



**AstraZeneca UK Limited**

**General Conditions of Contract  
AZ 1-05b**

**MAINTENANCE SERVICES AND REPAIR**

**This Document Comprises 28 Pages**

**Issued on behalf of AstraZeneca UK Limited by:**

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**Revision History:**

November 2009 Revised Issue  
November 2005 Third Issue  
May 2001 Second Issue  
January 2000 First Issue

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**1 Definitions and Interpretation**

1(1) For the purposes of the Contract (as defined in this sub-clause 1(1)) the following words and expressions shall, unless the context otherwise requires, have the following meanings:

- (a) "Adjudicator" means any person or persons from time to time appointed to act as an adjudicator in accordance with the procedures for appointing an adjudicator set out in paragraphs 3.1 to 3.5 of the ICE Adjudication Procedure (1997) in connection with a dispute arising under the Contract.
- (b) "CDM Regulations" means the Construction (Design and Management) Regulations 1994.
- (c) "Construction Industry Scheme" is the scheme for the taxation of sub-contractors in the construction industry in the United Kingdom pursuant to sections 559 to 567 of the Income and Corporation Taxes Act 1988 and the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 S.I. No. 743, as amended by the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 S.I. No. 2622 or any statutory re-enactment or amendment to the same that is made from time to time.
- (d) "Contract" means the legally binding agreement entered into by the Employer and the Contractor comprising the Contract Agreement and the documents listed therein, or, where a Contract Agreement has not been executed by the parties, the Purchase Order and the documents listed therein. In the event of a discrepancy between the documents listed in the Contract Agreement or, where applicable, the Purchase Order, the said documents shall take precedence in the order in which they are listed.
- (e) "Contract Agreement" means, where applicable, the document of that name executed by both the Employer and the Contractor and forming part of the Contract.
- (f) "Contractor" means the person, firm or company so named in the Contract.
- (g) "Corrective Maintenance" means the unscheduled maintenance and repair activities required to remedy a failure in the Equipment.

- (h) "Date of Take-Over" means the day upon which all completion tests following repair or maintenance are passed in accordance with sub-clause 10(2).
- (i) "Day" means a calendar day.
- (j) "Employer" means the company so named in the Contract, its successors in title and, subject to sub-clause 5(1), its assigns.
- (k) "Employer's Representative" means the person identified in the Contract Agreement or, where no Contract Agreement has been executed by the parties, the person identified elsewhere in the Contract, who is authorised by the Employer to accept the Equipment and give directions and instructions to the Contractor.
- (l) "Equipment" means the equipment which is the subject of the Maintenance Services and which is identified in the Contract.
- (m) "Force Majeure" means acts of God such as earthquake, storm, tempest, lightning and/or flood; acts of government or state; war, civil war, riot, civil commotion and/or insurrection; fire, explosion, protestor action and/or any other prevention from or material hindrance in obtaining essential raw materials, energy or other supplies; labour dispute (other than one solely confined to the Seller's own employees, servants, agents and/or sub-contractors); and/or any other reason or cause entirely beyond the control or influence of either party and which does not arise out of particular circumstances which are or should have been in the contemplation of the party relying upon the event of Force Majeure at the time of entering into the Contract. Shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.
- (n) "Group Company" means in relation to the Employer, another body corporate which is a Subsidiary of or a Holding Company of the Employer.
- (o) "Holding Company" and "Subsidiary" shall have the meanings ascribed to those expressions by Section 736 of the Companies Act 1985 (as amended) save that the condition in Section 736(1)(a) shall be deemed to be satisfied if that other company holds more than one quarter of the voting rights in it.

- (p) "Maintenance Services" means the maintenance services, duties and obligations which are to be provided by the Contractor in relation to or in connection with the Contract as set out in the Contract together with all necessary ancillary services, duties and/or obligations reasonably to be inferred from the requirements of the Contract and such other additional services as may be agreed between the Employer and the Contractor from time to time.
  - (q) "Normal Service Hours" means the normal daytime working hours from 0800 to 1800 on Monday to Friday inclusive, excluding Bank Holidays, unless specifically agreed otherwise and stated in the Contract.
  - (r) "Preventive Maintenance" means the planned maintenance activities described in the Contract.
  - (s) "Project Data" means any and all documents, designs, calculations, programmes, models, data and/or information, in whatever form or format, relating to or in any way touching upon the Maintenance Services.
  - (t) "Purchase Order" means the document of that name issued by the Employer to the Contractor and forming part of the Contract.
  - (u) "Site" means the area in which the Equipment to be maintained is situated and any other land, building or places provided by the Employer for the purpose of the Contract.
- 1(2) Words importing the singular also include the plural and vice versa where the context requires.
- 1(3) "Person" includes firms, companies and any other entities having legal capacity in English Law.
- 1(4) Any terms importing gender shall include any other gender.
- 1(5) Any reference to a Clause, sub-clause, part, schedule or appendix is, unless stated to the contrary, a reference to a Clause, sub-clause, part, schedule or appendix of or to this Contract.
- 1(6) The headings in these conditions shall not be deemed to be part thereof or to be taken into consideration in the interpretation or construction thereof or of the Contract.

