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Terms and Conditions for the Supply of Goods

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Background:

Instruct-ERIC

Instruct-ERIC is a distributed European Research Infrastructure for structural biology composed of a number of Instruct Centers across Europe. Diamond Light Source (DLS) is part of one of these Instruct Centers: Instruct Centre UK. Together, Instruct-ERIC and DLS participate in the Horizon Europe funded project Fragment-Screen, for which Instruct-ERIC has designated funding for the procurement of Goods to be installed at DLS.

Diamond Light Source Ltd

Located on the Harwell Science and Innovation Campus in Oxfordshire, UK, Diamond Light Source Ltd (DLS/Diamond) is a leading-edge facility for science, engineering and innovation. It is the largest science facility to be built in the UK for 40 years and produces infra-red, ultraviolet and X-ray beams of exceptional brightness. DLS allows researchers from academia and industry to investigate the structure and behavior of the world around us at the atomic and molecular level. Areas of investigation include fields such as medicine, the environment, materials and engineering science, physics, chemistry and heritage science. The research undertaken at DLS brings economic, health and quality of life benefits to the UK and further afield.

The Supplier and Instruct-ERIC have agreed to enter into this Agreement (defined below) for the supply of the Goods (defined below) at DLS from the Supplier and the Supplier has agreed to supply such Goods Instruct-ERIC on the terms and conditions of this Agreement.

Though Instruct-ERIC will be the purchaser, DLS will be actively involved in the enactment of this agreement.

It is agreed as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

“Acceptance Certificate” the certificate issued by Instruct-ERIC to the Supplier in accordance with clause 8.5;

“Agreed Use” the use of the Goods at DLS’s Facilities as is more particularly described in the Specification, or otherwise;

“Agreement” means the supply of Goods agreement made between Instruct-ERIC, and the Supplier incorporating the Personal Data Annex, the Alterations Annex, the Order, the Commissioning Plan and the Terms and Conditions and any other documents expressly stated to be incorporated therein;

“Alterations Annex” the annex to this Agreement in which Instruct-ERIC shall set out alterations (if any) to the Terms and Conditions as agreed by Instruct-ERIC and the Supplier and signed by authorised representatives of each party;

“Applicable Legislation” any and all laws, statutes acts, regulations, codes, judgments, orders, directives or determinations applicable to the manufacture, supply and sale of the Goods (including without limitation subordinate legislation and European Community legislation to the extent it has direct effect in member states) and all codes other guidance relating to the safety of the Goods including, without limitation, in relation to their manufacture, supply, sale, packaging, storage and use;

“Commissioning” installing and commissioning the Goods at DLS’s Facilities;

“Commissioning Plan” the plan for Commissioning by the Supplier agreed between the parties in writing in the Order;

“Controller” has the meaning set out in Article 4(7) of GDPR;

“Corrective Measures” any and all necessary corrections and modifications to the Goods so that the Goods comply with the Specification, function on Site, are of satisfactory quality, fit for the Agreed Use and are in accordance with this Agreement after such corrections and modifications have been carried out;

“Date of Agreement” the date specified on the Order as the effective date of the Agreement;

“Defect” a defect in the Goods or any part of them which results in the Goods or any part of them not complying with the Specification, not being of satisfactory quality or not fit for the Agreed Use whether as a consequence of a poor design, faulty materials, negligence, bad workmanship or any other reason attributable to the Supplier, its sub- contractors or its suppliers;

“Delivery” each delivery of any Goods to the Site (or such other site as DLS may from time to time direct) unless the Agreement requires On-Site Acceptance Tests, in which case delivery shall only take place once Instruct-ERIC has issued an Acceptance Certificate;

“Delivery Date” the date or dates identified in the Order as being the date or dates for Delivery of the Goods;

“Instruct-ERIC and DLS Personal Data” has the meaning set out Article 4(1) of GDPR and relates only to personal data, or any part of such personal data, of which Instruct-ERIC and/or DLS are the Controller and in relation to which the Supplier is providing services under the Agreement;

“DLS’s Facilities” DLS’s synchrotron facility, associated laboratories and other facilities;

“Factory Acceptance Tests” the tests to be carried out by the Supplier on the Goods in accordance with the Specification and this Agreement before Delivery or where the Goods are delivered in instalments, before each Delivery, as set out in the Order;

“Final Acceptance” when factory tested Goods have been received by DLS and the On-Site Acceptance Tests have been passed and the Goods have been successfully commissioned as determined by Instruct-ERIC acting reasonably and the Acceptance Certificate has been issued by Instruct-ERIC;

“Force Majeure” an event beyond the reasonable control of a party, including but not limited to:

- (i) acts, defaults or omissions of sub-contractors but excluding acts, defaults or omissions of the Supplier's suppliers of the Goods or any components of the Goods;
- (ii) strike, lock out or other form of industrial action, other than by its own employees or agents;
- (iii) act of God;
- (iv) outbreak of hostilities, riot, civil disturbance or acts of terrorism;

- (v) fire, explosion or flood; or
- (vi) theft and malicious damage;
- (vii) provided that no event shall be treated as Force Majeure if it is attributable in whole or part to any wilful act or omission or any failure to take reasonable precautions by the affected party;

“Free Issue Equipment” any equipment which is made available by DLS to the Supplier or it’s sub-contractor without charge for the purpose of enabling the Supplier or it’s sub-contractor to carry out its obligations under this Agreement together with all machinery and tools which are specially developed by the Supplier to supply the Goods (or part thereof) in accordance with this Agreement;

“GDPR” the General Data Protection Regulation ((EU) 2016/679);

“Goods” the goods specified in the Order and described in detail in the Specifications;

“Grant End Date” the end date of the Fragment-Screen grant through funding the purchase of Goods by Instruct-ERIC, and is 31st January 2026 unless notified otherwise in writing by Instruct-ERIC;

“Guarantee Period” the period specified on the Order;

“Invitation to Tender” the invitation to tender issued by Instruct-ERIC (if any) in relation to Instruct-ERIC's procurement of the Goods;

“Liquidated Damages” the amount specified on the Order;

“On-Site Acceptance Tests” means the on Site testing of the Goods by the party specified in the Order following receipt of the Goods at the Site or following receipt of each instalment where the Goods are received in instalments and, where applicable, following Commissioning, to determine whether the Goods conform with the provisions of this this Agreement;

“Order” means the purchase order issued by Instruct-ERIC for the supply of Goods on these Terms and Conditions including without limitation the Specifications.

