

## **Romax Terms & Conditions of Services (Version May 2014) ("Conditions")**

### **Schedule A – GENERAL TERMS AND CONDITIONS FOR SERVICES**

This Schedule applies to all Services provided by Romax Technology to the Client.

#### **1 Interpretation**

##### 1.1 Definitions

In these Conditions, the following definitions apply:

**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 the Contract, 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;

**Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 5.

**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 12.7

**Contract:** the contract between Romax Technology and the Client comprising the Proposal, these Conditions and any other schedules attached thereto.

**Client:** the person or firm who purchases Services from Romax Technology.

**Deliverables:** the deliverables set out in the Proposal produced by Romax Technology for the Client.

**Input Material:** 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:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including, algorithms, calculations, methods and calculation results, know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Client's order for Services as set out in the Client's purchase order form, the Client's written acceptance of a quotation by Romax Technology, or , as the case may be.

**Proposal:** the document setting out Romax Technology's quotation for the Services to which these Conditions relate.

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

**Romax Technology:** Romax Technology Limited registered in England and Wales with company number 2345696, and whose registered office is at Romax Technology Centre, University of Nottingham Innovation Park, Triumph Road, Nottingham NG7 2TU or if applicable the Associated Company of Romax Technology stated in the Proposal as the contracting party.

**Software** means any software provided by Romax Technology in connection with the Services (other than any Deliverables), as specified in the Proposal or otherwise.

**Supplier Materials:** has the meaning set out in clause 4.1(f)

**Work Scope:** the description or specification of the Services provided in the Proposal by Romax Technology to the Client.

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

##### 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 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, except where the context indicates otherwise.

## **2 Basis of contract**

- 2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Romax Technology issues written acceptance of the Order or when first invoices for part or full payment, whichever is the earlier at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Romax Technology which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Romax Technology, and any descriptions or illustrations contained in Romax Technology's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 Except to the extent expressly provided these Conditions apply to the Contract to the exclusion of any other terms or conditions that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Romax Technology shall not constitute an offer, and is only valid for a period of 20 days from its date of issue.

## **3 Supply of Services**

- 3.1 Romax Technology shall supply the Services to the Client in accordance with the Work Scope in all material respects.
- 3.2 Romax Technology shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Romax Technology 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 Romax Technology shall notify the Client in any such event.
- 3.4 Romax Technology warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.5 Romax Technology shall not be obliged to commence or continue work in respect to the Services unless or until Client has provided all appropriate and necessary Input Material as identified in the Proposal, free of all charges, and performed all its obligations, and any estimated date for delivery shall be postponed at Romax Technology's option, to the extent of any such delay in Client's performance,.
- 3.6 Romax Technology 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.

- 3.7 The Deliverables shall be as specified in the Proposal and, unless otherwise specified in the Proposal, the Deliverables will be delivered ex works at Romax Technology's premises.
- 3.8 Save as expressly provided in the Proposal 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 validated for production of any component, part, engine, transmission or vehicle.
- 3.9 A request or acknowledgement by the Client to begin work on any staged Deliverable shall be deemed to be an acceptance by the Client of all previous staged Deliverables.
- 3.10 If no explicit objection is made to a Deliverable or staged Deliverable within 5 working days of its delivery, that Deliverable or staged Deliverable shall be deemed to be accepted by the Client.
- 3.11 The Services shall be performed at Romax Technology's premises unless indicated otherwise in the Proposal.

#### **4 Client's obligations**

- 4.1 The Client shall:
  - a) ensure that the terms of the Order and any information it provides in the Input Material are complete and accurate and timely provided and shall 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;
  - b) timely co-operate with Romax Technology in all matters relating to the Services provide instructions and feedback when requested to and, in the event of suspension of the Contract due to lack of instructions, any extra costs and expenses suffered or incurred by Romax Technology will be charged to and payable by the Client in addition to the Charges;
  - c) provide Romax Technology, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities including timely co-operation of the Client's IT facilities function when setting up connections and IT infrastructure necessary for the delivery of the Work Scope, all as reasonably required by Romax Technology;
  - d) provide Romax Technology with such information and materials as Romax Technology may reasonably require in order to supply the Services without cost to Romax Technology, and ensure that such information is accurate in all material respects, free from defects and in working order;
  - e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - f) keep and maintain all materials, equipment, documents and other property of Romax Technology (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain Supplier Materials in good condition until returned to Romax Technology, and not dispose of or use the Supplier Materials other than in accordance with Romax Technology's written instructions or authorisation; and
  - g) ensure and be responsible for the health and safety of Romax Technology'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, whether on or off the Client's premises; and
  - h) in the event that Romax Technology's use of Input Materials results in any infringement, suspected infringement or allegation of infringement of the Intellectual Property Rights of any other person, then the Client shall:
    - (i) procure the right for Romax Technology to continue using the Input Materials;
    - (ii) make such alterations, modifications or adjustments to the Input Materials so that it becomes non-infringing without incurring a material diminution in performance or function; or