## **2 General Obligations**

- 2(1) The Contractor will perform and/or provide the Maintenance Services in accordance with the requirements of the Contract and the instructions of the

Employer. The Contractor shall with due expedition and safety, maintain, repair, test and commission the Equipment to the reasonable satisfaction of the Employer using the reasonable skill, care and diligence expected of a properly qualified and competent contractor experienced in providing maintenance services of this nature. To achieve the objectives of this Contract the Contractor shall:

- (a) carry out Preventive Maintenance at the Site during Normal Service Hours at the frequency stated in the Contract, at times to be agreed with the Employer, so as to minimise the time the Equipment cannot be used by the Employer;
- (b) provide unscheduled on-call Corrective Maintenance by having maintenance personnel at the Site where the Equipment is located within the relevant periods of time stated in the Contract during Normal Service Hours and outside Normal Service Hours after receiving a request for Corrective Maintenance from the Employer. Any such request by the Employer may be made by telephone, electronic mail or letter (whether sent by post, facsimile transmission or telex). For the avoidance of doubt, the carrying out of Corrective Maintenance by the Contractor at the request of the Employer shall not be conditional upon receipt of such written request. The Corrective Maintenance shall be completed by a date determined in accordance with sub-clause 2(10).
- (c) comply with the instructions of the Employer in connection with any matter concerning the Contract, including, but not limited to, any variation, addition or omission to the Maintenance Services or any part or parts of them.
- (d) incorporate, subject to the Employer's agreement, any improvements designed to further the reliability of the Equipment;
- (e) guarantee the availability of spare parts and any agreed major sub-units for maintaining the Equipment during the duration of the Contract;
- (f) have spare parts available at the Site within the period of time stated in the Contract from the time that the need for such spare parts has been established;
- (g) carry out modifications or improvements to the Equipment at the instruction of the Employer.

- (h) provide all labour and (subject to sub-clause 2(2)h) materials necessary for the performance of the Maintenance Services.
  - (i) ensure that all materials provided are of satisfactory quality and reasonably fit for their intended purpose.
  - (j) subject to sub-clause 2(2)h, provide the requisite plant and equipment for the proper performance of the Maintenance Services, including (without limitation) scaffolding, tackle, machinery, tools, or other appliances and everything necessary for the use of its workmen and shall be responsible for the carrying thereof to the place they are required on the Site, for any necessary erection and for subsequent removal, unless agreed otherwise and confirmed in writing by the Employer.
  - (k) provide all items necessary to ensure compliance with sub-clause 2(8) and Clause 7.
- 2(2) To enable the Contractor to fulfil his obligations above, the Employer shall:
- (a) allow the Contractor full access to the Equipment and the Site at all reasonable times which shall be agreed in advance between the Contractor and the Employer. Possession of the Site shall not be exclusive to the Contractor who shall, as directed by the Employer, allow others to work on the site and afford them all reasonable access and facilities so to do.
  - (b) provide suitable working space and such other facilities as the Contractor may reasonably require;
  - (c) subject to prior agreement with the Contractor, provide suitable, safe, storage for maintenance equipment and/or spare parts;
  - (d) operate the Equipment in accordance with normally accepted standards of good practice;
  - (e) not relocate the Equipment without reasonable notice to the Contractor;
  - (f) inform the Contractor of any additions or alterations to the Equipment;
  - (g) carry out such maintenance routines as are agreed between the Contractor and Employer.
  - (h) supply to the Contractor any materials, plant, equipment or utilities for the carrying out of the Maintenance Services as the Employer has expressly stated in the Schedule of Maintenance Services it will provide. Any materials provided by the Employer under this sub-



clause shall remain the property of the Employer and shall be used by the Contractor for the carrying out of the Maintenance Services and for no other purpose and the Contractor shall be responsible for the safe storage of such materials while on the Site. Any such materials provided by the Employer, but which are surplus to the Contractor's requirements shall be returned to the Employer as soon as possible or disposed or despatched by the Contractor as the Employer may instruct.

