



AVL UNITED KINGDOM LIMITED Terms and Conditions of Sale

General Terms

1 INTERPRETATION

1.1 In these Conditions the following words and expressions have the following meanings:

"Acceptance Test(s)" shall mean the test(s), if any, specified in the Contract which is/are to be undertaken upon completion of installation of the Equipment and, if applicable, the Software before it is accepted by the Buyer and which defines the criteria to determine that the Equipment and, if applicable, the Software meets the specification set out in the Contract in all material respects;

"Applicable Laws" shall mean all applicable national, supranational, foreign or local laws (including case law), legislation, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law in effect from time to time;

"AVL" shall mean AVL United Kingdom Limited a company registered in England under company number 01067795 and whose registered office is at Avon House, Hartlebury Trading Estate, Hartlebury, Worcestershire, DY10 4JB;

"Business Day" shall mean any day which is not a Saturday, a Sunday or a bank or public holiday in England;

"Buyer" shall mean the person(s), firm or company who purchases the Deliverables from AVL as listed on the Order;

"Buyer's Facilities" shall mean any and all equipment and systems of the Buyer with which the Equipment and, if applicable, the Software is required to interface or to be made available by the Buyer for use by AVL for any purposes under the Contract;

"Buyer's Representative" shall mean the person named as such in the Contract or nominated from time to time in writing by the Buyer;

"Conditions" shall mean the terms and conditions set out in these AVL United Kingdom Terms and Conditions of Sale – General Terms and any other conditions agreed in writing between the Buyer and AVL;



"Confidential Information" shall mean the provisions of these Conditions, the Contract, the Tender and all information (including, where applicable the Software Documentation and all other information relating to the Software), whether marked as confidential or not, which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets, business methods or any other information which may reasonably be considered to be confidential in nature, in all cases whether disclosed orally or in writing before or after the date of the Contract; together with any reproduction of such information in any form or medium or part;

"Contract" shall mean the contract between AVL and the Buyer for the sale of the Deliverables incorporating, in order of priority, the Tender, where applicable, these Conditions and the Order;

"Deliverables" shall mean the Equipment, Services, Software or any combination thereof as the case may be and as set out in the Tender and Order;

"Equipment" shall mean any equipment or goods agreed in the Contract to be supplied to the Buyer by AVL (including any part or parts of them);

"Final Acceptance Certificate" shall mean a certificate, in such form as AVL determines, which shall be issued by AVL in accordance with Condition 5 following the completion or resolution of any open issues listed on the related Release For Use Certificate;

"Force Majeure Event" shall mean any event or sequence of events beyond the reasonable control of the affected party which prevents or delays its ability to perform any of its obligations under the Contract including without limitation, act(s) of God, fire, flood, drought, storm, lightning, natural disasters compliance with any law or governmental order, rule, regulation or direction, war, revolution, act of terrorism, riot or civil commotion, strikes, locks outs and industrial action, malicious damage, imposition of sanctions, embargo, building collapse, pandemic or epidemic, nuclear or chemical or biological contamination, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services but not including inability to pay any amounts due under the Contract;

"Intellectual Property Rights" shall mean any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in any invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications for, or renewal or extension of, such rights which exist now or will exist in the future in England or in whichever part of the world existing and in each case whether registered or not and including any application for registration of the foregoing;



“**Licence Fee**” shall mean the proportion of the Price applicable to the Software and any support or maintenance services applicable to the Software;

“**Order**” shall mean the order from the Buyer to AVL for the supply of the Deliverables;

“**Payment Terms**” shall mean the payment terms stated in the Tender or, if not stated in the Tender, the Order as the case may be;

“**Price**” shall mean the price(s) stated in or calculated in accordance with the Tender or, if not stated in the Tender, the Order as amended in accordance with these Conditions;

“**Release For Use**” shall mean the project stage reached following the completion of installation or commissioning of the Equipment and, if applicable, the Software or a Successful Acceptance Test, as applicable;

“**Release For Use Certificate**” shall mean a certificate in such form as AVL determines which shall be issued by AVL in accordance with Condition 6 following the completion of installation or commissioning of the Equipment and, if applicable, the Software or a Successful Acceptance Test, as applicable;

“**Report**” shall mean the document provided to the Buyer from AVL detailing AVL’s results and/or findings from any study undertaken by AVL including, but not limited to, design studies and feasibility studies, and forming part of the Services as set out in the Tender;

“**Services**” shall mean any services agreed in the Contract to be provided to the Buyer by AVL including, where applicable, the production of a Report.;

“**Site**” shall mean the actual place(s) to be made available to AVL by the Buyer to which the Equipment is to be delivered or where Services are to be carried out by AVL which, for the avoidance of doubt, shall include sufficient space, as reasonably determined by AVL, for AVL personnel to perform the obligations under the Contract.

“**Software**” shall mean the computer software, (if any), owned by or licensed to AVL and required to operate, or comprised within, the Equipment or otherwise supplied to the Buyer for utilization on and operation or control of electro-technical, electromechanical and, or electronic systems and devices pursuant to the Contract or as otherwise described in the Software Specification;

“**Software Documentation**” shall mean any operating instructions or other documentation relating to the Software which is disclosed to the Buyer by AVL;

“**Software Licence Terms**” shall mean the additional licence agreement terms between AVL and Buyer whereby a licence is granted by AVL to the Buyer in respect of the Software as set out in attachment A;



“Software Specification” shall mean the specification for the Software as set out in the Tender or otherwise agreed by the parties in writing and which may be determined by reference to software licence numbers and/or a software list provided by AVL;

“Successful Acceptance Test” shall mean an Acceptance Test where the results of the test meet or exceed the criteria to determine that the Equipment and, if applicable, the Software meets the specification set out in the Contract in all material respects;

“Tender” shall, where applicable, mean any proposal submitted by AVL as referred to in the Contract.

1.2 Drafting Conventions:

- (a) Headings are inserted for convenience only and shall not affect the interpretation or construction of these Conditions.
- (b) Words expressed in the singular shall include the plural and vice versa. References to a person include an individual company, body corporate, corporation, unincorporated association firm, partnership or other legal entity,
- (c) The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding wordings where a wider construction is possible.
- (d) References to any statute or statutory provision shall include (i) any subordinate legislation made under it (ii) any provision which it has modified or re-enacted (whether with or without modification) and (iii) any provision which subsequently superseded it or re-enacts it (whether with or without modification) whether made before or after the date of the Contract.

2 SCOPE

2.1 These Conditions shall apply to all Contracts created in accordance with Condition 3 to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer may purport to apply through, or which are contained in, any confirmation of Tender, Order, specification or other document whatsoever and whenever unless otherwise agreed in writing by AVL). These Conditions supersede any previously issued terms and conditions of purchase or supply.

2.2 In the case of any conflict between the Conditions, the Tender and the Order, then the following order of precedence shall apply:



- (a) first the Tender;
- (b) second the Conditions;
- (c) third the Order.

2.3 In the case of a Contract which involves the supply of Software, including any services relating to the Software, the Software Licence Terms shall also apply save that, in the event of any conflict, the following order of precedence shall apply:

- (a) first the terms of the Software Licence Terms;
- (b) second the terms set out in these Conditions.

2.4 In the case of a Contract that involves the supply of installation or commissioning services the "Additional terms and conditions for the supply of AVL installation, and/or commissioning" set out in ATTACHMENT B to these Conditions shall also apply save that, in the event of any conflict, the following order of precedence shall apply:

- (a) first the terms set out in Attachment B; and
- (b) the terms set out in these Conditions.

2.5 No purported alteration or variation to the Contract shall apply and be effective unless confirmed in writing by AVL and with reference to this Condition 2.5. AVL shall be entitled to change the specification for the Deliverables at any time due to a change in Applicable Law.

3 BASIS OF CONTRACT

3.1 Each Order, regardless of whether it is issued pursuant to any Tender or otherwise, shall constitute an offer by the Buyer to purchase the Deliverables in accordance with the Contract. The offer constituted by the Order shall remain in effect and capable of being accepted by AVL unless withdrawn by the Buyer in writing prior to acceptance.

3.2 No Order shall be deemed to be accepted by AVL until the earlier of a written acknowledgement of such Order is issued by AVL or AVL commences manufacture or supply of the Deliverables. Any Order shall be accepted entirely at the discretion of AVL, at which point and on which date, a Contract shall come into existence. Rejection by AVL of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Buyer.

3.3 The Buyer may only cancel an Order, or part of an Order, which AVL has accepted with AVL's written agreement which may be given at AVL's absolute discretion.