- (iii) replace the Input Materials with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

If the Client is unable to remedy such infringement in accordance with the foregoing paragraphs (i) – (iii) within thirty (30) days, then Romax Technology shall be entitled to terminate the Contract by notice of immediate termination to the other.

- 4.2 If Romax Technology's performance of any of its obligations under the Contract 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) Romax Technology 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 Romax Technology's performance of any of its obligations;
  - b) Romax Technology shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Romax Technology's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - c) the Client shall reimburse Romax Technology on written demand for any costs or losses sustained or incurred by Romax Technology arising directly or indirectly from the Client Default.

## 5 Charges and payment

- 5.1 The Proposal shall specify the Charges for the provision of the Services. The Charges 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, save that all travel, accommodation and subsistence costs of Romax Technology personnel unless 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 Romax Technology to the Client and shall include a handling charge of 10 per cent unless and to the extent specifically identified in the Proposal as separately chargeable or as part of the Price. All travel and subsistence costs of the Client's personnel are the sole responsibility of the Client.
- 5.2 Romax Technology shall invoice the Client for the Charges and other sums payable in accordance with any payment schedule set out in the Proposal. In the absence of any contrary statement in the Proposal, Romax Technology shall be entitled to invoice the Client for all work undertaken on a monthly basis.
- 5.3 All payments from the Client to Romax Technology are due within 30 days of the date of Romax Technology's invoice and shall be paid (in full without set off or other deduction) in such currency as may be specified in the Proposal. Payment shall be made direct to Romax Technology's Bank Account with HSBC at 12 Victoria Street, Nottingham, NG1 2FF, England ("the Bank"), sort code 40-35-18 for the credit of Romax Technology's relevant account numbers: for payments in Pounds Sterling: 54150058; for payments in US Dollars: 68093394; for payments in Euros: 68096267; for payments in Japanese Yen: 68096232
- 5.4 In the event that payment is not received within 30 days of the date of the Romax Technology's invoice then Romax Technology shall be entitled in its sole discretion to:
- a) charge interest on the outstanding amount from day to day at the rate equal to the European Central Bank main refinancing rate plus 7% per annum 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;
  - b) 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

- c) terminate the Contract in accordance with Clause 9.2(b)
  - d) If, by reason of any rise in costs beyond Romax Technology'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 Romax Technology of providing the Services shall increase Romax Technology 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.
- 5.5 Romax Technology may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Romax Technology to the Client.

## **6 Intellectual property rights**

- 6.1 All Intellectual Property Rights made by Romax Technology in or arising out of or in connection with the Services shall be owned by Romax Technology. The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Romax Technology obtaining a written licence from the relevant licensor on such terms as will entitle Romax Technology to license such rights to the Client.
- 6.2 The ownership of Intellectual Property Rights in or to Background Information of Romax Technology shall not be affected by the Contract. Calculations, methods and calculation results used to produce the Deliverables are confidential and proprietary to Romax Technology and will not be provided as part of the Deliverables.
- 6.3 The ownership of Intellectual Property Rights of Client including any in the Input Materials shall not be affected by the Contract, save that Romax Technology shall have the right to use such Input Material to perform the Services.
- 6.4 Effective upon full payment by the Client of the total Price due to Romax Technology and any other costs and expenses provided for under the Contract, Romax Technology grants the Client a non-exclusive, non-transferable licence under the Intellectual Property of Romax Technology for the use of the Deliverables for the purposes stated in the Proposal for which they were created and not for any other purpose without Romax Technology's express prior written consent.
- 6.5 Upon written confirmation, the Client and Romax Technology will be able to use each other's names in association with the Contract in publicity and marketing material, and will produce a joint press release. The contents of the press release will be authorised by both parties. Authorization will not be unreasonably withheld.