- 2(3) The property and copyright in Project Data provided by or on behalf of the Employer to the Contractor shall remain with the Employer and the Contractor is only permitted to make at its own expense such copies as it may require for the purposes of performing/providing the Maintenance Services under the Contract.
- 2(4) The Contractor as beneficial owner hereby grants to the Employer an irrevocable, royalty free, non-exclusive licence (such licence to remain in full force notwithstanding the completion or termination of the Contractor's obligations under the Contract) to copy and use any and all Project Data, whether in hard copy versions or held or stored on electronic media, which are produced by, or on behalf of, the Contractor in the course of performing its obligations under the Contract for any purpose whatsoever connected with the Maintenance Services. The copyright licence granted by this sub-clause 2(4) shall include the right to reproduce the designs contained in the Project Data and the purposes for which the Project Data may be used shall include, but not be limited to, the design, construction, installation, completion, testing, commissioning, operation, maintenance, dismantling, reassembly, repair, alteration, modification, adjustment, replacement, demolition, disposal, advertisement and/or sale of the Equipment or any part of the Equipment. The Employer shall have the right to grant sub-licences in the same terms as this licence and to transfer the licence to third parties without requiring the consent of the Contractor. The Contractor hereby undertakes to procure the necessary rights from any sub-contractor to give effect to this sub-clause 2(4). The Contractor will not be liable for any use of the Project Data prepared or provided by the Contractor for any purpose other than that for which it was originally prepared and such other uses as are reasonably foreseeable unless the Contractor authorises such use and confirms that the Project Data is suitable for such use.

- 2(5) The Contractor shall prepare or provide all Project Data in the form and format specified by the Employer and shall provide copies to the Employer on demand of any and all Project Data and in any event on completion or earlier termination of the Contract.
- 2(6) The Contractor shall be responsible for the sufficiency of and any discrepancies (including errors and inaccuracies) in the Project Data supplied by it and the Contractor shall make good any deficiencies and/or rectify such discrepancies as soon as possible at its own expense.
- 2(7) The Contractor shall provide for the safe storage of the Project Data in its possession and protect the same against loss or damage. The Contractor shall indemnify the Employer against all demands, damages, costs, charges and expenses arising in connection with any claims against the Employer for any such loss or damage.
- 2(8) The Contractor shall ascertain and conform in all respects with the provisions of any general or local Act of Parliament and the Regulations and Bye-laws of any local or other statutory authority which may be applicable to the Maintenance Services or the Equipment and with such rules and regulations of public bodies and companies whose property or rights are or may be affected in any way by the Maintenance Services and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Act Regulation or Bye-law. Provided always that:
- (a) the Contractor shall not be required to indemnify the Employer against the consequences of any such breach which is the unavoidable result of complying with the Contract or the instructions of the Employer; and
  - (b) if the Contract or instructions of the Employer shall at any time be found not to be in conformity with any such Act Regulation or Bye-law the Employer shall issue such instructions as may be necessary to ensure conformity with such Act Regulation or Bye-law.
- 2(9) Unless otherwise stated in the Contract, the Contractor is appointed as the Planning Supervisor and Principal Contractor for the purposes of the CDM Regulations. The Contractor warrants that it is competent to fulfil this role and will devote adequate resources to discharging its obligations as Planning Supervisor. The Contractor further warrants that it has and will continue to discharge the obligations of a Designer in compliance with Regulation 13 of the CDM Regulations if applicable.

2(10) Where the Employer issues a request for Corrective Maintenance pursuant to sub-clauses 2(1)(b) or (c) above it shall either:

- (a) state a date by which the Contractor is to complete the Corrective Maintenance; or
- (b) request the Contractor to inspect the relevant Equipment and provide an estimated date for completion of the Corrective Maintenance. If the Employer agrees with the Contractor's estimate, the Corrective Maintenance will be completed by the Contractor on or before that date.

In the event that neither (a) or (b) above occurs, the parties will agree a completion date for the carrying out of the Corrective Maintenance as soon as possible. If the parties have been unable to reach agreement within 3 working days the Corrective Maintenance will be completed within a reasonable time, taking into account the Employer's business and commercial requirements for the relevant Equipment.

### **3 Relocation of Equipment**

3(1) In the event that the Employer wishes to relocate the Equipment or any part thereof, within a reasonable distance of its original location, he shall so notify the Contractor whereupon the Contractor shall provide such assistance as the Employer may reasonably require, including supervising the preparation of the Equipment or part thereof for movement and its reassembly at the new location, checking the satisfactory operation of the Equipment or part thereof so moved and making good any damage to the Equipment arising from such relocation. The Employer shall pay any reasonable charges the Contractor may make in respect of providing such assistance.

3(2) Relocation as aforesaid shall not affect the Contractor's obligations to maintain the Equipment. However, where it can be shown that the Contractor's costs are likely to significantly increase or decrease as a direct result of such relocation, the parties shall review whether and in what manner the charges set out in the Contract shall be adjusted.