“Personal Data Annex” the annex to this Agreement which stipulates how the Supplier shall process Instruct-ERIC and DLS Personal Data.

“Price” the total price of the Goods stated on the Order payable in accordance with clause 15;

“Products for Incorporation” products, which according to the Specification, DLS is required to provide to the Supplier for incorporation into the Goods by the Supplier;

“Site” the site on which DLS’s Facilities are situated and its immediate vicinity (to the extent DLS may from time to time direct), which is at the Harwell Science and Innovation Campus, Didcot, Oxfordshire, OX11 0DE United Kingdom;

“Specification” the specification of the Goods as detailed in the Order;

“Supplier Personal Data” has the meaning set out Article 4(1) of GDPR and relates only to personal data, or any part of such personal data, of which the Supplier is the Controller and in relation to which the Supplier is sharing it with Instruct-ERIC and/or DLS under the Agreement;

“Tender” the Supplier's written response to any Invitation to Tender;

“Term” the period from the Date of Agreement until the later of either Final Acceptance or final payment of all sums due under clause 15;

“Terms and Conditions” these terms and conditions of supply of Goods; and

“Testing Procedure” the Factory Acceptance Tests and the On-Site Acceptance Tests and all necessary repeat Factory Acceptance Tests and On-Site Acceptance Tests required in accordance with this Agreement.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to a “person” includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality);
- (c) A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it;
- (d) references to clauses, annexes and schedules are to clauses, annexes and schedules of this Agreement. References to paragraphs are references to paragraphs of the annex or schedule in which they appear. Clause, annex, schedule and paragraph headings do not affect the interpretation of this Agreement.
- (e) The annexes and schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the annexes and schedules.
- (f) where the words “include(s)”, “including” or “in particular” are used in this Agreement, they are deemed to have the words “without limitation” following them.

2. Supply of Goods

2.1 The Supplier shall sell and supply the Goods for the Agreed Use to Instruct-ERIC in accordance with the provisions of this Agreement.

2.2 This Agreement shall commence on the Date of Agreement and shall continue in force for the Term unless terminated earlier in accordance with the provisions of this Agreement.

3. Quality and Description

3.1 Without prejudice to clauses 8 and 14 the Supplier agrees and warrants to Instruct-ERIC that at the Delivery Date and for the duration of the Guarantee Period the Goods (and each part of them) shall:

- (a) conform as to quantity, quality and description with this Agreement;
- (b) conform to the Specification;
- (c) meet any applicable quality standard, and be capable of, and fit for the purpose of, the Agreed Use or any additional use or purpose made known to the Supplier by Instruct and/or DLS.
- (d) be free from any Defect;
- (e) be free from any lien, charge or other encumbrance; and
- (f) comply with all Applicable Legislation.

4. Delivery

- 4.1 The Supplier shall at its own expense deliver the Goods to the Site (or such other site as DLS may direct) by the Delivery Date in accordance with DLS routing instructions specified in clause 4.2. Where the Order provides for more than one Delivery Date the Supplier shall deliver the part or parts of the Goods on each Delivery Date as specified in the Order. Time for Delivery is of the essence unless if owing to Force Majeure the Supplier is unable to deliver the Goods by the Delivery Date then, provided that the Supplier has given Instruct-ERIC notice in writing without delay of its intention to claim an extension of time, Instruct-ERIC shall grant the Supplier a reasonable, as determined by Instruct-ERIC extension of time (but in any event no longer than fourteen (14) days and not later than the Grant End Date).
- 4.2 Due to restrictions on local road use, all delivery vehicles shall approach the DLS site via the A34 highway, leaving at the A4185 exit. The A34 can be accessed from the M4 motorway, near Newbury, and from the M40, north of Oxford. All vehicles shall report to Science & Technical Facilities Council (STFC) RAL (Rutherford Appleton Laboratory) Security for directions upon reaching the site.
- 4.3 In addition to any other right that Instruct-ERIC may have under this Agreement Instruct-ERIC shall be entitled to postpone any Delivery Date for up to three (3) months, as long as the postponed Delivery Date is not later than the Grant End Date, on giving notice in writing at any time at no additional cost to Instruct-ERIC.
- 4.4 Instruct-ERIC shall be entitled, without incurring any liability (including without limitation the Supplier's storage charges) to require the Supplier to suspend Delivery of the Goods or any part of them for any period if the activities for which the Goods were ordered are stopped or seriously interfered with by any Force Majeure event suffered by Instruct-ERIC.
- 4.5 All Goods ordered by Instruct-ERIC shall be at the Supplier's risk until Delivery at DLS's facilities. Until such time as risk in the Goods passes to Instruct-ERIC the Supplier shall insure the Goods to their full replacement value.
- 4.6 Any signature by a representative of DLS on any delivery note or other documentation presented in connection with delivery of the Goods shall be evidence only that an item has, or a number of packages have, been received and is not necessarily evidence that Delivery has been successfully completed or that the Goods delivered comply with the requirements of this Agreement.
- 4.7 DLS shall be responsible for unloading the Goods at the Site unless the parties agree

otherwise. Where the Supplier is requested to provide equipment or personnel to carry out or assist with the unloading, the Supplier shall ensure that good manual handling practice is observed at all times, all lifting and unloading equipment it supplies is in a good and serviceable condition and its personnel are trained in the use of such lifting and unloading equipment.