## **7 Confidentiality**

- 7.1 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 shall survive termination of the Contract.

## **8 Limitation of liability**

- 8.1 Subject to **clauses 8.2 and 8.3**, Romax Technology's maximum aggregate liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence, arising from a breach of, or a failure to perform or defect or delay in performance of, any of the its obligations under the Contract:

- a) in respect of losses suffered in connection with the performance of the Service or Services under which liability has arisen will be limited to the amount paid to Romax Technology by the Client in respect of the applicable Service;
  - b) in respect of all other liability will be limited to the sums paid by the Customer to Romax Technology in the year when the liability arose.
- 8.2 Without prejudice to clause 8.4, no party shall be liable to any other party for any:
- a) loss of profit (direct or indirect);
  - b) loss of revenue, loss of production or loss of business (in each case whether direct or indirect);
  - c) loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect);
  - d) loss or corruption of data (in each case whether direct or indirect);
  - e) loss of anticipated saving or loss of margin (in each case whether direct or indirect); or
  - f) indirect, consequential or special loss;
- arising out of or in connection with the Contract.
- 8.3 Nothing in the Contract shall operate to exclude or restrict one party's liability (if any) to the other:
- a) for death or personal injury resulting from its negligence or by the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
  - b) any breach of the obligations arising from Section 12 of the Sale of Goods Act 1979;
  - c) for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or
  - d) for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 8.4 Except as set out in the Contract, each party excludes, to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist.
- 8.5 The Client shall fully indemnify and hold harmless Romax Technology against any and all costs, losses and expenses (including without limitation legal and expert fees) incurred directly or indirectly by Romax Technology arising out of or in connection with the use or misuse of the Services provided pursuant to the Contract; and/or any act or omission by the Client relating to the Deliverables.
- 8.6 This clause 8 shall survive termination of the Contract.

## **9 Termination**

- 9.1 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 9.2.
- 9.2 The Agreement may be terminated by:
- a) 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;
  - b) Romax Technology on written notice to the Client 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; either party on written notice 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 any other analogous action is taken in respect of the inability of the other party to pay its debts; or any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1 or the other party

suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

c) by Romax Technology under Clause 11.3.

9.3 On any termination of the Contract, Romax Technology may

- a) 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
- b) On 30 days' notice to the Client, destroy the Input Material and charge the Client for its reasonable costs.

9.4 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.

9.5 Without limiting its other rights or remedies, Romax Technology may suspend provision of the Services under the Contract or any other contract between the Client and Romax Technology if the Client becomes subject to any of the events listed in clause 9.2, or Romax Technology reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

## 10 Consequences of termination

10.1 On termination of the Contract for any reason:

- a) the Client shall immediately pay to Romax Technology all of Romax Technology's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Romax Technology shall submit an invoice, which shall be payable by the Client immediately on receipt;
- b) the Client shall return all of Romax Technology Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then Romax Technology may enter the Client's premises and take possession of them and the Client shall pay Romax Technology's travel and labour costs to do so. 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; In the event of termination of the Contract for any reason, the Client shall pay Romax Technology for all Services performed up to the date of termination.
- c) in the event of termination of the Contract for any reason (other than by the Client pursuant to Clause 9.2 ), the Client shall additionally pay Romax Technology 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 Romax Technology'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 Romax Technology'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 Romax Technology 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 Romax Technology will suffer as a result of any such termination.
- d) Unless otherwise specified in the Proposal, the Input Material without prejudice to any other right or remedy which Romax Technology may have, Romax Technology may at its sole discretion dispose of such Input Material:
  - (i) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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
  - (ii) clauses which expressly or by implication survive termination shall continue in full force and effect.

## 11 Force majeure

- 11.1 For the purposes of the Contract, **Force Majeure Event** means an event beyond the reasonable control of Romax Technology including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Romax Technology 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 other adverse weather conditions or default of suppliers or subcontractors.
- 11.2 Romax Technology 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.
- 11.3 If the Force Majeure Event prevents Romax Technology from providing any of the Services for more than 4 weeks, Romax Technology shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

## 12 General

### 12.1 Assignment and other dealings.

- a) Romax Technology 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 or agent.
- b) The Client shall not, without the prior written consent of Romax Technology, assign, transfer, mortgage, lien or any encumbrance, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract or deal in any other manner with any of its rights and obligations under the Contract.

