set out in the Proposal solely for the purpose set out in the Proposal. Otherwise, Ricardo gives no warranty that the Deliverables will be satisfactory for the purposes of the Client and the Client acknowledges and agrees that it is its sole responsibility to ensure the same. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.6 Where Ricardo provides any Deliverables which contain or rely upon components, parts, software or other third party products, Ricardo gives no warranty, guarantee or other term as to their quality, fitness for purpose or otherwise. Ricardo shall to the extent possible assign to the Client the benefit of any warranty, guarantee or indemnity given by the supplier of the relevant components, parts, software or third party products to Ricardo.

11.7 Ricardo shall not be liable for any failure or delay in respect of Input Material under test, any defect arising from fair wear and tear, misuse, alteration, amendment or repair of the Deliverables.

11.8 Except in the case intent or gross negligence (*opzet of bewuste roekeloosheid*) of Ricardo or its management staff :

11.8.1 Ricardo shall not be liable to the Client for any liability whether arising in contract or in tort (*onrechtmatige daad*) including but not limited to negligence and breach of statutory duty, misrepresentation (unless fraudulent), any breach of warranty whether express or implied, any condition or other term, or any duty for any loss of profit or indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Ricardo, its servants, agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Client; and

11.8.2 Ricardo's total liability to the Client shall not exceed the Price and the sum of €1,000,000, whichever amount is lower.

11.9 Ricardo will use its reasonable endeavours to deliver the Deliverables in accordance with the timetable set out in the Proposal. The timetable is an estimate and shall not constitute firm dates as set out in section 6:83a DCC only and Ricardo accepts no responsibility or liability, financial or otherwise, in the event that the estimated delivery schedule is not complied with. For the avoidance of doubt Ricardo shall not be liable to reimburse the Client in respect of any delay payments (*vertragingsschade*) or other penalties for which the Client may become liable to third parties whether or not Ricardo was aware of such liability.

11.10 In the event that during the execution of the Services or during any subsequent development of the Deliverables an Engineering Design Defect is discovered which is due to the default of Ricardo, Ricardo shall seek to remedy that Engineering Design Defect at its own cost.

12   Confidentiality

12.1 The parties acknowledge and agree that the Confidentiality Agreement (if any) shall continue to apply in respect of the Contract. If there is not a Confidentiality Agreement in place between the parties, the following terms of this Condition 12 shall apply.

12.2 The parties (as a "Receiving Party") hereby acknowledge that the other (the "Disclosing Party") has provided to the Receiving Party Confidential Information and in respect of all such Confidential Information the Receiving Party will:

12.2.1 Treat it as confidential;

12.2.2 Restrict its disclosure to such of its employees, agents and professional advisors as have a need to know and subject always to such employees and agents being under a similar duty of confidentiality; and

12.2.3 Not disclose it to any third party without the prior written consent of the Disclosing Party.

12.3 The requirements of Condition 12.2 shall not apply to any Confidential Information which:

12.3.1 is or becomes common knowledge without breach of this Condition by the Receiving Party; or

12.3.2 was in the Receiving Party's possession prior to receipt from the Disclosing Party or developed for or by the Receiving Party at any time independently of any disclosure by the Disclosing Party; or

12.3.3 the Receiving Party is required to disclose by law or other competent authority provided that the Receiving Party notifies the Disclosing Party, if permitted by law, as soon as it receives such a request for disclosure and affords to the Disclosing Party all such reasonable assistance as the Disclosing Party may request to prevent or limit such disclosure.

13   Assignment

13.1 Subject to Condition 13.2 below, neither party may assign the Contract nor any of the benefits or liabilities hereof in whole or in part without the express prior written consent of the other party, save for the purpose of a solvent reconstruction or amalgamation.

13.2 Ricardo is entitled to sub-contract any of its rights or obligations under the Contract, whether in connection with the performance of the Services or otherwise, to any one or more of the Associated Companies as it may determine in its sole discretion.

14   Termination

14.1 The Contract shall continue in full force and effect until completion by both parties of their respective obligations hereunder unless terminated earlier in accordance with Condition 14.2.