- 3.4 Specifications, drawings, descriptive matters, illustrations and quotes in AVL catalogues, brochures etc., are for information only and they will not form part of a Contract. The description and specification of the Equipment or Services shall be as set out in the Contract and/or, where applicable the Software Specification and/or the Software Licence. It is the Buyer's responsibility to ensure that any description and specification within the Order and Contract are sufficient to meet the Buyer's requirements.
- 3.5 No statement, description, information, warranty, condition or recommendation in any catalogue, brochure or advertisement or communication made verbally or in writing by any agents or employees of AVL shall be construed in any way to vary the Contract.
- 3.6 Any quotation or estimate given by AVL, whether or not in the form of a Tender, is given subject to, and incorporates, these Conditions. Without prejudice to AVL's right not to accept an Order and subject to Condition 4.3, quotations, estimates and the contents of a Tender will be valid for the validity period specified in the Tender or, where no period is specified, 30 days from date of issue unless otherwise withdrawn by AVL in writing prior to this expiration of this period.
- 3.7 The Buyer acknowledges that AVL's quotations, estimates and Tenders shall at all times remain Confidential Information for the purposes of Condition 13 and AVL shall remain the owner of all Intellectual Property Rights in the Tender. The Buyer shall not reproduce or disclose the Tender to any third parties without AVL's prior written consent.

4 PRICES

- 4.1 Where the Services include installation and/or commissioning services, AVL reserves the right to adjust the Price if AVL's installation and/or commissioning services are delayed due to circumstances or reasons beyond AVL's control (including, but not limited to, a Force Majeure Event) if AVL has to perform activities at times or in conditions other than those that could have reasonably foreseen at the time of the Contract and these activities cause additional costs. In such circumstances, AVL shall be entitled to adjust the Price to include such additional costs.
- 4.2 Subject to Condition 4.3, the Price shall include delivery of the Deliverables by AVL in accordance with Condition 5.1. Unless otherwise expressly stated, the Price shall be exclusive of VAT.
- 4.3 If, following the date of the Tender, there is any increase in any costs associated with delivering the Deliverables (including administration costs and delivery costs), to the extent that AVL would be responsible for such costs under the Contract or any contract between AVL and its supplier(s), AVL shall be entitled to charge such increased costs to the Buyer and the Buyer shall pay such amounts to AVL in accordance with the Payment Terms.



5 DELIVERY, RISK AND PERFORMANCE

- 5.1 AVL shall deliver but not off-load the Equipment unless AVL have specifically included off-loading in the Contract to the address stipulated in the Contract or such other location as the parties shall agree in writing. If the Contract includes the supply of Software, the Software shall be delivered in accordance with the terms of the Software Licence Terms and this Condition 5.
- 5.2 Any period(s) or lead times stated in AVL's acknowledgment of the Order for the delivery of the Deliverables or any part thereof shall commence only from the date of acceptance of the Order by AVL.
- 5.3 Time for delivery shall not be of the essence of the Contract and AVL shall not be liable for any loss or damage whatsoever due to any failure by AVL to deliver the Deliverables (or any part of them), within, or a reasonable time of, the delivery period stated in AVL's acknowledgment of the Order or the Tender. Notwithstanding that AVL may have delayed or failed to deliver the Deliverables promptly the Buyer shall in any event be bound to accept delivery and to pay for the Deliverables in full.
- 5.4 The risk in the Equipment shall pass to the Buyer on delivery.
- 5.5 The failure of the Buyer to pay any one or more instalment of the Price on the due date shall entitle AVL, at its sole discretion and without notice, to suspend further delivery of the Deliverables until payment is received.
- 5.6 AVL shall be entitled to deliver the Deliverables by instalments and to make preliminary or partial deliveries of the Deliverables.
- 5.7 Any delivery period or the date for handing over the Deliverables shall be subject to a reasonable extension of time in the event that AVL is delayed by any variation to the Contract, any instructions or lack of instructions from the Buyer, industrial dispute or any Force Majeure Event.
- 5.8 Should the Buyer request AVL to delay the delivery of all or part of Deliverables that is ready for despatch or to delay the carrying out of any Services, the relevant part of the Equipment and/or the Software may be stored subject to Condition 5.10, until such time as the Buyer is able to accept delivery or have such Services carried out.
- 5.9 AVL shall be entitled to terminate the Contract by giving written notice to the Buyer if AVL cannot obtain an import licence or other governmental permit or licence which is required within a reasonable time scale.
- 5.10 If the Buyer does not accept delivery of the Equipment and/or, if applicable, the Software



when they are ready for delivery or requests delay of delivery pursuant to Condition 5.8 above or if AVL is unable to deliver the Equipment and/or, if applicable, the Software because the Buyer has not provided appropriate instructions, documents, licences or authorisations or because the Buyer has not ensured that the Site is ready for installation:

- (a) the Equipment and/or, if applicable, the Software will be deemed to have been delivered for the purposes of the Contract; and
- (b) AVL may store the Equipment and/or, if applicable, the Software until actual delivery and the Buyer shall be liable for all related costs and expenses that have been incurred by AVL (including storage and insurance charges) which shall be for the account of the Buyer.

5.11 The Buyer will be deemed to have accepted the Equipment as being in accordance with the Contract unless:

- (a) within 14 days of the date of delivery of the Equipment, the Buyer notifies AVL in writing of any defect or other failure of the Equipment to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Equipment within 14 days); or
- (b) the Buyer notifies AVL in writing of any omission from, defect or other failure of the Equipment to conform with the Contract within a reasonable time where the omission, defect or failure would not be apparent within 14 days of the date of delivery,

failing which the Buyer shall not be entitled to reject the Equipment and AVL shall issue an invoice and shall have no liability for such defect or failure other than in accordance with the warranty provisions herein, and the Buyer shall be bound to pay the Price.

5.12 The Buyer will be deemed to have accepted the Software as being in accordance with the Contract in accordance with the Software Licence Terms.

5.13 Where the Contract specifies that Acceptance Tests need to be carried out on the Equipment and/or, if applicable, the Software:

- (a) the Equipment and/or, if applicable, the Software will not be deemed to be accepted in accordance with Condition 5.11 or Condition 5.12;
- (b) the Buyer shall:
 - (i) supply to AVL all necessary materials, equipment and labour as reasonably required by AVL to conduct such Acceptance Tests promptly and in any event



by the dates and project timing programme stated in the Contract; and

- (ii) take any steps necessary to ensure that the Site is ready for the conduct of the Acceptance Tests promptly and in any event by the dates and project timing programme stated in the Contract.
- (c) subject to the Buyer's compliance with Condition 5.13 (b), AVL will carry out the Acceptance Tests in accordance with the Contract and Conditions 5.16 and 5.17 below shall apply.

5.14 The Buyer shall provide all the facilities as reasonably required by AVL for installation of the Equipment and/or, if applicable, the Software and for carrying out the Acceptance Test.

5.15 AVL shall give reasonable notice in writing to the Buyer's Representative of its readiness to carry out any Acceptance Test and shall be entitled to repeat any Acceptance Test whenever or as often as it thinks fit.

5.16 As soon as a Successful Acceptance Test has been carried out AVL shall issue a Release For Use Certificate stating the date of the Successful Acceptance Test. The Equipment and/or, if applicable, the Software shall, subject to Condition 5.18, be deemed to be accepted by, and handed over to, the Buyer from that date.

5.17 If any Acceptance Test is carried out but does not result in a Successful Acceptance Test, AVL will be entitled to take such steps as it considers necessary to achieve a Successful Acceptance Test and AVL will be entitled to repeat the Acceptance Tests in accordance with Condition 5.15. The Buyer will provide such co-operation and assistance as is reasonably required by AVL in order to rectify the cause of any Acceptance Test not resulting in a Successful Acceptance Test.

5.18 The Release For Use Certificate may contain a list of open issues which do not affect the operation or performance of the Equipment and/or, if applicable, the Software, but which are required to be completed or resolved by AVL. In that event acceptance of the Equipment and/or, if applicable, the Software shall take place when AVL has completed or resolved such open issues in accordance with the Contract and AVL shall issue the Final Acceptance Certificate. If the Release For Use Certificate does not contain any open issues then the Release For Use Certificate shall also be the Final Acceptance Certificate.

5.19 The Acceptance Test may be limited by the specification and operational functionality of the test object provided by the Buyer. In such circumstances the Acceptance Test criteria will be reduced as appropriate to take into account the limitations of the test object.

5.20 Upon the sooner of the Buyer commencing its use of the Equipment and/or, if applicable, the Software, AVL issuing the Release For Use Certificate or the Buyer's Representative agrees that



the Equipment and Services have been supplied in accordance with the Contract then the Buyer shall assume responsibility for operation of the Equipment and/or, if applicable, the Software and all health and safety responsibilities.