### 12.2 Notices.

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (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, sent by pre-paid first class post or other next working day delivery service, commercial courier. Notice under this Clause may not be given by fax or email.
- b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 1)a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 12.3 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.

12.4 **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 provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it 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.
- 12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.7 **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 Romax Technology.
- 12.8 **Governing law.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) ("any dispute"), shall be governed by, and construed in accordance with the law of England and Wales.
- 12.9 **Jurisdiction.** Where the Contract is to be performed (a) in the European Community (EU), each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute; (b) outside the EU, any dispute arising shall be submitted to the International Court of Arbitration of the International Chamber of Commerce. The seat of the arbitration shall be in (i) London, where the Contract is for performance in the USA; (ii) Hong Kong, where the Contract is for performance in the People's Republic of China ("PRC"). (iii) Singapore, where the Contract is for performance outside EU, USA, and PRC.

## **Schedule B – TERMS AND CONDITIONS FOR MONITORING, DATA ANALYSIS AND INSPECTION SERVICES**

This Schedule B applies to all Monitoring Services, Data Analysis Services and Inspection Service provided by Romax Technology to the Client. **The Client's attention is particularly drawn to the provisions of clause 3.**

### **1 Provision of Monitoring Service, Inspection Service, and Data Analysis Services ( InSight Service)**

- 1.1 Romax Technology shall dependent upon the Client's performance of its obligations under the Contract collect the data in the manner indicated in the Proposal and will supply the InSight Service stated in the Proposal and any ancillary Software to Client via the delivery method specified in the Proposal.
- 1.2 Romax Technology may change the content or format of the Monitoring Service at any time, with as much prior notice to Client as is reasonably practicable. If such change is material and has or is likely to have a material adverse effect on Client's reasonable use of the Monitoring Service, within 30 days of being notified of the change, Client may notify Romax Technology, requiring Romax Technology either not to implement or to reverse the change, as applicable. If within 90 days of its receipt of that notice, Romax Technology has not notified the Client that either the change will not be implemented or that the change will be reversed within a reasonable period (as applicable), Client may cancel the Monitoring Service on 90 days' notice.
- 1.3 Where Romax Technology has provided Client with a written specification of the minimum hardware configuration for any Hardware required to effectively use the Monitoring Service, Romax Technology will give not less than 60 (sixty) days' prior notice to Client of a material change

to that configuration. If such change is material and is likely to have a material adverse effect on Client's reasonable use of the Monitoring Service or require Client to incur material costs, within 90 (ninety) days of being notified of the change, Client may notify Romax Technology, requiring Romax Technology not to implement the change. If within 90 (ninety) days of its receipt of that notice, Romax Technology has not notified the Client that the change will not be implemented, Client may cancel the affected Monitoring Service on 90 (ninety) days' notice.

- 1.4 The Client shall provide Romax Technology's employees, contractors and such other personnel involved in performing the Services, 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 Romax Technology's or the Client's premises, as reasonably determined by Romax Technology, at times agreed between the parties to meet the Services requirement and will be given in English. Any training materials and appropriate manuals will only be provided in English;
- 1.5 Client shall prepare the Location in accordance with the requirements of the Proposal;

