

BOWERS ELECTRICAL ENGINEERING SERVICES LIMITED

STANDARD CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

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1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Commencement Date: has the meaning given in clause 0.

Conditions: these terms and conditions as amended from time to time in accordance with clause 0.

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

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

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

Delivery Location: has the meaning given in clause 0.

Force Majeure Event: has the meaning given to it in clause 15.

Goods: the goods set out in the Quote.

Goods Specification: any specification for the Goods, including any relevant functional specifications, plans or drawings stated in the Quote or incorporated therein by reference.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

Quote: the document issued by the Supplier setting out various commercial terms including, the Goods and/or Services to be provided by the Supplier to the Customer, the prices and payment terms, the delivery address and estimated delivery/installation dates.

Services: the services set out in the Quote.

Services Specification: any specification for the Services stated in the Quote or incorporated therein by reference.

Supplier: BOWERS ELECTRICAL ENGINEERING SERVICES LIMITED incorporated and registered in England and Wales with company number 09230702 whose registered office is at Unit 25 Lyveden Road, Brackmills Industrial Estate, Northampton, England, NN4 7ED.

Supplier Materials: has the meaning given in clause 0.

1.2 Interpretation:

- (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 and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to writing or written includes fax and email.

2. BASIS OF CONTRACT

- 2.1 The Quote shall only be deemed to be accepted when the Customer signs it or otherwise issues written acceptance of the Quote at which

point and on which date the Contract shall come into existence (Commencement Date).

- 2.2 The Supplier shall provide the Goods and/or Services set out in each accepted Quote in accordance with the Goods Specification and/or Services Specification.
- 2.3 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 nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 The Quote shall not constitute an offer and may be withdrawn any time prior to the Commencement Date.

3. GOODS

- 3.1 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause shall survive termination of the Contract.
- 3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall deliver the Goods to the location set out in the Quote or such other location as the parties may agree (Delivery Location).
- 4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.3 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 Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the 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 Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to take OR accept delivery of the Goods within three Business Days of the Supplier notifying the Customer 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 Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken OR accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5. QUALITY OF GOODS

5.1 Following completion of any factory acceptance tests the Goods and/or Services will be deemed accepted once the Customer has signed them off as being satisfactory or signed a project approval document and any subsequent changes to the Goods Specification, Services Specification or any functional design specification shall be chargeable to the Customer.

5.2 Where the Supplier offers a warranty on the Goods or any part of them (such warranty to be specified in the Quote) the Supplier warrants that on delivery, and for any period stated in the Quote (warranty period), the Goods shall:

- (a) conform in all material respects with the Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.3 Subject to clause 5.4 the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

- (a) the Customer 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 0; and
- (b) the Supplier is given a reasonable opportunity of examining such Goods.

5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 0 if:

- (a) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or good trade practice;
- (b) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (c) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (e) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 0.

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

6. TITLE AND RISK

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

6.2 Title to the Goods shall not pass to the Customer 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 Customer 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 Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer 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 0 to clause 0; 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 Customer the Customer becomes subject to any of the events listed in clause 0 to clause 0, then, without limiting any other right or remedy the Supplier may have:

- (a) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quote, 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 reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

- (a) ensure that the terms of the Quote and any information it provides in the Service Specification and 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 Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises 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) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer'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

- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer 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 Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 0; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

9.1 The Customer shall pay the price for Goods and/or Services, in accordance with the payment terms set out in the Quote;

9.2 The Supplier reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer 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 Customer 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 Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- (b) Increase any annual charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.

9.3 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer 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.

9.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum,

whether before or after judgment. Interest under this clause 0 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 9.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

- 10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 0.

- 10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

11. CONFIDENTIALITY

- 11.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 0.

- 11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the

party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12. LIMITATION OF LIABILITY

12.1 The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.

12.4 The Supplier's total liability to the Customer shall not exceed

- (a) 125% of the total charges in the contract year in which the breaches occurred;

- (b) contract year. A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
- (c) total charges. The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.

12.5 This clause 12.5 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 0, the types of loss listed in clause 0 are wholly excluded by the parties, but the types of loss and specific losses listed in clause 0 are not excluded.
- (b) If any loss falls into one or more of the categories in clause 0 and also falls into a category, or is specified, in clause 0, then it is not excluded.
- (c) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
- (d) The following types of loss and specific loss are not excluded:
 - (i) sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;

- (ii) wasted expenditure;
- (iii) additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;
- (iv) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.

12.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.7 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged damage to a third party arising out of or in connection with the Supplier's misuse of the Goods.

12.8 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, either 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 the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 0 to clause 0, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

14.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

15. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a Force Majeure Event). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for one month, the party not affected may terminate this agreement by giving fourteen days' written notice to the affected party.

16. GENERAL

16.1 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 0_the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

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

16.3 **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, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.4 **Entire agreement.**

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

16.5 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.6 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

16.7 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

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