- 4.8 The Supplier shall ensure that the Goods are properly packed, stored and secured prior to delivery. DLS shall not be obliged to return to the Supplier any packaging materials used in the transportation of the Goods, whether or not DLS accepts any Goods.
- 4.9 If the Goods are to be delivered by instalments, the contract for the purchase of the Goods shall be treated as a single contract and not severable.
- 4.10 The Supplier shall ensure that it, its employees, agents and sub-contractors follow the directions of authorised representatives of DLS when on the Site.

5. Delay in Delivery

- 5.1 If the Supplier fails to deliver the Goods by each relevant Delivery Date for any reason (other than Force Majeure or the wilful default), without prejudice to any other rights and remedies it may have, Instruct-ERIC shall be entitled to charge to the Supplier for any loss suffered and any costs and expenses which Instruct-ERIC may incur including as a result of such delay, including but not limited to, any additional costs incurred by Instruct-ERIC in obtaining replacement Goods from a third party (where possible) and any payments contractually due to third parties from Instruct-ERIC as a result of or despite the Goods not being delivered by the Delivery Date.
- 5.2 If the Supplier fails to deliver the Goods by the Grant End Date for any reason, Instruct-ERIC shall be entitled to pay only for proportion the Goods already delivered.
- 5.3 The Supplier must issue any invoices for Goods thirty (30) days prior to the Grant End Date.
- 5.4 Instruct-ERIC will not be liable for any payment requests made beyond the Grant End Date.

6. Improvements and changes required to comply with Applicable Legislation

- 6.1 The Supplier shall not make (and shall procure that its sub-contractors and suppliers do not make) any changes to manufacturing processes, materials, testing procedures (including but not limited to the Testing Procedures) or any specification (including but not limited to the Specification) of the Goods without the prior written consent of Instruct-ERIC.
- 6.2 The Supplier shall, as soon as reasonably practicable, notify Instruct-ERIC and DLS of potential ways to improve the efficiency and or effectiveness of the Goods. The Supplier, Instruct-ERIC and DLS shall discuss in good faith whether or not to incorporate such potential improvements into the Agreement although the final decision on whether or not to incorporate any potential improvements shall at all times remain with Instruct-ERIC.
- 6.3 Without prejudice to clause 6.1, the Supplier shall at the Supplier's own expense make such amendments to the Supplier's procedures with respect to the Goods as are required to ensure that the Goods comply with Applicable Legislation and to modify all Goods to remedy any breach of any Applicable Legislation. Where such modification would alter the Specification the Supplier shall notify Instruct-ERIC and DLS of the required change, the

reason for the change and the effect on the Specification.

- 6.4 If, following notification in accordance with clause 6.3, Instruct-ERIC determines the effect on the Specification is not acceptable to Instruct-ERIC the parties shall discuss in good faith how to comply with the Applicable Legislation and ensure the Goods are fit for the Agreed Use. Instruct-ERIC shall not withhold consent to a modification to the extent that is required to allow the Supplier to comply with an Applicable Law.
- 6.5 Where, following the discussions in accordance with clause 6.4, Instruct-ERIC (acting reasonably) determines that it is not possible to achieve compliance with both the Applicable Legislation and ensure the Goods are fit for the Agreed Use, it shall be able to terminate this Agreement in accordance with clause 22.3.

7. Inspection, Licences and Management Information

- 7.1 Instruct-ERIC or its delegated representative shall have the right to inspect the Goods and any part of them during manufacture, processing or storage at the premises of the Supplier or any third party prior to Delivery. The Supplier shall use all reasonable endeavours to procure access to such third parties' premises to enable Instruct-ERIC to exercise its rights of inspection under this clause 7.1. Irrespective of whether the right of inspection under this clause 7.1 is exercised, Instruct-ERIC shall have the right to reject any Goods after Delivery if in the opinion of Instruct-ERIC they do not pass any of the Testing Procedures or do not comply with the Specification, the Applicable Legislation or any provision of this Agreement in accordance with clause 8.
- 7.2 The Supplier warrants that it complies and shall continue to comply with all Applicable Legislation and that it has, will maintain and will comply with, all necessary licences, permissions, authorisations, permits and consents relating to its business activities including, but not limited to, the manufacture and supply of the Goods.
- 7.3 The Supplier shall promptly supply to Instruct-ERIC following a written request from Instruct-ERIC or its authorised representative copies of any licences, permissions, authorisations, permits and/or consents including, without limitation, test reports together with any other information relating to the manufacture, supply or Commissioning of the Goods.
- 7.4 Where Instruct-ERIC has the benefit of a licence, permission, authorisation, permit or consent which can be extended to the Supplier for the purposes of this Agreement, Instruct-ERIC shall use its reasonable endeavours to procure that such licence, permission, authorisation, permit or consent is extended to the Supplier solely to be used by the Supplier for supply of the Goods in accordance with this Agreement and for no other purpose.
- 7.5 The Supplier undertakes to monitor manufacture and supply of the Goods and, without limitation to:
- (a) carry out specific on-going monitoring, Factory Acceptance Tests and any monitoring procedures Instruct-ERIC may from time to time reasonably require to ensure the safety and compliance of the Goods with the Applicable Legislation and the Specifications;
 - (b) maintain comprehensive and systematic records of all monitoring and Factory Acceptance Tests and other measures taken by the Supplier to ensure the safety and compliance of the Goods with Applicable Legislation and the Specifications and to procure that its suppliers do the same

- (c) permit, and procure that its suppliers permit, Instruct-ERIC or its agent on reasonable notice during normal business hours to have access to the records in clause 7.5(b) and to take copies of them;
- (d) provide all information to Instruct-ERIC as required by this Agreement within the timescales set out in this Agreement; and
- (e) attend all meetings as DLS or Instruct-ERIC may reasonably require, provided DLS or Instruct-ERIC has given reasonable notice to the Supplier of the date, time and place of such meetings.