## **2 Use of Monitoring Service, Software and Data**

- 2.1 Romax Technology, on behalf of itself and/or its Romax Technology Affiliates, grants a personal licence for Client, without the right to sub-license to provide access to each Monitoring Service to Client's End Users in accordance with the 'Licence Level' or that Monitoring Service expressly specified in the Proposal.
- 2.2 An End User may use, copy, process, compile, store or download, in hard copy or electronically, a reasonable amount of the Data for his or her own use for the benefit of Client. An End User may not distribute the Data outside the Client's organization.
- 2.3 In respect to any Software provided to the Client:
  - a) Client acknowledges that all Intellectual Property in the Software are the property of Romax Technology or third party licensors
  - b) Except as specifically granted in clause 2.1, the Licensee shall have no right or license in respect of the Software.
  - c) No title to or ownership of Intellectual Property in the Software and/or the Documentation, shall be transferred to the Client.
  - d) Property in the Software and the program disks and the hardware key supplied to the Client shall remain the property of Romax Technology.
  - e) Client shall not and shall procure that its officers, employees, consultants, agents, contractors and others within its control shall not:-
  - f) Except as permitted by mandatory rules of law which cannot be disapplied by contract, copy, decompile, reverse engineer or create derivative works from the Software and use any information provided by Romax Technology or otherwise gained as part of any lawful reduction, create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it;
    - (i) use or install the Software other than in accordance with the Licence Level without the prior consent of the Supplier, and Client acknowledges that additional fees may be payable on any change of use approved by Romax Technology; ;
    - (ii) all or any part of Software or merge all or part of the Software into any other document or software or create derivative works based upon all or part of the Software;
    - (iii) make or use any backup or archival copy of the Software for any purpose other than to replace the original licensed copy in the event that the original licensed copy is destroyed or becomes defective and on condition that records are kept as to the number and location of any backup or archival copy and that steps are taken to prevent unauthorized copying.;
    - (iv) permit, the Software the hardware key and/or any copy of all or part of the forgoing to be disclosed to or used by any third party other than End Users who are bound by confidentiality obligations equivalent to those set out in these Conditions;

- (v) use or permit the Software to be used to provide monitoring services to or by third parties; and/or
  - (vi) remove, tamper with or circumvent any software or hardware provided with the Software, which is used to ensure or monitor compliance with the License Level;
- 2.4 Client will comply with Romax Technology's reasonable reporting requirements in respect of Client's use of the Data. These reporting requirements will be set out in the Proposal or otherwise notified in writing to Client by Romax Technology and may change from time to time.
- 2.5 Without prejudice to any further right, Client grants Romax Technology and its Affiliates the right to use all Input Material, test data and monitoring data produced during the execution of the Services for the purposes of R&D.
- 2.6 Romax Technology will take all reasonable steps to ensure that any of its personnel performing the Monitoring Services at the Location will comply with any reasonable security or health and safety requirement of Client relating to that Location, provided those requirements have been previously notified to Romax Technology.

### **3 Warranties and limitations and exclusions of liability**

- 3.1 Romax Technology warrants that the Monitoring Service, the Inspection Service and the Data Analysis Service as applicable will, in all material respects, comply with the Work Scope forming part of the Proposal including where applicable that the Software upon delivery complies with the then current end user guide. Client's sole remedy for breach of this warranty is that Romax Technology will use its reasonable efforts to remedy any material failure to comply with the Work Scope;
- 3.2 Romax Technology warrants that it will use all reasonable efforts to remedy any interruption to the Monitoring Service (other than planned interruptions to upgrade or maintain the Monitoring Service).
- 3.3 Except as set out in clauses 3.1 and 3.2 above and to the maximum extent permitted under applicable laws, Romax Technology, each Romax Technology Affiliate accepts no liability in contract, negligence or otherwise for (i) any error or omission in the Data, Software, or the Data Analysis Service; (ii) for the consequences of reliance on the Data, Software or Data Analysis Service nor (iii) for any interruption to the Monitoring Service
- 3.4 Notwithstanding Clause 8.1 of Schedule A, Romax Technology's limit of liability shall be £1,000,000 in respect to damage to the Client's property caused by the negligence of Romax Technology its employees or contractors.

### **4 Termination**

- 4.1 The Monitoring Service shall continue for the period stated in the Proposal or such other period agreed by the parties in writing;
- 4.2 If Client has committed a material breach of this Schedule B, Romax Technology may suspend or cancel the Monitoring Service and or the Data Monitoring Service upon at least five (5) days' prior notice.
- 4.3 Upon cancellation of the Monitoring Service or the Data Analysis Service, or termination of the Contract, all licences, (except in respect to any perpetual licences granted under the cancelled or terminated Monitoring Service or any Deliverables), will automatically terminate and Client will cease to use all Data, Software, licensed in connection with the Monitoring Services and or Data Analysis Service and all Monitoring Equipment provided in connection with the Monitoring Services. Client will return all such Monitoring Equipment to Romax Technology). Upon cancellation of the Monitoring Service or Data Analysis Service under Clause 9.2 of Schedule A or Clause 4.2 of this Schedule B, all licences to the Software and or the Deliverables will automatically terminate and the Client will cease to use all Software and Deliverables.
- 4.4 At the option of Romax Technology, the Client shall delete or destroy all copies of licensed materials for which its licence has terminated and which it may have in its possession or control.