### **4 Contractor's Conditions**

No general or printed conditions submitted with or referred to in the Contractor's tender or at any other time shall form part of the Contract unless expressly agreed to in writing by the Employer.

**5 Assignment and sub-contracting**

- 5(1) The Employer shall be entitled to assign the benefit of the Contract to another Group Company without the consent of the Contractor.
- 5(2) The Contractor shall not assign or charge or purport to assign or charge the Contract or any part or parts thereof or any benefit or interest therein or thereunder without the prior written consent of the Employer.
- 5(3) This Contract is for the sole benefit of the parties to the Contract. Terms which make reference to third parties are not to be construed as terms purporting to confer a benefit upon such third parties. It is not the intention of the parties to this Contract that any term hereof should be enforceable by anyone other than the parties to the Contract.
- 5(4) The Contractor shall not sub-contract any part of the Maintenance Services without the prior written consent of the Employer, such consent not to be unreasonably withheld or delayed.

**6 Commencement and Site Responsibilities**

- 6(1) Maintenance Services under the Contract shall commence upon the date stated, and continue for the period of time stated in the Contract, unless terminated earlier by the Employer giving to the Contractor one month's notice in writing. The Contractor will ensure that all items of work have been completed before the expiry of such period.
- 6(2) The Contractor is deemed to have understood the nature and extent of the Maintenance Services and to have visited the Site and shall make no claim founded on its failure so to do. The Employer shall, at the request of the Contractor, grant such access to the Site as may be reasonable for this purpose.
- 6(3) The Contractor shall satisfy itself that the information provided by the Employer whether contained within the Contract, Project Data or otherwise provided by the Employer is accurate and sufficient and will not prejudice the performance of any of the Contractor's obligations under the Contract. The Contractor shall inform the Employer immediately of any inaccuracy, discrepancy or insufficiency in such information and the Employer shall reconcile such inaccuracy or discrepancy and/or provide further information/data to the reasonable satisfaction of the Contractor within a reasonable time of being requested so to do. The Contractor shall not be entitled to any additional time or payment in respect of such clarification.

- 6(4) The Contractor shall not make any deliveries nor commence work on Site before advising details to and obtaining the consent of the Employer.
- 6(5) Where materials or goods are to be delivered to the Site and installed by the Contractor, the Contractor shall make prior arrangements for and subsequently effect their off-loading and adequate storage, unless otherwise stated in the Contract.
- 6(6) The Contractor shall, before employing hourly-paid labour on the Site, agree with the Employer the hours to be worked (including overtime), basic wages, bonus and other conditions of employment. Such matters shall not be changed without the Employer's written consent. Notice shall be given to the Employer of any changes in national agreements affecting such matters.
- 6(7) The Contractor shall ensure that no work is covered up until the Employer has had a reasonable opportunity to inspect it.
- 6(8) The Contractor shall afford to the Employer and any other of the Employer's contractors, servants or agents, reasonable access to the Equipment. The Maintenance Services shall be carried out so as not to interfere unnecessarily or improperly with the convenience of the public or with any other activities of the Employer, its contractors, servants or agents on the Site.
- 6(9) The Employer reserves the right to place orders for similar work with other contractors or his own labour on the Site or elsewhere on the Employer's premises.
- 6(10) Notwithstanding any representation or statement in the Contract as to the Maintenance Services to be provided, the Employer does not warrant or guarantee the work or value of the work which the Contractor may be requested to carry out pursuant to this Contract and accepts no liability as to the amount or value of work that may be required.

## **7 Site Regulations and Safety**

- 7(1) The Contractor shall carry out the Maintenance Services with proper regard to the safety of all persons and in accordance with all applicable laws.
- 7(2) Without prejudice to its general obligations under sub-clause 7(1) above, the Contractor shall:-
  - (a) comply with the operating works rules applicable to the premises where the Maintenance Services are to be carried out;
  - (b) comply with the Employer's safe systems of working which includes permits to work and clearance notes;

- (c) obtain copies of the operating works rules from the Employer and failure by the Contractor in obtaining copies of these works rules will not relieve him of the responsibilities and obligations imposed by them;
  - (d) obtain from the Employer copies of the operating works rules applicable to all Contractor's employees relevant to the particular sites and issue a copy to all personnel (including sub-contractors and agents) prior to them entering into the Employer's premises; and
  - (e) comply with any requirements of the Employer to require any personnel to attend a safety induction course.
- 7(3) The Contractor shall be responsible for the suitability and safety of the maintenance equipment used by it and no maintenance equipment shall be used which may be unsuitable, unsafe or liable to cause damage or injury. Without lessening the responsibility of the Contractor in regard to such maintenance equipment, if in the Employer's opinion it is unsuitable, unsafe or liable to cause damage or injury, it shall not be used on the Maintenance Services and it shall be replaced with the minimum of delay at the Contractor's cost.
- 7(4) The Contractor shall ensure that its personnel shall comply with all applicable rules and regulations when visiting the Site and any and all other parts of the Employer's premises.
- 7(5) The Employer shall have the right at any time to require the removal of any person employed by the Contractor in connection with the Maintenance Services and for an immediate replacement to be provided.