8. Acceptance and Testing

- 8.1 Where the Agreement requires Testing Procedures the Supplier shall carry out such Factory Acceptance Tests and the On-Site Acceptance Tests at a time previously agreed in writing with Instruct-ERIC and in the presence of a representative of each party. Instruct-ERIC reserves the right to delegate representation to DLS. The Supplier shall be responsible for the costs of carrying out Testing Procedures.
- 8.2 Without prejudice to any other rights of Instruct-ERIC pursuant to this Agreement, Instruct-ERIC may by notice in writing to the Supplier reject Goods (or any part of them) if, before On-Site Acceptance Tests are carried out, it identifies the Goods (or any part of them) are not in accordance with the Specification, do not function on Site, are not fit for the Agreed Use or are not in accordance with this Agreement. Where Instruct-ERIC rejects the Goods (or any part of them) in accordance with this clause 8.2 the Supplier shall repair or, if possible, replace the Goods (or the relevant part) and carry out further On-Site Acceptance Tests.
- 8.3 Where the Specification requires the Supplier to commission the Goods the Supplier shall carry out the On-Site Acceptance Tests otherwise DLS shall carry out the On-Site Acceptance Tests. When the responsibility of the Supplier, the On-Site Acceptance Tests shall be carried out at a time previously agreed in writing with Instruct-ERIC and in the presence of a representative of Instruct-ERIC. Instruct-ERIC reserves the right to delegate representation to DLS. The Supplier shall familiarise himself with, and at all times comply with either DLS or STFC's (Science and Technology Facilities Council) "Contractor on Site" rules and procedures, whichever is applicable to the location of the On-Site Acceptance Tests. DLS shall provide such assistance to the Supplier as is reasonably necessary to ensure the Site is suitable for the On-Site Acceptance Tests to take place and shall provide such utilities and materials as may reasonably be required for the On-Site Acceptance Tests. For the avoidance of doubt where the Supplier is responsible for Commissioning the Supplier shall agree the Commissioning Plan with Instruct-ERIC and the Supplier shall carry out the commissioning and the On-Site Acceptance Tests to the standards required in the Commissioning Plan.
- 8.4 Where the Supplier is not responsible for Commissioning the Goods DLS shall carry out the On-Site Acceptance Tests.
- 8.5 The Goods shall pass the On-Site Acceptance Tests if they demonstrate to the satisfaction of Instruct-ERIC that the Goods meet the standards set out in clause 3.1. If the Goods pass the On-Site Acceptance Tests and the Supplier has discharged its obligations under this Agreement to the extent that it is required to by the date of the On-Site Acceptance Tests, DLS shall confirm in writing that Delivery has been completed and Instruct-ERIC issue an Acceptance Certificate.
- 8.6 If during any Testing Procedures the Supplier observes any Defect in the Goods the

Supplier shall immediately notify Instruct-ERIC in writing of the Defect. If Instruct-ERIC observes any Defect in the Goods or is informed by the Supplier of any Defect in the Goods during the Testing Procedures or the Goods fail any of the Testing Procedures for any other reason, Instruct-ERIC shall be entitled to require the Supplier to carry out all necessary Corrective Measures.

- 8.7 Once the Supplier has carried out all Corrective Measures they shall repeat the Factory Acceptance Tests (where the Goods have been taken from the Site for the Corrective Measures) and the Supplier or DLS (determined in accordance with clauses 8.3 and 8.4) shall carry out On-Site Acceptance Tests. Time shall be of the essence in relation to the Supplier's obligations under this clause 8.7.
- 8.8 All costs for carrying out Corrective Measures and the repeated Testing Procedures (including without limitation detaching and removing the Goods from the Site and transporting the Goods from and back to the Site) shall be borne by the Supplier.
- 8.9 If the Goods do not pass the repeat On-Site Acceptance Tests effected under clause 8.7 or any subsequent Factory Acceptance Tests or On-Site Acceptance Tests, then at Instruct-ERIC's sole discretion, either:
- (a) the Supplier shall carry out further Corrective Measures and Testing Procedures within a reasonable timescale specified by Instruct-ERIC so that the Goods comply with the Specification and are fit for the Agreed Use; or
 - (b) Instruct-ERIC may terminate this Agreement in accordance with clause 22.1(a).

9. Delay in the issue of the Acceptance Certificate

- 9.1 If the Goods fail to pass the On-Site Acceptance Tests (other than due to Force Majeure) on the agreed date, without prejudice to any other rights and remedies it may have, **Instruct-ERIC** shall be entitled to charge to the Supplier any additional costs, losses or expenses which Instruct-ERIC may incur due to the Supplier's failure to deliver Goods which are able to pass the On-Site Acceptance Tests including, but not limited to, any additional costs incurred by Instruct-ERIC in obtaining replacement goods from a third party (where possible) and any payments contractually due to third parties as a result of the On-Site Acceptance Tests not being passed.