6 PAYMENT AND TITLE

6.1 The Price shall be calculated and paid in accordance with:

- (a) Condition 4;
- (b) this Condition 6; and
- (c) the Payment Terms.

6.2 The Buyer shall pay all invoices in full without deduction or set-off, in cleared funds within the time stated in the Payment Terms and to the bank account nominated by AVL.

6.3 Title in the Equipment shall remain vested in AVL and shall not pass to the Buyer until the Buyer has paid the Price together with any applicable VAT, all additional fees and taxes and all other monies payable by the Buyer to AVL under the Contract, .

6.4 Title in the Software shall remain, at all times, vested in AVL or the third party that owns such Software.

6.5 In the event that commercial use of the Equipment and/or, if applicable, the Software is made before the Acceptance Test, if any, has been carried out then Release For Use shall be deemed to have taken place, the warranty period referred to at Condition 8.3 shall commence and any payment due on Release For Use shall become payable.

6.6 All payments of the Price together with VAT shall be due within the period specified in the Payment Terms. Time of payment shall be of the essence.

6.7 AVL may deliver the Deliverables by instalments and in such circumstances any Payment Terms which entitle AVL to invoice following delivery shall be automatically amended to entitle AVL to invoice after each delivery of an instalment a sum reflecting that instalment.

6.8 All payments shall be made in cleared funds without any deduction in the agreed currency to AVL's nominated bank account as detailed in AVL's acknowledgment of the Order or otherwise available from AVL upon request and with all applicable charges on such payments being at the Buyer's expense. Cheques or bills of exchange shall be accepted on account only, and all connected expenses shall be charged to the Buyer's account.

6.9 The Buyer may not withhold payment of any invoice or amount due to AVL by reason of any



right of set-off, counterclaim or discount which the Buyer may have or allege to have or for any reason whatever unless the Buyer has a valid court order allowing it to do so.

6.10 In the event that the Buyer fails to make payment of an invoice by the due date, without prejudice to any other right or remedy available to AVL, AVL shall be entitled to:-

- (a) postpone or cancel its performance of its obligations under any Contract with the Buyer and these Conditions including suspending the manufacture and delivery of the Equipment and/or, if applicable, the Software and ceasing to supply the Services until receipt of the payment(s) due or until arrangements as to payment and credit have been established which are satisfactory to AVL;
- (b) fix a final date for the payment of all outstanding amounts;
- (c) require the Buyer to pay for all future Equipment and/or, if applicable, the Software in advance of manufacture or despatch;
- (d) charge interest on all such amounts to accrue at a daily rate on the amounts from the date when each payment became due until the date of payment at the rate of four percent (4%) per annum above the Bank of England base rate from time to time and
- (e) terminate all Contracts with the Buyer immediately on notice to the Buyer if the Buyer fails to pay by the final date fixed in accordance with Condition 6.10(b)

6.11 In case of attachment or other kinds of seizure of any of the property of the Buyer the Buyer shall evidence AVL's title to the Equipment and/or, if applicable, the Software to all third parties and notify AVL immediately.

6.12 Until payment of the Price in full and until title to in the Equipment passes to the Buyer, the Buyer shall:

- (a) store the Equipment in a proper manner in conditions which adequately protect and preserve the Equipment and in any event take all reasonable care of the Equipment;
- (b) not tamper with any identification upon the Equipment or their respective packaging and shall store the Equipment at the Site, separately from any other equipment and in such a way as to enable it to be identified as the property of AVL and
- (c) shall hold such Equipment on a fiduciary basis as bailee for AVL;



provided that, where the Equipment or any of it is supplied for re-sale, the Buyer may, unless an event set out in Condition 10.1 has occurred, sell the Equipment and/or, if applicable, the Software in the normal course of business to its bona fide customers in the normal course of business but in such case AVL shall be entitled to trace the proceeds of such sale and maintain an action for such proceeds of sale against the Buyer notwithstanding that legal, equitable and beneficial title to and property in the Equipment has passed to the customer. At AVL's request, the Buyer shall assign all claims to AVL all claims that AVL may have against purchasers of the Equipment from the Buyer. If the Buyer sells the Equipment prior to paying the Price in full to AVL, the Buyer shall hold the proceeds of sale in a separate bank account.

6.13 AVL reserves the right, in the event that Condition 6.10 applies, to repossess and remove any Equipment supplied to the Buyer and thereafter to resell the same and for this purpose the Buyer hereby grants an irrevocable right and licence to AVL's employees and agents to enter upon all or any of the Site and any other premises including procuring the right to enter the premises of any third party in which the Equipment is stored, with or without vehicles at any time and without prior notice. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and is without prejudice to any other accrued rights of AVL.

6.14 The Buyer's right to possession of the Equipment shall cease forthwith if:-

- (a) the Buyer has failed to pay any amount due to AVL under this Contract or under any contract, or
- (b) the Buyer is declared bankrupt or makes any proposal to his creditors for composition or other voluntary arrangement with its creditors or does or fails to do anything which would entitle a petition for winding up or a bankruptcy order to be presented, or
- (c) the Buyer does or fails to do anything which would entitle any person to appoint a receiver to the whole or part of the Buyer's assets or would entitle any person to present a petition for the administration of the Buyer or a resolution is passed for the winding up of the Buyer, (other than for the purposes of amalgamation or reconstruction), or
- (d) a judgement against the Buyer remains unsatisfied, or
- (e) the Buyer is unable to pay a debt to a third party as it falls due and/or is or is deemed to be insolvent.

6.15 No indulgence granted by AVL to the Buyer concerning the Buyer's obligations under this



Condition 6 shall be deemed to be a credit facility but if any such facility is granted to the Buyer by AVL, AVL may withdraw it at its sole discretion at any time.

- 6.16 All payments payable by the Buyer to AVL under the Contract created pursuant to these Conditions shall become due immediately upon the termination of the Contract.
- 6.17 AVL's rights and remedies set out in this Condition 6 are in addition to and shall not in any way prejudice, limit or restrict AVL's rights and remedies under these Conditions, the Contract or in law or equity.
- 6.18 Payments effected by the Buyer to AVL's personnel shall not release the Buyer from his obligation to make payment to AVL, save as stipulated by express agreement.

7 PROVISION AND ACCEPTANCE OF THE SERVICES

- 7.1 AVL shall use reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.2 Where AVL is to perform the Services at the Site, the Buyer shall comply with the additional terms set out in ATTACHMENT B.
- 7.3 The Services will be deemed to be completed and the relevant element of the Price will be due and payable in accordance with the Contract when AVL issues a written notice to the Buyer:
 - (a) Confirming such completion of the Services in accordance with the Contract and any applicable Specification; or
 - (b) Where applicable, providing a copy of the final Report; or
 - (c) confirming that AVL is available to perform the Services but is prevented from doing so by reason of:
 - (i) the lack of relevant assistance from the Buyer; and/or
 - (ii) the breach of the Contract by the Buyer; and/or
 - (iii) the condition of the Site is not as reasonably required by AVL at the time agreed for the provision of the Services.

8 WARRANTY

- 8.1 These Conditions and the Contract set out the entire agreement between AVL and the Buyer in relation to the Deliverables and supersede any prior understanding whether written or oral



between them in relation to the same. The Buyer acknowledges that the Contract have not been entered into wholly or partly in reliance on, nor has the Buyer been given, any representation, statement, promise or warranty by AVL except as stated herein.

- 8.2 AVL warrants that the Deliverables shall, at the time of delivery, correspond in all material respects to the description in the Contract.
- 8.3 Subject to compliance with the Payment Terms by the Buyer in accordance with these Conditions and subject to Condition 8.4, AVL shall make good by repair or replacement, at its option and free of charge to the Buyer any defect in or damage to the Equipment, other than normal wear and tear, which appears during a period of 12 months from delivery or 12 months from the date of the Buyer commencing its use of the Equipment or AVL issuing the Release For Use Certificate pursuant to Condition 5.19 or 18 months from AVL's readiness to deliver, whichever is the sooner and which is due to defective materials workmanship or design of AVL or from any act or omission of AVL during the said period. AVL shall not be responsible for any defects or damage that arise from fair wear and tear, any designs furnished or specified by the Buyer, any incorrect operation, maintenance, storage or other work by the Buyer or any third party, any alternations or repairs carried out by any party other than AVL or any wilful damage or failure to follow AVL's instructions whether oral or written in relation to the use, storage or repair of the Equipment.
- 8.4 The Buyer shall notify AVL in writing within five Business Days of discovering any defect providing all information which is necessary for detection of the respective warranty defect and affording AVL an adequate opportunity to inspect and test the Equipment. Warranty claims are restricted to the repair or replacement of the defective item. All other costs are to be borne by the Buyer.
- 8.5 Defects in items which are considered as consumables are excluded.
- 8.6 If the Buyer asserts that there is a defect for which AVL is responsible in accordance with Condition 8.3 then the Buyer shall document the defect by log files or otherwise provide all assistance required by AVL to reproduce the alleged defect.
- 8.7 The Buyer's Representative shall support AVL in eliminating the warranty defect if this is reasonably possible.
- 8.8 If the Buyer's Representative cannot prove to AVL's reasonable satisfaction that the defect is covered by the warranty as set out in Condition 8.3 then AVL shall be entitled to compensation for AVL's cost resulting from any site visits, inspections and/or remedial work following notification of the defect.
- 8.9 Unless otherwise specifically agreed by AVL in writing, the location for warranty work to be undertaken by AVL or location for replacement parts to be sent, will be the original UK



Delivery address irrespective that the Buyer may have subsequently shipped Equipment to another location.