14.2 This Agreement may be terminated by:

14.2.1 either party if the other continues in default of any obligation imposed upon it hereunder for more than 30 days after written notice has been dispatched by that party by recorded delivery or courier requesting the other to remedy such default;

14.2.2 Ricardo on written notice to the Client with immediate effect in the event that the Client fails to pay within the period allowed and/or fails to make payment after a further request for payment;

14.2.3 either party on written notice with immediate effect to the other in the event that the other makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the other or the other ceases, or threatens to cease, to carry on business; or

14.2.4 by either party on 30 days written notice to the other if an event of Force Majeure affects the other party from properly performing its obligations under the Contract for a continuous period of at least 4 weeks.

14.3 In the event of termination of the Contract for any reason, the Client shall pay Ricardo for all Services performed up to the date of termination.

14.4 In the event of termination of the Contract for any reason (other than by the Client pursuant to Condition 14.2.1), the Client shall additionally pay Ricardo for all costs incurred after the date of termination in winding down the Services including, inter alia and without limitation the dismantling of any test facilities, the storage and/or return of Input Material, delivery of the Deliverables the use of Ricardo's facilities and resources which are unavailable as a result of the termination, any third party supplier costs in respect of goods and/or services which cannot be terminated and the labour costs for Ricardo's personnel and/or sub-contractors, involved in the performance of the Services, for up to a maximum of four weeks from termination or such shorter period until Ricardo can place such personnel with alternative work. The Client shall also pay 10 per cent of the Price outstanding at the date of termination and which the parties agree is a reasonable pre-estimate of the loss Ricardo will suffer as a result of any such termination.

14.5 Unless otherwise specified in the Proposal, the Input Material will, at Ricardo's sole option as notified to the Client, be returned to the Client by Ricardo and/or made available for collection from Ricardo's premises and if the Client is responsible for collecting any of the Input Material from Ricardo's premises, such collection may be made at any time during business hours and on at least 48 hours' notice to Ricardo after Ricardo has given notice that the Input Material are available for collection.

14.6 If the Client fails to collect any Input Material or fails to provide delivery instructions within the time stated in the notification then, without prejudice to any other right or remedy which Ricardo may have, Ricardo may at its sole

discretion:

14.6.1 Store the Input Material at its own premises or elsewhere and charge the Client for its reasonable costs including without limitation insurance for storage; and/or

14.6.2 On notice to the Client, destroy the Input Material and charge the Client for its reasonable costs.

14.7 Any termination of the Contract shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination.

15 Delays

15.1 Ricardo shall not be responsible for any delay caused by:

15.1.1 the inadequacy or the delay in provision of any Input Material to be supplied by the Client and/or third party suppliers whether or not nominated by the Client;

15.1.2 the failure or malfunction of any Input Material under test.

In the event of such delay Ricardo may extend the timetable and charge the Client for any additional cost incurred in re-allocating resources.

16 Taxes

16.1 The Price is exclusive of all taxes including but not limited to VAT and Customs and import duties which will be invoiced to and payable by the Client in addition to the Price.

16.2 If Ricardo is liable for any tax levied by a foreign government in connection with the provision of the Services and/or the supply of the Deliverables the Client shall provide Ricardo with the necessary tax certificates to enable Ricardo to recover the taxes to the greatest extent possible under any agreement for the avoidance of double taxation between the relevant government and the foreign government levying the tax charge.

16.3 If any deduction or withholding is required by any law, practice or regulation (whether or not such practice or regulation has the force of the law) in respect of any payment due from the Client to Ricardo under the Contract or is in any event made, the relative sum payable by the Client shall be increased so that, after making the minimum deduction or withholding so required, the Client shall pay to Ricardo and Ricardo shall receive and be entitled to retain on the due date for payment a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be, or had in fact been made.

17 Variations

17.1 To allow flexibility within the Services but with appropriate controls a system of project variation requests will be used. The project variation request may be Client or Ricardo driven and may include, inter alia, changes to the objectives, scope of work, Deliverables, timing, responsibilities, assumptions, Price or delays caused by the Client and/or third party suppliers, whether or not nominated by the Client, and shall be agreed by the parties in writing in a timely (*binnen bekwame tijd*) manner so as not to prejudice any timing schedule agreed between the parties. Ricardo shall be entitled to charge for any additional cost incurred as a result of any project variation. Subject to Condition 3.3, no project variation shall take effect unless and until agreed in writing by the Project Manager of Ricardo or such other person who may be notified by Ricardo to the Client as duly authorised for the purposes of this Condition.