Client may continue to use and store any such licensed materials to the extent necessary for Client to comply with any statutory or regulatory requirements.

- 4.5 Clauses 2.3, 2.5, 3, 4.3, 4.4 and 5 of this Schedule B and Clauses 1.7, 1.8, 1.9 and 2 of Schedule C shall survive the cancellation of any of the Monitoring Service, Inspection Service, Data Analysis Service, or the termination of the Contract.

## 5 Definitions

In this Schedule B the following definitions apply:

**Data:** information from time to time available from the Services and or Input Material and models calculations, calculation results and databases analysed, calculated, compiled or otherwise produced by Romax Technology or on its behalf from that data

**End User:** (i) an employee of the Client or (ii) an individual contractor providing services to the Client at Client's premises, either of them as designated by the Client to use the Monitoring Service for the benefit of Client.

**Monitoring Service:** the monitoring service provided by Romax Technology to the Client and specified in the Proposal;

**Data Analysis Services:** the provision of data and or the data analysis service, as provided by Romax Technology to the Client and specified in the Proposal.

## SCHEDULE C – MONITORING EQUIPMENT

This Schedule C applies where Romax Technology provides Monitoring Equipment to Client.

### 1 Provision of Monitoring Equipment (InSight Service)

- 1.1 Romax Technology will provide the Monitoring Equipment to Client.
- 1.2 All Monitoring Equipment will remain the property of Romax Technology (or the third party owner of the Monitoring Equipment, if any) unless and to the extent expressly provided in the Proposal and Client will not part with possession or control of the Monitoring Equipment except for use by any third party exclusively using the Monitoring Equipment on behalf of the Client for the purposes of the business of the Client only) nor grant any security interest over the Monitoring Equipment.
- 1.3 Romax Technology warrants that the Monitoring Equipment will at the time of delivery comply in all material respects with the manufacturer's specifications and any further applicable specifications provided in writing by Romax Technology to Client.
- 1.4 Client will at its own expense prepare and make available a site for the Monitoring Equipment at the Location specified in the Proposal in accordance with Romax Technology's reasonable instructions.
- 1.5 Risk in the Monitoring Equipment shall transfer to Client on delivery to the Location and Client shall, subject to ordinary wear and tear, at all times maintain the Monitoring Equipment in good working condition and in an appropriate environment.;
- 1.6 Client may neither modify nor move the Monitoring Equipment. If Client wants to relocate any Monitoring Equipment it shall give Romax Technology at least 20 working days' notice if the move is within the Location in which the Monitoring Equipment is currently located and at least 30 working days' notice if the move is outside that Location. Romax Technology may charge Client for services carried out in relation to the relocation of the Monitoring Equipment including writing a "method statement" on how the relocation shall be carried out, at Romax Technology's then current standard charge out rates. The relocation will be carried out by Romax Technology or its agents only during normal working hours.
- 1.7 Within 30 days of cancellation of the Monitoring Service or termination of the Contract, Client shall at Romax Technology's option, either return to Romax Technology all the Monitoring Equipment

with respect to which title has not passed to the Client, or make it available for collection. This clause 1.7 shall survive the cancellation of the Monitoring Service or termination of the Contract.

1.8 Romax Technology will not be liable for any failure in, interruption to or degradation of the

1.9 Services caused directly or indirectly by Client's equipment or any communications facilities arranged by the Client to access the Services.

1.10 Except as set out in Schedule C and to the maximum extent permitted under applicable laws, Romax Technology, each Romax Technology Affiliate accepts no liability in contract, negligence or otherwise for (i) any error or omission in the Hardware or the Monitoring Equipment; (ii) for any interruption to the Hardware or Monitoring Equipment.

## 2 Definitions

In this Schedule C the following definitions apply:

**Hardware:** any hardware as specified in the Proposal or otherwise, other than Monitoring Equipment, to be procured by the Client and installed by or on behalf of the Client in order for Romax Technology to provide the Monitoring Services.

**Location:** the site under the control of the Client where any of the Services are to be performed by Romax Technology;

**Monitoring Equipment:** any monitoring equipment or other hardware as specified in the Proposal or otherwise, provided or to be provided by Romax Technology and specified in the Proposal.