10. Liquidated Damages

- 10.1 If the Supplier fails to complete Delivery by the Delivery Date for any reason (other than Force Majeure), without prejudice to any other rights and remedies it may have, Instruct-ERIC will not be obligated to pay the Supplier nor take delivery of the goods. Instruct-ERIC shall pay for the proportion of the work completed, which should be agreed and invoiced thirty (30) days before the Grant End Date (31st January 2026) as detailed in the Payment Schedule.
- 10.2 If the Goods do not pass the On-Site Acceptance Tests for any reason other than Force Majeure without prejudice to any other rights and remedies it may have, Instruct-ERIC shall be entitled to charge the Supplier (whether by way of deduction from any sums due to the Supplier or otherwise) the Liquidated Damages for each week or part thereof from the date of the failed Acceptance Tests until the Acceptance Certificate is issued in accordance with this Agreement.

11. Free Issue Equipment and Products for Incorporation

11.1 All Free Issue Equipment and Products for Incorporation shall remain the property of DLS and shall be clearly marked by the Supplier as being the property of DLS. The Supplier shall return all Free Issue Equipment and all unused Products for Incorporation to DLS - on the earlier of:

- (a) termination of this Agreement under clause 22; or
- (b) five (5) days from the date of the Acceptance Certificate,

in no worse condition than it was/they were when issued by DLS or the Supplier (fair wear and tear excepted in the case of Free Issue Equipment only).

11.2 The Supplier shall follow any reasonable instructions DLS may give in relation to the use, storage and maintenance of the Free Issue Equipment and the Products for Incorporation and in any event shall store the Free Issue Equipment in suitable conditions to ensure the safety of persons and the protection of the Free Issue Equipment.

11.3 Where the Specification requires DLS to supply Products for Incorporation, the Supplier shall store them, until their incorporation into the Goods, in accordance with the Specification, any directions given by DLS and in any event in such conditions which protects the safety of persons and the Products for Incorporation.

11.4 Products for Incorporation provided to the Supplier in accordance with this Agreement and all Free Issue Equipment shall be at the risk of the Supplier following their delivery to the Supplier's premises (or such other premises as the parties may agree in writing) until returned to DLS as evidenced by a written receipt from an authorised person at DLS. Risk in the Goods containing the Products for Incorporation shall transfer in accordance with clause 12.

12. Passing of Property

12.1 Ownership and title in the Goods shall pass to Instruct-ERIC on Delivery.

13. Bank Guarantee and Escrow Account

13.1 Where Instruct-ERIC notifies the Supplier it requires a bank guarantee, such guarantee shall be in such form as Instruct-ERIC may reasonably require and for such amount as Instruct-ERIC may specify and the Supplier shall provide such bank guarantee to Instruct-ERIC before the first instalment of the Price is due. Any bank guarantee required by Instruct-ERIC shall cease to be required following the later of Delivery or Final Acceptance. Any delay in providing a bank guarantee shall result in the equivalent delay in the payment by Instruct-ERIC of the first instalment of the Price and Instruct-ERIC shall not be in breach of this Agreement for failing to pay such first instalment on the due date.

13.2 Where Instruct-ERIC reasonably requires an escrow account, Instruct-ERIC and the Supplier shall open an escrow account with such third party as Instruct-ERIC may reasonably nominate.

14. Guarantee of Goods

- 14.1 If within the Guarantee Period Instruct-ERIC gives notice in writing to the Supplier of any Defect, whether or not the Goods with a Defect have been incorporated into any other goods, including without limitation DLS's Facilities, the Supplier shall, as soon as possible, replace or repair (at DLS's sole option) the Goods in question so as to remedy the Defects without cost to Instruct-ERIC.
- 14.2 Instruct-ERIC shall, as soon as practicable after discovery of any Defect, notify the Supplier and Instruct-ERIC in writing of the existence of the Defect. The Supplier shall, unless DLS requires the defect to be remedied off Site, carry out the repair or replacement on the Site. If it is agreed that the defective Goods should be removed from the Site, DLS will provide the Supplier with reasonable assistance to do this but the defective Goods or parts thereof shall be removed at the Supplier's risk and expense.
- 14.3 Without prejudice to the guarantee detailed in clauses 14.1 and 14.2 and regardless of whether or not the Guarantee Period for the relevant Goods has ended, the Supplier shall continue to supply all spare parts and maintain the capability to carry out repairs unless it obtains the prior written consent of DLS to cease to have such capability, such consent not to be unreasonably withheld provided the Supplier uses its best endeavours to procure parts or repairs from a third party or to enable DLS to produce its own spare parts or carry out its own repairs.
- 14.4 The liabilities of the Supplier under this clause 14.4 shall be in addition and without prejudice to any other rights or remedies of Instruct-ERIC (whether arising in contract, tort, at common law, under statute or otherwise).

15. Price and Payment

- 15.1 The Price shall be exclusive of Value Added Tax ("VAT") and shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery. Instruct-ERIC is a European Research Infrastructure Consortium, which is a legal entity created by the European Regulation (EC) No 723/2009, of 25 June 2009, and therefore entitled to some taxation exemptions such as on VAT and Excise Duty. Therefore, it is entitled to exemption from VAT .
- 15.2 After set-off of any sums due to Instruct-ERIC under clause 10, the Supplier may invoice the Price in accordance with the schedule. Subject to clause 15.3, Instruct-ERIC shall pay the Price within thirty (30) days of receipt by Instruct-ERIC of the Supplier's correctly rendered invoice into the Supplier's bank account, details of which the Supplier shall have previously given to Instruct-ERIC in writing.
- 15.3 Both parties shall be entitled, without notice, to set off from the Price (or any other sums due to the other party) any sums due to the other party from time to time pursuant to the terms of this Agreement.
- 15.4 All invoices must contain the following information:
- (a) the reference number of this Agreement (as set out in the Order),
 - (b) the allowance made for Liquidated Damages;
 - (c) the Price due, excluding VAT;
 - (d) Supplier's VAT reference, if applicable.