## **8 Confidentiality**

- 8(1) The Project Data together with all other information in whatsoever form relating to the Maintenance Services or to the Employer's business which comes into the Contractor's possession (the "Information") shall be regarded as secret and confidential and shall not be disclosed by the Contractor except to the extent that it becomes necessary to furnish Information to others solely for the purpose of carrying out the Maintenance Services. The Contractor shall impose the same obligations of secrecy and confidentiality upon any authorised third party to whom the Information is passed. These obligations will continue in full force and effect notwithstanding the termination or

completion of the Contract, but shall not in any event apply to any part of the Information which the Contractor can show:

- (a) was already in the Contractor's possession prior to its disclosure by the Employer; or
  - (b) was lawfully acquired by the Contractor at any time from a third party who holds such information free of any obligation of confidentiality; or
  - (c) is or comes into the public domain otherwise than through the fault of the Contractor.
- 8(2) The Contractor and its agents, servants and workmen shall keep secret and shall not disclose to any third party (except sub-contractors accepting like obligations as to secrecy and then only to the extent necessary for the performance of the sub-contract in question) any matters relating to the existence or to the performance, variation, cancellation or termination of the Contract (either actual or projected) except with the prior written consent of the Employer.
- 8(3) The Contractor shall not take photographs nor make films or video recordings of the Equipment or any section or part thereof or of any property of the Employer without the prior written consent of the Employer.
- 8(4) The Contractor shall not display any advertisement on the Site or elsewhere in connection with the Maintenance Services without the prior written approval of the Employer.
- 8(5) The Contractor shall do everything necessary to comply with its obligations under this Clause 8 and if required by the Employer the Contractor and its individual personnel shall sign a confidentiality agreement approved by the Employer.

## **9 Intellectual Property Rights**

- 9(1) The Contractor shall indemnify the Employer against any claims for infringement of any patent, registered design, trademark, copyright or any other intellectual property right in connection with the Maintenance Services or the use by the Employer of Project Data prepared and/or provided by the Contractor pursuant to sub-clause 2(5) and against all costs, losses, damages and expenses which the Employer may incur in any action for such infringement or for which the Employer may become liable in any such action provided that this indemnity will not apply where the infringement arises as a result of and in relation to any Project Data provided by the Employer in

circumstances where the Contractor has properly discharged its duty to warn under sub-clause 6(3).

- 9(2) Any inventions made or created by the Contractor or by its employees in the performance of the Maintenance Services shall belong to the Employer absolutely. The Contractor shall give or procure the giving of such assistance including the execution of all necessary documents to procure the vesting of any patent (or right to apply for the same) for such inventions in the Employer as absolute owner.

## **10 Completion Tests and Take-Over**

- 10(1) Completion tests shall be carried out in the presence of the Employer. They shall be carried out as stated in the Contract and at the time specified therein. If completion tests are not so specified their content and the time for conducting them will be discussed and agreed by the parties. In the absence of any agreement, the Employer will instruct the Contractor as to the nature of and time for the completion tests and the Contractor will comply with such instruction. The Contractor shall give the Employer reasonable notice of the date after which it will be ready to carry out the tests and shall immediately carry out to the Employer's reasonable satisfaction any necessary adjustments or remedial work in respect of the Equipment or any part thereof failing to pass such completion tests. Following the completion of the adjustments and/or remedial work, the completion tests shall be repeated and the provisions of this Clause 10 shall apply to such repeated tests.
- 10(2) When the completion tests to be made by the Contractor have been passed to the reasonable satisfaction of the Employer, the Employer shall forthwith take-over the Equipment (the "Date of Take-Over").

## **11 Warranty Period**

- 11(1) The Contractor shall be responsible for defects in the Equipment which occur under proper usage and are due to faulty design, the Seller's erroneous instructions as to use or erroneous data, inadequate or faulty materials or workmanship or any other breach of the Contractor's obligations or warranties, express or implied. The Contractor shall be responsible as aforesaid for a period of eighteen months from the Date of Take-Over, or such other period as is stated in the Contract.