18 Insurance

18.1 The Client will list all Input Material supplied to Ricardo and will advise Ricardo of the value of that Input Material prior to delivery so that Ricardo may, subject to verification, take steps to insure the same for such value whilst at Ricardo's premises and under Ricardo's control. Ricardo shall not be obliged to insure Input Material which is being used by employees or representatives of the Client at Ricardo's premises or elsewhere.

19 General

19.1 The Client shall not be entitled to exercise any right of set off *(verrekening)* arising out of the Contract or otherwise.

19.2 The Contract, these Conditions, the Proposal and the Confidentiality Agreement (if any) embody the entire understanding of the parties in respect of the provision of the Services by Ricardo and all and any prior statements, undertakings, documents or promises whether written or oral, express or implied made by either party shall have neither force nor effect.

19.3 If any provision or part-provision of this agreement 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 this agreement.

19.4 Neither party shall be liable to the other party for the non-performance or delay in the performance of any of its obligations hereunder, other than for payment, due to events of Force Majeure. Upon the occurrence of such an event of Force Majeure, the affected party shall immediately notify the other party with as much detail as possible and shall promptly inform the other party of continuing developments. Once the event of Force Majeure is removed or ended the affected party shall perform its obligations with all due speed unless the Contract has been terminated in accordance with Condition 14.2.4.

19.5 Nothing in these Conditions shall create a partnership or joint venture between the parties hereto and, save as expressly provided in these Conditions, neither party shall enter into or have authority to enter into any engagement or make any representations or give any warranty either express or implied on behalf of or pledge the credit of or otherwise bind or oblige the other party.

19.6 Nothing contained in these Conditions shall prevent either party from working with any third party.

19.7 No failure or delay by Ricardo in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by Ricardo of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

19.8 Any notice required or permitted to be given under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this Condition to the party giving the notice.

19.9 Save for Associated Companies, a person who is not a party to the Contract has no rights under the Contract to enforce any term of the Contract.

19.10 The language for communication, training and training manuals and correspondence between the parties in respect of the provision of the Services shall be English.

20 Law and Dispute Resolution

20.1 The parties agree that the Contract and these Conditions shall be governed and construed in accordance with Dutch law and, subject to Condition 20.2 below, the parties submit to the non-exclusive jurisdiction of the courts of Utrecht the Netherlands.

20.2 Should any dispute arise out of the Contract or these Conditions, including the interpretation thereof or any other matter specifically referred to herein, the parties agree to negotiate for the settlement thereof by the following procedure:

20.2.1 The parties shall use all reasonable endeavours to promptly negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Contract or a breach thereof within 14 days of notification by one party to the other of such dispute. If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the parties within such 14 day period, the dispute shall be immediately referred to the Project Directors of both parties who shall meet (either by themselves or through their authorised representatives and either in person, by telephone or through such other means of communication as may be agreed between them) in good faith within 14 days of the request of either party in order to attempt to resolve the dispute within a further 14 days from the initial date of such meeting.

20.2.2 In the event that the parties are unable to resolve the dispute pursuant to Condition 20.2.1, the matter at the election of either party may be referred to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure"). To initiate a mediation, a party by its Managing Director shall give notice in writing ("ADR Notice") to the other party to the dispute addressed to its Duly Authorised Officer requesting a mediation in accordance with the Model Procedure. The place of mediation shall be Utrecht, the Netherlands. The language of the mediation and agreement shall be in English.

In the event that the parties are unable to resolve the dispute pursuant to Condition 20.2.2 within 6 weeks, or either party at any time, acting reasonably, no longer considers that the matter may be resolved by mediation, the matter may, at the election of either party, be referred to and finally resolved by the International Chamber of Commerce ("ICC") in Paris. Such arbitration shall be conducted in the English language and in accordance with the ICC Conciliation and Arbitration Rules. The decision of such arbitration shall be final and binding upon the parties.