15.5 If either party fails to pay any sum payable under this Agreement when due (whether payable by agreement or by an order of the court or otherwise) the liability of that party shall be increased to include interest on that sum from the date when such payment was due until the date of the actual payment at a rate of 2% over the base rate from time to time of the Bank of England. Such interest shall accrue from day to day and shall be compounded annually.

16. Intellectual Property Rights

16.1 The Supplier warrants that it is not aware of any patent, copyright, design right, trademark or other intellectual property right that will be infringed by its Goods or the Agreed Use.

16.2 The Supplier indemnifies Instruct-ERIC in full against all liability, loss, damage, costs or expense suffered or incurred by Instruct-ERIC and by reason of any claim, action or litigation in respect of any alleged or actual infringement of any patent, copyright, design right, trademark or other intellectual property rights of any person which results directly or indirectly from the possession or use of Goods.

16.3 Clause 16.2 shall not apply where Instruct-ERIC required the Supplier in writing to use the patent, copyright, design right, trademark or other intellectual property right which has given rise to Instruct-ERIC's liability, loss, damage, costs or expense.

16.4 The Supplier shall notify Instruct-ERIC of any claim, action or litigation in respect of any alleged infringement of any patent, copyright, design right, trademark or other intellectual property rights relating to the Goods immediately upon becoming aware of any such claim, action or litigation.

16.5 Without prejudice to the foregoing the parties hereby agree that the rights in the copyright in any drawings, designs and the Specification and any other intellectual property rights covering the Goods existing before the Date of the Agreement or generated during the Term ("**Diamond Intellectual Property**") are and shall remain the property of DLS or the property of third parties (where DLS's rights to specific DLS Intellectual Property is by virtue of a license).

16.6 The Supplier agrees:

- (a) not to cause or permit anything which may damage or endanger the DLS Intellectual Property or assist or allow others to do so;
- (b) to notify DLS of any suspected infringement of the DLS Intellectual Property;
- (c) to take such reasonable action as DLS, or any third party authorised by DLS, may direct at the expense of DLS in relation to such infringement;
- (d) to compensate DLS for any use by the Supplier of the DLS Intellectual Property otherwise than strictly in accordance with this Agreement;
- (e) to indemnify DLS for any liability incurred to third parties for any use of the DLS Intellectual Property otherwise than strictly in accordance with this Agreement.

16.7 The Supplier shall immediately notify DLS of any intellectual property rights generated by the Supplier during the Term under this Agreement and DLS shall, in its sole discretion, at its own expense and in its own name make any applications for the registration of registerable DLS Intellectual Property.

16.8 The Supplier as beneficial owner and with full title guarantee hereby assigns to DLS the DLS Intellectual Property including without limitation copyright in all documents, drawings, designs and computer programs (including source code and object code) and any other material in which copyright may subsist (in each case on its creation) created by the Supplier solely in connection with the design, development, production, manufacture or supply of the Goods. The Supplier shall execute all such documents and carry out all such acts to perfect the assignment of the DLS Intellectual Property including but not limited to copyright.

17. Assignment and Sub-contracting

17.1 The Agreement shall be binding on and enure for the benefit of the successors in title of the parties. The Supplier shall not assign or subcontract any or all of its rights or obligations under this Agreement without the prior written consent of Instruct-ERIC.

17.2 Notwithstanding Clause 17.1, the Supplier can only enter into subcontracting arrangements in accordance with this Clause 17 (Assignment and Sub-contracting).

17.3 In order to help Instruct-ERIC reach a decision on a proposed sub-contract, the Supplier shall provide Instruct-ERIC with a copy of any proposed sub-contract, together with any other information that Instruct-ERIC may reasonably require about the proposed sub-contractor (including the approximate value of the supplies of the proposed sub-contract as a percentage of the Price and/or its materiality to the supply of the Goods) and the impact of the proposed sub-contract on this Agreement.

17.4 The Supplier shall (unless otherwise agreed by Instruct-ERIC) ensure that each material sub-contract includes:

- (a) the right, under the Contracts (Rights of Third Parties) Act 1999 or otherwise, for Instruct-ERIC to enforce the terms of that sub-contract as if it were the Supplier; and
 - (b) a provision enabling the Supplier, at Instruct-ERIC's discretion, to assign, novate or otherwise transfer any of its rights and obligations under the sub-contract to Instruct-ERIC or any replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by Instruct-ERIC.
- 17.5 The Supplier shall not terminate or materially amend the terms of any sub-contract without the Instruct-ERIC's prior written consent, which shall not be unreasonably withheld or delayed.
- 17.6 Instruct-ERIC may require the Supplier to terminate a sub-contract where the acts or omissions of the relevant subcontractor have given rise to Instruct-ERIC's right of termination of this agreement pursuant to Clause 22 (Termination).
- 17.7 The Supplier shall remain responsible for all acts and omissions of its sub-contractors and the acts and omissions of those employed or engaged by the sub-contractors as if they were its own. An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation on the Supplier to procure that its employees, staff and agents and sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