- 11(2) The Contractor shall as soon as reasonably practicable and at its own expense make good, repair or replace the Equipment or any part of the Equipment which is or becomes defective. Repairs or replacements shall themselves be subject to the foregoing obligations for a period of twelve months from the date of re-installation or passing of tests (if any) whichever is appropriate after repair or replacement.
- 11(3) In the event that the Contractor cannot or does not respond within a reasonable time to rectify any such defects, the Employer may carry out the repair and/or replace the Equipment and shall be entitled to reimbursement by the Contractor for reasonable costs necessarily incurred in connection therewith. Such action by the Employer shall not relieve the Contractor of its continuing obligations under the Contract.

## **12 Payment**

- 12(1) The Contractor shall be paid for the Maintenance Services on the basis set out in the Contract. Where no such basis is set out in the Contract the Contractor shall be remunerated on the basis of a fair and reasonable hourly rate having regard to any previous course of dealings between the parties and/or rates quoted by the Contractor and other maintenance contractors periodically employed by the Employer.
- 12(2) The Contractor shall submit to the Employer at monthly intervals an invoice (in such form, if any, as may be prescribed by the Employer) showing the value of the Maintenance Services provided since the previous submission of an invoice (or in the case of the first such monthly invoice, the date of commencement of the Maintenance Services) together with such supporting documentation as the Employer may reasonably require.
- 12(3) Within 14 days of the date of delivery of the Contractor's invoice to the Employer, or the provision by the Contractor of supporting documentation requested by the Employer in accordance with sub-clause 12(2), whichever is the later, the Employer shall give notice to the Contractor specifying the amount (if any) of the payment proposed to be made and the basis on which it was calculated. The notice requirements of this sub-clause 12(3) shall be satisfied by the Employer amending and countersigning the Contractor's invoice and delivering a copy to the Contractor.
- 12(4) Payments to the Contractor become due on the date of the Employer's notice under sub-clause 12(3) above.

- 12(5) It is agreed by the parties that the final date for payment shall be whichever is the latest of the following:
- (a) the first working day after the end of the month following the month in which the Contractor's invoice submitted under sub-clause 12(1) is dated; or
  - (b) 14 days after submission of a VAT invoice which accords with the Employer's notice under sub-clause 12(3) in circumstances where the amount for payment in the Employer's notice differs from that on the invoice submitted under sub-clause 12(1); or
  - (c) 14 days after the requirements of the Construction Industry Scheme have been complied with by the Contractor to the satisfaction of the Employer.
- 12(6) Where a payment under this Clause is to differ from the amount notified to the Contractor or the Employer is to withhold payment after the final date for payment of the sum due under the Contract, the Employer shall notify the Contractor in writing not less than one day before the final date for payment specifying the amount proposed to be withheld and the ground for withholding the payment or, if there is more than one ground, each ground and the amount attributable to it.
- 12(7) If in complying with its obligations in respect of any instructions under sub-clause 2(1)(c) or any other matter arising under the Contract, the Contractor reasonably considers that it will incur additional costs due to such instructions or matters it shall immediately notify the Employer in writing. If the Employer agrees with the Contractor's opinion, it shall request the Contractor to provide a statement of the additional costs together with such supporting documentation as the Employer shall reasonably require. The Contractor's statement shall be valued and paid in accordance with sub-clause 12(1) provided that the Contractor will have no right to payment under this sub-clause 12(7) if the instruction or other matter was necessary or arose due to the act, default or omission of the Contractor, any sub-contractor, its servants or agents.

### **13 Indemnity**

- 13(1) For the purposes of Clauses 13 and 14 the following expressions shall have the following meanings:

“damage” shall mean actual physical damage or loss to property and any pecuniary losses resulting therefrom;

“injury” shall mean any bodily or mental injury to persons including sickness and disease;

“Employer’s Liability Insurance” shall mean insurance required pursuant to the Employer’s Liability/Compulsory Insurance Act 1969 or any statutory amendment or re-enactment thereof in force from time to time.

- 13(2) The Contractor shall indemnify and keep the Employer indemnified against all losses and claims for injury or damage to any person or property whatsoever which may arise out of or in consequence of the Maintenance Services and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto subject to sub-clauses 13(3) and 13(4).
- 13(3) The liability of the Contractor to indemnify the Employer under sub-clause 13(2) shall be reduced proportionately to the extent that the act or neglect of the Employer his servants his agents or other contractors not employed by the Contractor may have contributed to the said loss injury or damage.
- 13(4) The Contractor shall not be liable for or in respect of or to indemnify the Employer against any compensation or damage for or with respect to death or injury to persons or loss of or damage to property resulting from any act or neglect or breach of statutory duty done or committed by the Employer his agents servants or other contractors (not being employed by the Contractor) or for or in respect of any claims demands proceedings damages costs charges and expenses in respect thereof or in relation thereto.
- 13(5) The Employer shall save harmless and indemnify the Contractor from and against all claims demands proceedings damages costs charges and expenses in respect of the matters referred to in sub-clause 13(4). Provided always that the Employer’s liability to indemnify the Contractor under sub-clause 13(4) shall be reduced proportionately to the extent that the act or neglect of the Contractor or his sub-contractors servants or agents may have contributed to the said injury or damage.