- 8.10 The performance of a warranty obligation does not extend the original warranty period.
- 8.11 AVL's liability under this Condition 8 shall be in lieu of any contract term implied by law as to the quality or fitness for any particular purpose or the workmanship of any part of the Equipment or Services handed over and save as set out in this Condition 8 AVL shall have no liability whether in contract, in tort (including negligence) or by reason of breach of statutory duty or otherwise, in respect of defects in or damage to such part or the Equipment, or for any damage or loss of whatsoever kind attributable to such defects or damage or any work done or service or advice rendered in connection therewith (other than personal injury or damage caused by the intentional act or negligence of).
- 8.12 The Software Licence Terms shall apply in relation to the provision of Software, including any services related to the Software, by AVL.
- 8.13 All warranties and conditions, terms and conditions not set out in the Contract or these Conditions whether implied by statute or otherwise are excluded to the extent permitted by law.
- 8.14 Nothing in the Contract shall exclude any liability in respect of misrepresentations made fraudulently.

9 LIABILITY

- 9.1 Nothing in these Conditions excludes or limits AVL's liability for:
 - (a) death or personal injury caused by AVL's negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be legally excluded or limited.
- 9.2 Subject to Condition 9.1, AVL shall not be liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, for any:
 - (a) loss of actual or anticipated profit; or
 - (b) loss of revenue; or
 - (c) loss of business; or
 - (d) loss of anticipated savings; or



- (e) indirect, special or consequential loss and/or damage;

suffered by the Buyer howsoever arising.

- 9.3 Subject to Condition 9.1 and 9.4, AVL's total, aggregate, liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with these Conditions and any Contract, with the exception of Software, shall not exceed 100% of the Price excluding the Licence Fee payable by the Buyer.
- 9.4 AVL's total aggregate liability in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise in connection with the Software shall be as set out in the Software Licence Terms
- 9.5 The Price has been calculated on the basis that AVL will exclude or limit its liability as set out in these Conditions and, by placing an Order, the Buyer agrees that such exclusions and limitations are reasonable and warrants that it will insure against or bear itself any loss for which AVL has excluded or limited its liability in these Conditions and AVL shall have no further liability to the Buyer.

10 TERMINATION

- 10.1 AVL may immediately terminate these Conditions and any Contract, even where delivery or performance has been performed in whole or in part, by giving notice in writing to the Buyer if:
 - (a) delivery of the Equipment and/or, if applicable, the Software or performance of the Services shall become impossible or unlawful; or
 - (b) the Buyer fails to pay any sum payable under the Contract within 7 days of its due date;
 - (c) the Buyer commits a material breach of any of its obligations under the Contract which is incapable of remedy or which is capable of remedy but the Buyer has failed to remedy within 30 days of having been required in writing to remedy;
 - (d) the Buyer:
 - (i) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;



- (ii) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
- (iii) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
- (iv) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
- (v) takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
- (vi) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;
- (vii) has any distress, execution or sequestration or other such process levied or enforced on any of its assets; or
- (viii) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 10.1(d);
- (e) the Buyer ceases or appears in the reasonable opinion of AVL likely to cease to carry on all or a substantial part of its business; or
- (f) Conditions 14.2 or 17.6 apply.

10.2 In the event of termination of the Contract for any reason other than material breach of the Contract by AVL, AVL shall be entitled to be paid by the Buyer at the Contract rate for all items of Equipment and/or, if applicable, the Software supplied and Services already completed, (whether or not delivered), plus the reasonable costs together with a reasonable uplift for profit of all work in progress as well as to any preparatory work undertaken by AVL.

10.3 The termination of this Contract will be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

10.4 On termination of this Contract for any reason;



- (a) the Buyer shall immediately pay to AVL all of AVL's outstanding unpaid invoices and interest and, in respect of the Deliverables supplied but for which no invoice has yet been submitted, AVL shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- (b) the relationship of the parties will cease save as (and to the extent) expressly provided for in this Condition 10.4;
- (c) any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in full force and effect;
- (d) the Buyer shall immediately cease using the Software and shall return to AVL (or, if AVL so requests by notice in writing, destroy) all of AVL's property in its possession at the date of termination, including all of its Confidential Information and Software, together with all copies of such Confidential Information and/or Software and shall certify that it has done so, and shall make no further use of such Confidential Information or Software.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in the Deliverables, and any Intellectual Property Rights created by AVL in the performance of its obligations under this Contract or otherwise in the manufacture of the Deliverables, shall belong to AVL or any third parties who have licenced such Intellectual Property Rights to AVL.
- 11.2 In the event that the Equipment and/or the Software or any of it is produced according to the Buyer's design, construction drawings or specifications (**Buyer Intellectual Property Rights**), the Buyer grants to AVL an irrevocable non-exclusive, royalty-free, world-wide, licence to use the Buyer Intellectual Property Rights in connection with the Deliverables. The Buyer shall indemnify and keep indemnified on demand and hold harmless AVL against any and all losses suffered or reasonably incurred by AVL arising out of, or in connection with, any claim of infringement by AVL as a result of any use of any Buyer Intellectual Property Rights by any third parties.
- 11.3 All documentation, technical documents and plans, drawings, technical descriptions, as well as catalogues, brochures, pictures, models or items of a like nature are AVL's exclusive property and copyright and may not be used for any purpose other than the operation of the Equipment and/or, if applicable, the Software without the express written permission of AVL.
- 11.4 AVL grants to the Buyer a world-wide, royalty free, non-transferable licence to use the copyright in the Reports to the extent necessary for the Buyer in the course of its business and for its own internal purposes only.



11.5 Subject to clause 11.4, no right or licence is granted under this Contract to the Buyer which allows the Buyer to use any Intellectual Property Rights belonging to AVL other than as set out in the Conditions.

12 MISCELLANEOUS

12.1 Any notice required to be served pursuant to this Contract shall be in writing and served by first class post or by hand on AVL at its principal place of business, or such other address as AVL may from time to time notify to the Buyer in writing; on the Buyer at the Buyer's registered office or principal place of business. Notices served by hand shall be deemed delivered on delivery provided delivery is between 9 am and 5 pm on a Business Day. Notices served by first class post shall be deemed delivered at 9am on the second Business Day after posting.

12.2 This Contract is personal to the Buyer. AVL may assign, transfer, charge, sub-contract or otherwise dispose of all or any part of its rights or obligations under these Conditions or the Contract without the Buyer's consent. The Buyer may not assign, transfer, charge, sub-contract or otherwise dispose of any of its rights or obligations under these Conditions or the Contract without the prior written consent of AVL.

12.3 A party who is not AVL or the Buyer shall have no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of these Conditions or the Contract.

12.4 The rights and remedies of AVL in respect of the Contract and these Conditions shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by AVL to the Buyer or by any failure or any delay by AVL in ascertaining or exercising such rights or remedies. Any waiver of any breach of the Contract or these Conditions shall be in writing. No waiver or forbearance by AVL in enforcing any of its rights under the Contract or these Conditions shall prevent the subsequent enforcement of such rights or be deemed to be a waiver of any subsequent breach of this Contract.

12.5 Any provision, or part of any provision, contained in this Contract which is held to be or becomes void or unenforceable for any reason under any Applicable Laws shall to the extent of such invalidity or unenforceability be deemed severable and omitted and shall not affect the validity or enforceability of any remaining provisions or part of provisions of this Contract.

12.6 The Buyer may not pledge the credit of AVL or represent itself as being AVL or an agent, partner, employee or representative of AVL nor hold itself out as having any power or authority to incur any obligation or any nature, express or implied on behalf of AVL. Nothing in this Contract shall create or be deemed to create a partnership or joint venture or relationship or employer and employee between AVL and the Buyer.