18. Liability and Indemnity

- 18.1 The Supplier indemnifies Instruct-ERIC in full from and against all liabilities, expenses, damages, injury to any person or to any property and against all penalties, fines, actions, suits, claims, demands, costs (including, without limitation, reasonable legal costs), losses, charges and expenses arising out of or in connection with the possession or use of the Goods by DLS or their use by DLS or third parties permitted to use them by DLS which is caused by:
- (a) any act, default or omission (including negligence) of the Supplier, its employees, agents or sub-contractors; or
 - (b) the failure by the Supplier to supply Goods which comply with all Applicable Legislation, the Specification and the provisions of this Agreement.
- 18.2 The Supplier shall not be liable to Instruct-ERIC for any damage or injury to the extent that it is caused by or arises directly as a result of the negligence or wilful default of Instruct-ERIC.
- 18.3 Subject to clause 18.5, the Supplier's liability to Instruct-ERIC under this Agreement shall not exceed five million GB pounds (£5,000,000) or twice the Price (whichever is the greater) per event or series of connected events.
- 18.4 Save in relation to death and personal injury caused by the negligence of Instruct-ERIC, Instruct-ERIC's liability under this Agreement shall not exceed the Price.
- 18.5 Nothing in this Agreement shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or wilful default by or on the part of the Supplier; and
 - (c) anything else which it cannot by law limit or exclude its liability.

19. Insurance

- 19.1 The Supplier undertakes to take out and maintain insurance cover throughout the Term in full force and effect at its own cost with an insurance office of repute to cover its liabilities under this

Agreement to the extent as would be reasonably expected to be taken out and maintained by a reasonable and prudent provider providing the Goods (or goods similar to them) who does not self-insure.

- 19.2 The Supplier undertakes to arrange and maintain all risks insurance to cover physical loss of or damage to all constructional plant, equipment, tools, temporary buildings and contents owned by, hired to or otherwise the responsibility of the Supplier.
- 19.3 Any Goods or property of DLS held on the Supplier's site, or the site of one of the Supplier's sub-contractors (for the purposes of the execution of this contract) should be fully insured against loss or damage, including during return to DLS. This includes:
- (a) free-issue items supplied by DLS or another DLS contractor;
 - (b) items on loan from DLS; and
 - (c) raw materials and other components that have been purchased by the Supplier and have been stored and labelled as property of DLS as a condition for an interim contractual payment.
- 19.4 The Supplier agrees to promptly produce, following Instruct-ERIC reasonable request, a copy of the insurance policy (or policies) and the relevant renewal receipts for inspection by Instruct-ERIC.
- 19.5 Without prejudice to the generality of clause 19.1 the sum insured for each of product liability insurance and public liability insurance shall not be less than five million GB pounds (£5,000,000) for any one occurrence or series of occurrences consequent upon one event or original cause. If the Supplier fails to effect and keep in force the insurance required, then Instruct-ERIC may effect such insurance and pay the premium and deduct the amount so paid from any monies due to the Supplier. The Supplier undertakes throughout the Term, to obtain and maintain liability insurance covering its liabilities in respect of its manufacture and supply of the Goods.
- 19.6 DLS may, after the expiry or termination of this Agreement, require the Supplier at the Supplier's expense to effect and to maintain the insurances required under clause 19 with respect to the Supplier's ongoing liability under this Agreement for such period as DLS may reasonably require having regard to liabilities of the Supplier under this Agreement.

20. Publicity

- 20.1 The Supplier shall not, without the prior written consent of Instruct-ERIC, advertise or announce that it supplies the Goods to Instruct-ERIC and the Supplier shall discontinue any such advertisement or announcement on demand.

21. Force Majeure

- 21.1 No party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to Force Majeure.
- 21.2 The party affected by Force Majeure shall immediately give the other party written notification of the nature and extent of it and the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 21.3 If the Supplier is affected by Force Majeure and the written notice in relation to the event of

Force Majeure has not been withdrawn within thirty (30) days, Instruct-ERIC shall be at liberty to terminate this Agreement with immediate effect by serving a written notice on the Supplier. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination.

22. Termination

22.1 Without prejudice to any right or remedy either party may have against the other for breach or non-performance of this Agreement, either party may, with immediate effect by notice in writing to the other, terminate this Agreement on or at any time after the occurrence of any of the following events by written notice to the other:

- (a) the other party commits a material breach of any of the terms and conditions set out in this Agreement provided that where such breach is capable of remedy the party in breach has been advised in writing of the breach and has not rectified it within thirty (30) days of receipt. For the purposes of this clause 22.1, a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if that party can comply with the obligation within the thirty (30) day period;
- (b) a resolution is passed for the winding-up of the other party or a court of competent jurisdiction makes an order for the winding-up or the dissolution of the other party;
- (c) an administration order is made, or a receiver or administrative receiver is appointed over, or an encumbrancer takes possession of or sells any of the other party's assets;
- (d) the other party makes an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally;
- (e) the other party ceases to do business at any time for thirty (30) consecutive days; or
- (f) the other party for any reason whatsoever is substantially prevented from performing or becomes unable to perform its obligations.

22.2 Instruct-ERIC may terminate this Agreement immediately by written notice to the Supplier at any time if the Supplier commits fraud (whether or not in relation to this Agreement).

22.3 Instruct-ERIC may terminate this Agreement at any time by giving notice in writing to the Supplier. Where Instruct-ERIC serves notice in accordance with this clause 22.2 and provided the Supplier is not in breach of, or has not persistently breached this Agreement, Instruct-ERIC shall purchase from the Supplier all materials, components and parts manufactured or acquired by the Supplier solely or mainly for the supply of the Goods to Instruct-ERIC at a fair and reasonable price and shall, where the Supplier has entered into contracts to enable it to perform this Agreement that cannot be terminated without liability to the Supplier or novated to Instruct-ERIC, meet the reasonable and evidenced costs of the Supplier terminating such contracts.