## **14 Insurances**

- 14(1) The Contractor shall have in force and shall require any sub-contractor employed by it to have in force the following insurances at all times :

- (a) Insurance against damage loss or injury for which it is liable under sub-clause 13(2). Such insurance shall be for such amount as the Employer deems necessary, but in any event for at least £2,000,000 (two million pounds sterling) for each and every incident.
  - (b) Employer's Liability Insurance as defined in Clause 13.
- 14(2) Subject to sub-clause 14(3) the Employer agrees not to claim and will procure that its insurers and any Group Company and their insurers will not claim, against the Contractor in respect of loss or damage to any property belonging to the Employer or any Group Company arising out of the execution of the Contract in excess of the amount for which the Contractor is required to have insurance in force pursuant to sub-clause 14(1).
- 14(3) Sub-clause 14(2) shall not apply to the extent that any loss or damage:
- (a) arises out of the ownership or use by or on behalf of the Contractor of any motor vehicle, water craft or aircraft: or
  - (b) results from a deliberate or reckless act or omission by the Contractor, its servants or agents.
- 14(4) Upon request the Contractor shall provide satisfactory evidence to the Employer that the insurances required under the Contract have been effected and shall if so required produce the insurance policies for inspection. The terms of all such insurances shall be subject to the prior approval of the Employer (which approval shall not be unreasonably withheld). The Contractor shall upon request produce to the Employer receipts for the payment of current insurance premiums.
- 14(5) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force any of the insurances required under the Contract then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time, subject to sub-clause 12(6) deduct the amount so paid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 14(6) The Contractor shall comply with all conditions laid down in the insurance policies. In the event that the Contractor fails to comply with any condition imposed by the insurance policies effected pursuant to the Contract, the Contractor shall indemnify the Employer against all losses damages and expenses arising from such failure.

## **15 Loss of the Equipment**

- 15(1) In the event that all or any part of the Equipment is destroyed or otherwise so damaged as to be incapable of economic repair then the Employer may terminate this Contract forthwith by notice in writing to the Contractor. The provisions of Clause 17 will apply to any such termination.
- 15(2) In the event that the Contractor removes the Equipment from the Site for the purposes of repair or modification, the Contractor shall be responsible for the safe keeping of the Equipment and any loss or damage to the Equipment whilst in the possession of the Contractor shall be made good at the expense of the Contractor. The Equipment shall remain the property of the Employer when in the possession of the Contractor and the Contractor shall not have any lien on or over it. If any Equipment in the possession of the Contractor is declared scrap, it shall remain the property of the Employer.

## **16 Training**

- 16(1) Where the Contract requires, the Contractor shall provide, at the Employer's expense, such training of the Employer's personnel as is required by the Employer.
- 16(2) In the event that the operation and/or maintenance of any Equipment is changed due to the Contractor complying with its obligations under this Contract, the Contractor will provide the Employer with revised or amended operation and maintenance manuals for the Equipment as soon as possible.

## **17 Termination or Insolvency**

- 17(1) The Employer may in addition to any other rights and remedies which it may have by notice in writing at any time forthwith terminate the Contractor's employment under the Contract.
- 17(2) If the Employer is in material and persistent breach of its obligations under the Contract and shall fail to remedy the same after receiving a 30 day notice from the Contractor specifying the breach and requiring its remedy then the Contractor shall be entitled forthwith by written notice to terminate its engagement in connection with the Maintenance Services.
- 17(3) If the Contractor commits a breach of this Contract and fails within 10 days of notice by the Employer to take such steps as reasonably satisfy the Employer to rectify such breach, the Employer may, without prejudice to any other of his rights, carry out himself or employ a third party to carry out the maintenance