12.7 No purported alteration or variation of this Contract shall be effective unless it is in writing, refers specifically to the Contract and is signed by an authorised representative of each of the parties.

13 CONFIDENTIALLY

13.1 Both parties shall keep and procure to keep secret and confidential: -

- (a) the nature, extent, objective and existence of the Contract; and
- (b) all Confidential Information received from the other party pursuant to the Contract; and
- (c) shall not use or disclose any such Confidential Information belonging to the other party for any purpose other than the proper performance of the obligations set out in the Contract without the prior written consent of the other party to whom the Confidential Information belongs.

13.2 Each party may disclose Confidential Information to its employees, affiliates, contractors, agents or professional advisors, to the extent necessary for the performance of the obligations set out in the Contract save that such disclosure is subject to confidentiality obligations equivalent to those set out in these Conditions.

13.3 The confidentiality obligations imposed by these Conditions shall not apply to Confidential Information which a party can show: -

- (a) was already in its possession prior to entering into the Contract and not subject to an obligation of confidentiality;
- (b) is or becomes publicly known without a breach of the Contract;
- (c) was disclosed to it by a third party entitled to do so
- (d) it is required to disclose under any Applicable Law or by order or a court or governmental body or authority of competent jurisdiction; or
- (e) has been explicitly approved for release by prior written authorisation of both the parties.

13.4 The confidentiality obligations shall continue in force for an indefinite period of time and not



be affected by termination of the Contract.

14 FORCE MAJEURE EVENT

14.1 Neither party shall not be liable to the other as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

14.2 If the Force Majeure Event prevents either party from complying with any of its obligations under the Contract for more than 60 days, then the affected party shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the other party.

15 LAW AND JURISDICTION

15.1 The Contract and any issues, disputes or claims arising out of, or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

16 EMPLOYMENT

The Buyer shall not, during the term of the Contract and for a period of 3 months following termination for any reason, offer to employ or employ any person who is or has been within the previous three months in the employment of AVL and while in that employment has carried out any work under this Contract except as the result of a general recruitment campaign or advertisement published within the national, technical or local media.

17 COMPLIANCE

17.1 AVL and the Buyer each undertake that they:

- (a) shall comply with AVL's code of conduct and AVL's anti-slavery and human trafficking policy (copies of which are available upon request);
- (b) have not committed an offence under the Bribery Act 2010 or the Modern Slavery Act 2015;
- (c) have not been formally notified that they are, nor are they aware of any circumstances that could give rise to, an investigation or prosecution under the Bribery Act 2010 or the Modern Slavery Act 2015; and
- (d) will:



- (i) each have in place, and maintain, adequate procedures designed to prevent persons associated with them from committing offences under the Bribery Act 2010 or the Modern Slavery Act 2015 and to ensure such persons comply with those Acts and shall not commit any offences under those Acts; and
 - (ii) notify the other party immediately in writing if it becomes aware or has reason to believe that it has, or any of its associated persons have, breached the obligations under this Condition 17.1.
- 17.2 AVL and the Buyer each agree to comply with their respective obligations under the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018.
- 17.3 For the purposes of Conditions 17.4 and 17.5 the expressions 'Corporate Failure to Prevent Offence', 'Prevention Procedures', 'UK Tax Evasion Offence' 'Foreign Tax Evasion Offence' and 'Associated' will be construed in accordance with Part 3 of the Criminal Finances Act 2017 (CFA 2017) and guidance published under it.
- 17.4 The Buyer represents warrants and undertakes to AVL that it shall and shall procure that its Associates (and Associates of those Associates) will:
 - (a) not take any step either alone or with any person to commit, solicit or facilitate any Corporate Failure to Prevent Offence, UK Tax Evasion Offence or a Foreign Tax Evasion Offence in connection with the supply of the Equipment and/or, if applicable, the Software, the Contract or these Conditions;
 - (b) properly and promptly pay all taxes for which they are liable in connection with the supply of the Equipment and/or, if applicable, the Software, the Contract and these Conditions;
 - (c) establish and at all times maintain and implement reasonable Prevention Procedures to prevent any breach of this Condition 17.4 and provide AVL with copies of these procedures on request from time to time; and
 - (d) notify AVL as soon as the Buyer becomes aware of any allegation, investigation, evidence or report relating to a breach or possible breach of any of the requirements in this Condition 17.4.
- 17.5 The Buyer warrants that neither the Buyer nor any of its Associates has been investigated in connection with or charged with having committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence and there are no grounds for considering that any such investigation or charge is likely.



- 17.6 AVL shall be entitled to terminate all Contracts and these Conditions if the Buyer commits a breach of its obligations under this Condition 17.
- 17.7 AVL shall not accept an Order from any Buyer listed on the UK Sanctions List (<https://www.gov.uk/government/publications/the-uk-sanctions-list>) nor will AVL act on behalf of any entity on the UK Sanction list. The Buyer warrants that it is not listed on the UK Sanctions List and shall inform AVL if, at any time during the Contract, the Buyer is added to the UK Sanctions List. In the event that during the Contract a Buyer appears on the UK Sanctions List, irrespective of when the Buyer was added, AVL shall be entitled to terminate the Contract, without liability and with immediate effect. The Buyer shall provide all reasonable assistance and information to AVL to demonstrate its compliance with this Condition 17.7.



ATTACHMENT A

Software Licence Terms

1. Scope and Definitions

1.1 Scope

These Software Licence Terms are additional terms and conditions that shall apply to all deliveries of SOFTWARE by AVL United Kingdom Limited ("AVL") as well as to any maintenance and support services performed by AVL in respect of any SOFTWARE. For the avoidance of doubt the term "delivery" also includes the downloading of SOFTWARE by the Buyer or otherwise the SOFTWARE being made available by to the Buyer by AVL. Unless stipulated otherwise in these Software Licence Terms, the AVL United Kingdom Terms and Conditions of Sale – General Terms (the **Conditions**) shall apply. In the event of a conflict between these Software Licence Terms and the Conditions relating to these transaction(s), these Software Licence Terms will take precedence.

1.2 Definitions

In addition to any definitions contained within these Software Licence Terms the following definitions apply:

"CAREline" means additional support services which may include special telephone support as set out in the Tender.

"DESIGNATED HARDWARE" means HARDWARE on which the DESIGNATED SOFTWARE is installed.

"DESIGNATED SOFTWARE" means SOFTWARE installed by AVL and which may not be installed via digital download.

"DOCUMENTATION" means user manuals delivered to the LICENSEE.

"ENHANCEMENT RELEASE" means a new version of the SOFTWARE which contains a significant additional functionality. New functionalities may be made available to LICENSEE as new SOFTWARE options (to be licensed and charged separately to LICENSEE) or included in existing SOFTWARE options (no extra charge to the LICENSEE if such options are already part of the LICENSE).

"FAULT" means any defect, error, failure or other problem in the SOFTWARE which causes the SOFTWARE not to function in accordance with its specifications in any material way, but expressly excluding compatibility and interface issues with any HARDWARE to the extent that such compatibility and interface issues are due to an error or defect in such HARDWARE.

"HARDWARE" means any electronic devices, computer or network components.

"HOTLINE" means telephone support on functionality, use and FAULT diagnosis of the SOFTWARE.



“INTELLECTUAL PROPERTY RIGHTS” means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and in each case a) whether registered or not; b) including any applications to protect or register such rights; c) including all renewals and extensions of such rights or applications; d) whether vested, contingent or future; and e) wherever existing.

“LICENSE” means the licence(s) granted by AVL to the LICENSEE to use the SOFTWARE pursuant to these Software Licence Terms and the Contract.

“LICENSE AGREEMENT” means the license agreement that specifies the SOFTWARE licensed to LICENSEE by AVL. The LICENSE AGREEMENT may be concluded either by placing an order based on AVL’s Tender and these Software Licence Terms, or by signing a separate detailed license agreement.

“LICENSEE” means the Buyer.

“MAINTENANCE RELEASE” means an improved and/or corrected version of the SOFTWARE involving, for instance, a higher execution speed, minor improvement of features, accuracy or user friendliness and correction of errors. AVL may provide separate MAINTENANCE RELEASES for each ENHANCEMENT RELEASE.

“PATCH” means a modified version or component of the SOFTWARE which is provided only to specific LICENSEES, and which is not generally available.

“PERMITTED PURPOSE” means the internal business purposes of the LICENSEE.

“PRODUCT EXPERT SUPPORT” means provision of comprehensive knowledge and expertise about the use and functionality of SOFTWARE.