23. Consequences of Termination

23.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of this Agreement except that termination shall not affect:

- (a) the accrued rights and obligations of the parties at the date of termination; and

- (b) the continued existence and the validity of the rights and obligations of the parties under clauses 7, 10, 11.1, 13, 14, 16, 18, 19, 20, 23, 24, 26, 27, 28, and 29 and any clauses which are necessary for their interpretation.

24. Confidentiality

24.1 During the Term and for a period of one (1) year after termination or expiry of this Agreement for any reason whatsoever, subject to clause 24.2, each party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to the provisions or subject matter of this Agreement, to any other party or any negotiations relating to this Agreement ("Confidential Information"). Each receiving party shall treat Confidential Information with the same degree of care and apply no lesser security measures than it affords to its own confidential information, which the receiving party warrants as providing adequate protection against unauthorised disclosure, copying or use.

During the Term and for a period of one (1) year after termination or expiry of this Agreement for any reason whatsoever, subject to clause 24.2 Instruct-ERIC may disclose any confidential information received or obtained as a result of entering into or performing this agreement with DLS.

24.2 Any party may disclose information which would otherwise be confidential if and to the extent:

- (a) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;
- (b) it considers it necessary to disclose the information to its professional advisers, auditors and bankers, provided that it does so on a confidential basis;
- (c) the information has come into the public domain through no fault of that party;
- (d) the information was previously disclosed to it without any obligation of confidentiality;
or
- (e) each party to whom it relates has given its consent in writing.

25. Dispute Resolution

25.1 If a dispute arises out of or in connection with this Agreement, the parties shall:

- (a) within twenty one (21) days of written notice of the dispute being received by the receiving party in good faith seek to resolve the dispute through negotiations between the parties' senior representatives who have the authority to settle it;
- (b) not pursue any other remedies available to them until at least two (2) months after the first written notification of the dispute.

26. General

26.1 *No partnership*

Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.

26.2 *Entire agreement*

- (a) The Agreement sets out the entire agreement and understanding between the parties in respect of the subject matter of the Agreement.
- (b) The Agreement shall prevail over:
 - (i) any terms and conditions on any acknowledgement from the Supplier of any order placed by Instruct-ERIC in connection with the Agreement;
 - (ii) the Tender to the extent it conflicts or is not compatible with the Agreement;
 - (iii) (subject to clause 26.4) any other correspondence between the parties relating to the subject matter of the Agreement;
 - (iv) any conflicting provisions of the Invitation to Tender; or
 - (v) any Commissioning Plan to the extent it relates to the supply (as opposed to the Commissioning) of the Goods.

26.3 *Acknowledgement*

The Supplier acknowledges that it has entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, Instruct-ERIC shall have no liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

26.4 *Variation*

No purported variation of this Agreement shall be effective unless agreed in writing and signed on behalf of each of the parties.

26.5 *Releases and Waivers*

- (a) The rights, powers and remedies conferred on any party by this Agreement and remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.
- (b) Either party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by the other party without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
- (c) No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or

preclude any further exercise of, that or any other right, power or remedy arising under this Agreement or otherwise.

26.6 *Costs and Expenses*

Each party shall bear its own costs and expenses incurred in the preparation, execution and implementation of this Agreement.

26.7 *Value Added Tax*

Where under this Agreement any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply, such sum or consideration shall be exclusive of VAT.

26.8 *Personal Data*

(a) The Supplier shall:

- (i) Comply with all applicable laws, statutes, regulations and codes relating to the processing of Instruct-ERIC and DLS Personal Data, including, but not limited to the Data Protection Act 2018 and the GDPR;
- (ii) Process Instruct-ERIC and DLS Personal Data in accordance with the “Personal Data Annex” and as may be further detailed in the Order;
- (iii) Have and shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with applicable laws, statutes, regulations and codes relating to the processing of Instruct-ERIC and DLS Personal Data.

(b) Instruct-ERIC shall collect and process any Supplier Personal Data in accordance with Instruct-ERIC’s Data Protection Policy and Instruct-ERIC Privacy Notices.

26.9 *Rights are Cumulative*

Except as expressly provided in this Agreement, the rights, powers and remedies conferred on any party by this Agreement are cumulative and are additional and without prejudice to any right, power or remedy which it may have under general law or otherwise.

27. Notices

27.1 Any notice to a party under this Agreement shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally be left at, or sent by prepaid first class post to the receiving party's address for notices as set out on the Order of this Agreement or as otherwise notified in writing from time to time.

27.2 A notice shall be deemed to have been served:

- (a) at the time of delivery if delivered personally; or
- (b) forty eight (48) hours after posting;

27.3 A party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.

28. Exclusion of Third Party Rights

28.1 Save for Diamond where expressly stated, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

29. Supplier Code of Conduct, policies and procedures

29.1 If accessing the Site, DLS’s Facilities and/or DLS’s systems, the Supplier warrants and undertakes to comply with relevant DLS policies and procedures, including but not limited to DLS’s Safety, Health and Environment instructions, rules, policies and procedures. Failure to do so may result in the Supplier’s representatives having their Site or DLSs Facilities or systems access revoked and/or termination of the Contract.

30. Re assignment

30.1 Instruct-ERIC may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement.

31. Governing Law and Jurisdiction

31.1 This Agreement shall be governed by and construed in accordance with the laws of England.

31.2 Each of the parties irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.

SIGNED BY
Professor Harald Schwalbe on / / ,
duly authorised for and on behalf of Instruct-ERIC:

.....

SIGNED BY
[INSERT INDIVIDUAL NAME] on / / ,
duly authorised for and on behalf of the Supplier:

.....