“REMOTE ASSISTANCE” means remote system access to the SOFTWARE.

“SOFTWARE” means any SOFTWARE owned or licenced by AVL. For the purposes of these Software Licence Terms, SOFTWARE includes the accompanying DOCUMENTATION.

“SOFTWARE SUPPORT AND MAINTENANCE SERVICES” means the provision of ad hoc PATCHES, ENHANCEMENT RELEASES, MAINTENANCE RELEASES in relation to the SOFTWARE, access to HOTLINE support and, where indicated in the Tender, the provision of PRODUCT EXPERT SUPPORT and/or CAREline.

“THIRD PARTY SOFTWARE” means software which is supplied or developed by companies other than AVL or its affiliates.



For the avoidance of doubt, any defined terms used in these Software Licence Terms which are not defined in the Software Licence Terms shall have the same meaning as set out in the Conditions.

2. Subject of Contract

2.1 SOFTWARE

Subject to the terms of the Contract, including these Software Licence Terms, and payment of the Price the LICENSEE is granted a non-exclusive LICENSE to use the SOFTWARE. The LICENSEE will obtain a LICENSE key from AVL for the SOFTWARE. The extent of the LICENSE is defined sections 2.2 and 2.3 of these Software Licence Terms.

If, for technical reasons, the SOFTWARE delivered to LICENSEE contains software that is not covered by the LICENSE granted to LICENSEE, such software may only be utilized after LICENSEE obtains a separate written LICENSE. The delivered SOFTWARE may include technical measures or safeguards to prevent unauthorized access to such unlicensed software.

The SOFTWARE may communicate with servers of AVL's service provider for the purpose of ensuring that the SOFTWARE is used with a valid LICENSE key. This process collects only IT host information which can be provided to the LICENSEE upon its request. AVL will not provide any of the information collected during the license tracking process to any third party, except

- (i) to AVL's service provider in charge of the license tracking,
- (ii) as may be required by law or by the order of a competent court or
- (iii) to enforce compliance with these Software Licence Terms.

2.2 Use of SOFTWARE

SOFTWARE is used for the purpose of operating HARDWARE delivered by AVL or otherwise as set out in the Tender. The LICENSEE is granted a non-transferable and non-exclusive right to utilize the SOFTWARE, only:

- (i) at the place of installation;
- (ii) in accordance with the provisions of these Software Licence Terms and the Conditions;
- (iii) in accordance with the DOCUMENTATION or any reasonable instructions given by AVL;
- (iv) for DESIGNATED SOFTWARE, only on the DESIGNATED HARDWARE;
- (v) for the PERMITTED PURPOSE.

AVL reserves all rights not expressly granted to LICENSEE. In particular, LICENSEE may not, without prior written consent by AVL:

- a) copy or modify the SOFTWARE (see exceptions in section 3);



- b) distribute, sell, lease, sublicense or otherwise transfer the SOFTWARE to third parties;
- c) use the DESIGNATED SOFTWARE on HARDWARE other than the DESIGNATED HARDWARE;
- d) or use the SOFTWARE in the operation of a service bureau or similar arrangement for the sale or leasing of computer or information services.
- e) where the Tender indicates a limited number of users, provide access to the SOFTWARE to any number of persons in excess of the number of users as set out in the Tender.

2.3 Change of DESIGNATED HARDWARE

LICENSEE may request to change the DESIGNATED HARDWARE. In such case LICENSEE shall give AVL written notice of any request to change the DESIGNATED HARDWARE and AVL may, at its absolute discretion, agree to reinstall the DESIGNATED SOFTWARE on new HARDWARE. Any change in the DESIGNATED HARDWARE may delay the time required to install the DESIGNATED SOFTWARE.

2.4 Additional Services

AVL shall be entitled to charge a reasonable fee for any additional services by AVL and LICENSEE shall pay such charges in addition to the Price. Additional services may include, but are not limited to, the following:

- (i) Copying, translating or generating of the SOFTWARE, as well as services as described in section 5.3;
- (ii) supply of data media by AVL, unless the data media forms part of the HARDWARE delivered by AVL;
- (iii) analyzing and correcting deficiencies caused by improper handling, operating mistakes, or other circumstances not caused by AVL;
- (iv) Training, unless included in the Contract; and
- (v) provision of PATCHES, ENHANCEMENT RELEASES and/or MAINTENANCE RELEASES where the SOFTWARE is not subject to the SOFTWARE SUPPORT AND MAINTENANCE SERVICES.

3. Modifications, Updates, Copies

3.1 If necessary for the operation on the HARDWARE, the LICENSEE may modify the SOFTWARE in machine readable form or merge it into other software except DESIGNATED SOFTWARE which may not be modified by the LICENSEE. When adapted in such manner, the SOFTWARE shall remain subject to these Software Licence Terms and the Conditions, and any modified version shall remain the property of AVL.

3.2 A LICENSE granted by AVL entitles LICENSEE to utilize only the licensed SOFTWARE version as specified in the Tender or that version which is available at the time of installation unless otherwise stated in the Tender.

3.3 LICENSEE may copy the SOFTWARE only to the extent as such copies are necessary for the agreed usage of the SOFTWARE. LICENSEE is entitled to make a single backup copy of the SOFTWARE to the



extent necessary to secure use of the SOFTWARE.

4. Protection of Industrial and Intellectual Property Rights and Trade Secrets

4.1 All INTELLECTUAL PROPERTY RIGHTS in the SOFTWARE remain the sole property of AVL. Except for the rights to install and use the SOFTWARE expressly granted by these Software Licence Terms, the LICENSEE shall not acquire in any way any title, rights of ownership or INTELLECTUAL PROPERTY RIGHTS of whatever nature in the SOFTWARE or in any copies of them and no INTELLECTUAL PROPERTY RIGHTS of either party are transferred or licenced as a result of the Contract including these Software Licence Terms.

4.2 LICENSEE, its agents, employees and assignees are responsible for protecting and ensuring the continued proprietary nature of the SOFTWARE delivered by AVL, in particular with respect to INTELLECTUAL PROPERTY RIGHTS and any industrial property rights. LICENSEE shall provide all SOFTWARE copies, complete or partial, as well as all modified or transferred SOFTWARE versions with AVL's copyright notice, as well as with all other notice of industrial property rights in the same way as they are affixed on the original, licensed SOFTWARE version.

4.3 LICENSEE, its agents, employees and assignees are obligated to ensure the continued confidential nature of the SOFTWARE and of the techniques and methods involved in the SOFTWARE's development and use. These obligations continue to apply if the SOFTWARE is modified or merged into other software.

4.4 LICENSEE is not entitled to reproduce source code by any method, in whole or in part, from the binary SOFTWARE, or to knowingly gain knowledge of the structure and conception of the SOFTWARE. Such prohibition shall extend to all of LICENSEE's employees, agents and assigns and continues even if the SOFTWARE is modified or merged into other software.

4.5 LICENSEE shall maintain detailed records regarding the licensed SOFTWARE including the respective SOFTWARE version, serial number of any HARDWARE which is, or was, DESIGNATED HARDWARE, the location of the licensed DESIGNATED SOFTWARE, as well as the number of copies made. LICENSEE shall make such records immediately available to AVL upon AVL's request.

4.6 LICENSEE agrees not to challenge, directly or indirectly, the right, title, and interest of AVL in and to the SOFTWARE or DOCUMENTATION. LICENSEE agrees not to directly or indirectly, register, apply for registration, or attempt to acquire any legal protection for any of the SOFTWARE, DOCUMENTATION, or any proprietary rights therein.

4.7 LICENSEE agrees to notify AVL immediately and in writing of all circumstances surrounding the unauthorized possession or use of the SOFTWARE or DOCUMENTATION by any person or entity. Except when otherwise required by law or regulation, LICENSEE agrees to cooperate fully with AVL in any litigation relating to or arising from such unauthorized possession or use.



4.8 The obligation to observe secrecy and to protect and ensure proprietary and confidential information as proprietary as described in this section 4 continues indefinitely after termination of the LICENSE.

4.9 AVL and its suppliers may store LICENSEE's data disclosed to AVL if this is reasonably required for the performance of any of AVL's contractual obligations without LICENSEE's consent or prior notice. In all other cases AVL may forward LICENSEE's data to its suppliers only with LICENSEE's written consent.

5. Delivery, Assumption of Risk, Acceptance of Software

5.1 AVL will deliver to or make available for downloading by LICENSEE the SOFTWARE version which is valid at the time of delivery after the LICENSEE has provided all information reasonably required by AVL.

5.2 Unless stipulated otherwise, the SOFTWARE and the data media shall be dispatched and delivered or made available for downloading at LICENSEE's cost and risk.

5.3 If LICENSEE destroys or damages or accidentally deletes the SOFTWARE, AVL shall provide replacement for the damaged or deleted SOFTWARE if available at LICENSEE's expenses.

5.4 LICENSEE is responsible for the correct installation of the SOFTWARE unless LICENSEE has ordered a SOFTWARE installation by AVL except for DESIGNATED SOFTWARE which shall be installed by AVL.

5.5 The SOFTWARE is considered accepted by LICENSEE upon the earlier of the following:

- (i) LICENSEE confirms that the SOFTWARE corresponds with the contractual specifications; or
- (ii) LICENSEE fails to notify in writing of gross deficiencies within a period of two weeks of delivery or installation (the **Test Period**); or
- (iii) LICENSEE uses the SOFTWARE after the Test Period; or

5.6 Before acceptance of the SOFTWARE by the LICENSEE, LICENSEE has the right to use the SOFTWARE for installation and performing such tests as a reasonably required to determine the functionality and performance of the SOFTWARE.

6. Warranty

6.1 For SOFTWARE not excluded from warranty, AVL warrants that such SOFTWARE will perform substantially as specified in the Tender provided that the SOFTWARE is installed properly and used in accordance with the conditions specified in the Contract, these Software Licence Terms and the DOCUMENTATION. Unless stipulated otherwise, the warranty period is three months from the date of acceptance as specified under section 5.5.



6.2 The warranty includes FAULT diagnosis correction during the warranty period as set out in section 6.1. In the event LICENSEE notifies AVL of a FAULT, corrective measures shall take place first through AVL's instructions for troubleshooting by phone, email or HOTLINE support and then via data connection with LICENSEE (modem). If the FAULT continues, AVL will, to the extent reasonably possible, deliver PATCHES or MAINTENANCE RELEASES to resolve the FAULT. If this does not resolve the FAULT, then AVL may attempt troubleshooting (modification of SOFTWARE) at LICENSEE's place of business.

6.3 Upon AVL's request, LICENSEE shall demonstrate to AVL's reasonable satisfaction that:

- (i) the FAULT impairs the functioning of the SOFTWARE;
- (ii) the FAULT is reproducible;
- (iii) LICENSEE has installed PATCHES, MAINTENANCE and/or ENHANCEMENT RELEASES if offered free of charge to the LICENSEE during the warranty period;
- (iv) LICENSEE provides all information and material necessary for FAULT correction; and
- (v) AVL has access to the HARDWARE and SOFTWARE during normal working hours, i.e. access on site or via data connection with LICENSEE.

LICENSEE agrees to provide AVL with all reasonable assistance required by AVL in FAULT correction by providing an expert at LICENSEE's expense, who is qualified to install and operate the SOFTWARE and to assist in the FAULT correction.

6.4 AVL makes no warranties with respect to SOFTWARE

- (i) which has been modified, in whole or in part, by LICENSEE or by third parties without AVL's prior written consent, even if the error occurs in a part not modified.
- (ii) which is installed on HARDWARE other than HARDWARE identified by AVL as meeting or exceeding the minimum system requirements for the SOFTWARE, or
- (iii) DESIGNATED SOFTWARE which is installed on HARDWARE with an operating system modified after installation of the DESIGNATED SOFTWARE version.

6.5 AVL makes no warranties, that

- (i) the functionality of SOFTWARE will meet all requirements of LICENSEE,
- (ii) the SOFTWARE will run with other software used by LICENSEE,
- (iii) the SOFTWARE will run without interruptions; or

If during FAULT analysis AVL concludes that the FAULT is not subject to warranty, LICENSEE shall pay AVL for all costs and expenses of the FAULT analysis.

6.6 In order to streamline the SOFTWARE installation process, various THIRD PARTY SOFTWARE may



also be installed in course of the installation of the SOFTWARE. Such THIRD PARTY SOFTWARE is subject to the maintenance and support conditions of its vendor. AVL makes no warranty and accepts no liability arising out of or in connection with the THIRD PARTY SOFTWARE.

AVL does not perform any services for such THIRD PARTY SOFTWARE and LICENSEE agrees and acknowledges that LICENSEE may be required to purchase any services or new versions of the THIRD PARTY SOFTWARE directly from its vendor.

6.7 Should AVL, acting reasonably, determine that during the warranty period, the LICENSEE is not able to use the SOFTWARE due to a FAULT and that AVL cannot resolve the FAULT with commercially reasonable efforts, then AVL shall notify the LICENSEE in writing. After such notice has been provided by AVL to the LICENSEE either party may terminate the LICENSE AGREEMENT in respect of that SOFTWARE by giving to the other written notice. In the event of such termination, LICENSEE shall cease using the SOFTWARE in any manner and shall return all LICENSE keys to AVL and delete all copies of the SOFTWARE, including modified and merged copies, and shall certify its action in writing to AVL. AVL will refund a proportion of the Price in respect of that SOFTWARE paid by the LICENSEE less any depreciation and any other outstanding amounts owed from LICENSEE to AVL.

6.8 The presence of a FAULT in any individual SOFTWARE does not entitle LICENSEE to terminate the LICENSE AGREEMENT with respect to any other SOFTWARE.

6.9 AVL expressly disclaims and makes no other warranties or representations, whether express or implied, concerning the SOFTWARE. The warranty excludes any other claim and the liability for any damages arising out of the use of the SOFTWARE.

7. Limitation of Liability

7.1 The extent of AVL's liability under or in connection with the LICENSE (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this section 7.

7.2 Subject to sections 7.5, AVL's total aggregate liability howsoever arising under or in connection with the LICENSE shall not exceed an amount equal to 100% of the Licence Fee.

7.3 Subject to section 7.5, AVL shall not be liable for consequential, indirect or special losses.

7.4 Subject to section 7.5, AVL shall not be liable for any of the following (whether director or indirect):

- 7.4.1 loss of profit;
- 7.4.2 loss of revenue;
- 7.4.3 loss or corruption of data;
- 7.4.4 loss or corruption of software or systems;



- 7.4.5 loss or damage to equipment;
- 7.4.6 loss of use;
- 7.4.7 loss of production;
- 7.4.8 loss of contract;
- 7.4.9 loss of commercial opportunity;
- 7.4.10 loss of savings, discount or rebate (whether actual or anticipated);
- 7.4.11 harm to reputation or loss of goodwill;
- 7.4.12 wasted expenditure.

7.5 Notwithstanding any other provision of the LICENSE AGREEMENT, AVL's liability shall not be limited in any way in respect of death or personal injury caused by negligence, fraud or fraudulent misrepresentation or any other losses which cannot be excluded or limited by applicable law.

8. Third Parties' Rights

8.1 AVL shall reasonably assist the LICENSEE with appropriate information and expertise in defending all claims by third parties alleging that the use of the SOFTWARE as provided violates industrial or INTELLECTUAL PROPERTY RIGHTS held by third parties. LICENSEE shall immediately notify AVL of an alleged violation of such rights and of any claims to that effect.

8.2 Should a court of competent jurisdiction determine that a claim by a third party to be valid and enforceable, AVL may at its own discretion either modify, exchange or replace the SOFTWARE or acquire a software license from the third party.

8.3 If AVL chooses not to undertake a section 8.2 remedy, LICENSEE shall cease using the SOFTWARE in any manner and shall return all LICENSE keys to AVL and delete all copies of the SOFTWARE, including modified and merged copies, and shall certify its action in writing to AVL. Upon receipt of the LICENSE keys and other materials and documents, AVL will refund the LICENSE fees paid by LICENSEE less any depreciation charges, a reasonable fee for utilization prior to such date and any other outstanding amounts owed from LICENSEE to AVL. AVL expressly excludes and will not reimburse or pay any and all other claims submitted by LICENSEE with respect to the violation of industrial or INTELLECTUAL PROPERTY RIGHTS held by third parties.

9. License Fee

9.1 LICENSEE shall pay to AVL the Price including the Licence Fee as defined in the Contract.

10. Maintenance and Support

10.1 Subject to the payment by the LICENSEE of the Price and where the Tender includes SOFTWARE SUPPORT AND MAINTENANCE SERVICES then AVL shall provide the SOFTWARE SUPPORT AND MAINTENANCE SERVICES during AVL's normal business hours of 9:00am to 5:00pm on a day other



than a Saturday, Sunday or public holiday and subject to this section 10. AVL may provide any of the SOFTWARE SUPPORT AND MAINTENANCE SERVICES by REMOTE ASSISTANCE.

10.2 Duration of maintenance and support services

Where the LICENSEE is entitled to the SOFTWARE SUPPORT AND MAINTENANCE SERVICES then the SOFTWARE SUPPORT AND MAINTENANCE SERVICES shall commence from delivery of the SOFTWARE.

SOFTWARE SUPPORT AND MAINTENANCE SERVICES shall be provided for the duration as set out in the Tender (**Initial Period**) and thereafter they will be automatically renewed for additional periods of 12 months (each a **Renewal Period**) unless the LICENSEE or AVL gives written notice of non-renewal to the other party at least three (3) months prior to the expiration of the Initial Period or any Renewal Period. Where the SOFTWARE SUPPORT AND MAINTENANCE SERVICES renews by virtue of this section then AVL shall be entitled to vary the Price in relation to the SOFTWARE SUPPORT AND MAINTENANCE SERVICES for the next Renewal Period and shall provide LICENSEE with reasonable notice of such variation of the Price.

10.3 End-of-Life notification

Where reasonably possible, AVL shall provide the LICENSEE not less than four (4) years notice if it intends to discontinue providing SOFTWARE SUPPORT AND MAINTENANCE SERVICES for any specific version of the SOFTWARE.

10.4 Software support and maintenance disclaimers

10.4.1 AVL will use its reasonable endeavours to perform the SOFTWARE SUPPORT AND MAINTENANCE SERVICES promptly, but no warranty is given in respect of any times for response or performance by AVL, and time shall not be of the essence.

10.4.2 Provision of the SOFTWARE SUPPORT AND MAINTENANCE SERVICES does not imply any guarantee or representation that AVL will be able to assist the LICENSEE in achieving any results from any of the SOFTWARE which is not technically or commercially feasible.

10.4.3 Provision of the SOFTWARE SUPPORT AND MAINTENANCE SERVICES does not imply any guarantee that AVL will be successful in correcting any FAULT in any SOFTWARE.

11. Term of the LICENSE AGREEMENT, Termination

11.1 The LICENSE AGREEMENT shall be valid for the period as defined in the Contract.

11.2 Subject to sections 6.7 and 8.3 of these Software Licence Terms the LICENSE AGREEMENT may be terminated before the end of its term by either party in the event of a material breach or default by the other party by serving on the other party written notice effective not less than 60 (sixty) days after service of the notice specifying the particulars of the breach or default. If within the 60 (sixty) days



following receipt of such notice

- (i) the breach or default is remedied or
- (ii) the other party has commenced efforts to cure the default and continues diligently those efforts to cure, the LICENSE AGREEMENT shall continue in full force and effect; otherwise, it shall terminate in accordance with the notice.

11.3 AVL may terminate the LICENSE AGREEMENT, effective immediately upon notice at any time if

- (i) LICENSEE is subject to an insolvency proceeding or if such proceeding is not instituted because of insufficient assets; or
- (ii) LICENSEE resolves to or is subject to an order requiring it to, wind up or liquidate; or
- (iii) a third party acquires ownership of, or gains a controlling interest in, the LICENSEE; or
- (iv) a breach or default by LICENSEE of any provision of sections 2.4 or 4 of these Software Licence Terms occurs.

11.4 Upon termination of the LICENSE AGREEMENT the LICENSEE shall cease using the SOFTWARE in any manner and shall return all LICENSE keys to AVL and delete all copies of the SOFTWARE, including modified and merged copies, and shall certify its action in writing to AVL.

11.5 In the event of termination, the rights, obligations and duties described in section 4 shall continue in full force.



ATTACHMENT B

Additional terms and conditions applicable where the Services include installation and/or commissioning.

B.1. Scope

These terms and conditions shall be applicable to the supply of AVL installation and/or commissioning services in addition to the Conditions.

B.2. Co-operation by Buyer (Buyer's obligations)

- a. The Buyer shall, at its own cost and acting in good faith, undertake all preparatory work and conduct itself in a manner reasonably necessary to ensure that the installation work and commissioning is started on time and performed without hindrance or interruption.
- b. Any Equipment and/or, if applicable, the Software and any equipment intended to become part of the Buyer's facilities or premise and which have been delivered to the Buyer prior to installation and/or commissioning shall be stored in accordance with AVL's instructions but in any event such a way that they are properly protected against any damage or deterioration. This shall include, but is not limited to, storing the Equipment in a dry and non-condensing environment with a temperature between 8 and 25 degrees Centigrade at all times. If required by the Contract the Buyer shall carry out the assembly/installation of the Equipment and/or, if applicable, the Software.
- c. The Buyer shall ensure that any ancillary services or utilities necessary for starting and executing the installation work and as advised by AVL is available in time at the Site.
- d. The Buyer shall ensure that the access facilities to the Site are in a safe and usable state and the place of installation is in such a condition that installation work may be started as agreed in the programme. If installation work is to take place in closed rooms, the building must be in a condition that allows work under normal working conditions.
- e. The Buyer shall provide AVL with all necessary information relating to the Site during the execution of the installation or commissioning services and prior to commencement of AVL Site activities shall inform AVL of all the features of the Site which AVL ought reasonably to be aware of including, but not limited to, hidden power plant, gas fittings, water supply lines, electrical cabling or similar in the area of the Site where the installation and/or commissioning works are to be carried out including any approaches, structures or foundations which may be encountered for



the movement of the Deliverables which includes, but is not limited to, offloading, transport and positioning of the Deliverables in their final location at the Site.

- f. The Buyer shall give AVL's personnel access to the Site on the date specified in the Contract, or if no date is so specified, then in reasonable time having regard to the time periods and dates for performance of the Services as specified in the programme.
- g. The Buyer shall, within the time periods and dates stated in the programme or, if not so stated, before the time otherwise agreed by the parties in writing for delivery of the Equipment and/or, if applicable, the Software to Site, obtain all consents, wayleaves and approvals needed under the regulations and bylaws of any local or other authority which shall be applicable to the Site.
- h. All building work including structures, foundations, making good, approaches or work, equipment or materials to be carried out by the Buyer in order to allow AVL to provide the installation and/or commissioning services, as specified in the Contract, shall be completed within the time period specified in the Contract, shall be of the quality specified in the Contract or otherwise as reasonably required by AVL and shall be in a condition suitable for efficient transport, reception, installation and maintenance of the Equipment and/or, if applicable, the Software. Buyer shall provide AVL all information relating to any structures, foundations and approaches which AVL may reasonably require including, but not limited to, any restrictions on loading capacity or access.
- i. The Buyer shall make available suitable office and accommodation immediately adjacent to the point of installation or commissioning for the storage of parts and equipment for use by AVL personnel, suitable sanitary and messing facilities and protective clothing or safety devices where required.
- j. Unless AVL have specifically included the provision of specialised lifting equipment or services in the Contract, the Buyer shall, at AVL's request and free of charge to AVL, provide and operate for the purposes of off-loading and the installation work, suitable lifting equipment. The Buyer shall during such operation retain control of and be responsible for the safe working of the lifting equipment.
- k. The Buyer shall make such supplies of utilities including but not limited to electricity, water, gas, air and other services as may be specified by AVL available free of charge on the Site for use by AVL for the purposes of the installation and commissioning work. Such supplies shall be made available at the point(s) specified by AVL and in such form and quality as specified by AVL or as may be reasonable.



- i. Where Acceptance Tests are required pursuant to the terms of the Contract, the Buyer shall provide, free of charge to AVL, all utilities, test objects, services, stores, fuel, labour, material, engines, vehicles, samples, consumables, calibration means, appropriately trained labour as may be required by AVL and as may be reasonably requested by AVL, to enable the Acceptance Tests to be carried out effectively.

- m. In the event that the Buyer shall be in breach of any of his obligations imposed by this ATTACHMENT B, AVL shall be entitled to raise an invoice for any additional costs reasonably incurred by AVL as a result of such breach and such invoice shall be payable in accordance with Condition 6 and the Payment Terms.

The Buyer shall be responsible for AVL personnel's death or personal injury or damage to or loss of AVL (and AVL's subcontractors and personnel)'s property whilst on the Site except to the extent any such death or personal injury results from the negligence of AVL or its subcontractors or personnel.

B3. Installation work by Buyer or Third Parties

If any part of the installation work is to be performed by the Buyer, or any third party the following shall apply:

The Buyer shall ensure that the installation work to be performed by the Buyer, or third party is completed by the date specified in the programme.

Any additional costs incurred by AVL and caused by deficient or uncompleted installation work performed by the Buyer or third party shall be paid by the Buyer.

If commissioning or other Services are delayed owing to deficient or uncompleted installation work by the Buyer or third party the additional costs of AVL shall be paid by the Buyer.

The Buyer shall be liable for all defects or damages caused to the Equipment by deficient installation work performed by the Buyer or any third party.