- of the Equipment in accordance with the requirements of this Contract at the risk and expense of the Contractor. Any additional cost thereby necessarily incurred by the Employer shall be recoverable from the Contractor as a debt.
- 17(4) If the Contractor becomes insolvent or makes an arrangement with its creditors or has a receiver appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction), the Employer may, without prejudice to any other of his rights, terminate this Contract forthwith by notice to the Contractor or any person in whom this Contract may have become vested. For the purposes of the Contract, any termination under this sub-clause 17(4) shall be deemed to be a breach by the Contractor of its obligations under the Contract. In the event that the Employer gives such notice as stated in sub-clause 17(3) above or this sub-clause 17(4) to the Contractor when the Contractor has removed the Equipment from the Employer's Site, it shall be lawful for the Employer to enter the premises where the Equipment is situated and take possession of the Equipment.
- 17(5) The Employer may by notice in writing suspend all or any of the Contractor's duties under the Contract. If the Employer has not within 6 (six) months of the notice requested the Contractor to resume the duties suspended the Contractor may serve 30 days' notice on the Employer requiring it to end the suspension. If the Employer does not notify the Contractor within the 30 day period that the suspension is ended the Contractor may forthwith by written notice to the Employer terminate the Contract.
- 17(6) Upon any termination under sub-clause 6(1), sub-clause 15(1), sub-clause 18(5) or this Clause 17 and subject to any set-off or deduction which the Employer may be entitled to make under sub-clause 17(7) the Employer shall pay any sums due to the Contractor which have accrued prior to the date of such termination, together with a fair and reasonable proportion of the next following instalment of payment for the Maintenance Services which the Contractor has properly performed up to the date of such termination, less any amounts previously paid by the Employer to the Contractor. The Contractor shall not be entitled to any further sums in respect of loss of anticipated profit or otherwise.
- 17(7) Where the Contract has been terminated under sub-clause 6(1) or this Clause 17 due to a breach by the Contractor of its obligations under the Contract the Employer may itself complete the Maintenance Services or arrange for their completion by a third party and no further payments shall become due to the

Contractor until the Maintenance Services have been completed in accordance with the requirements of the Contract. The Employer shall be entitled to set off or deduct from monies due to the Contractor any additional costs with respect to completion of the Maintenance Services incurred by the Employer, provided the Employer gives notice in accordance with sub-clause 12(6). Payment shall become due on the giving of the notice. The final date for payment of the sums due (if any) to the Contractor under this sub-clause 17(7) shall be 28 days following receipt from the Contractor of a VAT invoice which corresponds in all respects with the amount of the Employer's notice provided that if the total cost to the Employer exceeds the amount due to the Contractor, the balance shall be recoverable from the Contractor by the Employer as a debt.

- 17(8) Termination of the Contractor's engagement shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination and the continuing operation of sub-clauses 2(3), 2(4), 2(5), 2(7), 5(2), 8(1), 8(2), 8(3), 8(4), 8(5), 9(1), 9(2), 13(2), 14(1), 17(7), 17(8), 17(9) and Clauses 19, 20, 21, 22 and 23.
- 17(9) Following any termination of the Contractor's engagement the Contractor shall:
- (a) immediately take all necessary steps to end the provision by it of the Maintenance Services in an orderly manner. Such steps are to be taken with all reasonable speed and economy. The Contractor shall be required, in particular (but without limitation), to vacate the site as soon as possible; and
  - (b) deliver to the Employer copies in such form as the Employer may reasonably require of all Project Data (whether in the course of preparation or completed) which the Contractor holds in connection with the Maintenance Services together with the originals and any copies which the Contractor may hold of all documents provided to it by the Employer or by others in connection with the Maintenance Services; and
  - (c) if requested by the Employer, immediately assign any contract with any sub-contractor to the Employer and take such steps as are necessary to enable that a legal assignment take place; and
  - (d) immediately return any materials, plant or equipment provided by the Employer pursuant to sub-clause 2(2)(h).

## **18 Force Majeure**

- 18(1) Neither party shall be liable for any failure to perform its duties, obligations and/or responsibilities hereunder or any failure to provide the other party with the opportunity to comply with its duties, obligations and/or responsibilities hereunder if and to the extent that such failure arises as a direct and unavoidable consequence of Force Majeure. For the avoidance of doubt any matter covered by Clause 20 is not an event of Force Majeure.
- 18(2) In the event that either party seeks to rely upon the relief granted by sub-clause 18(1), it shall submit to the other party written notice of the happening of the event of Force Majeure together with reasonable proof of the nature of the event and of its effect upon the performance of the party's obligations under the Contract.
- 18(3) The parties shall use all reasonable endeavours to prevent and mitigate the effects of any delay occasioned by, or other consequence of any event of Force Majeure.
- 18(4) Should one event of Force Majeure last continuously for more than 3 months then the parties shall endeavour to agree any modifications to the Contract which may be equitable having regard to the nature of the event.
- 18(5) If the parties have failed to reach agreement as described in sub-clause 18(4) within 6 months of the commencement of the event in question, either party may at any time thereafter, and provided the event still subsists, by notice to the other terminate the Contract. The provisions of Clause 17 will apply to any such termination.

## **19 Limitation of Contractor's Liability**

The Contractor shall not be liable to the Employer by reason of any breach of the Contract for:

- 19(1) any loss of production or of any contract that may be suffered by the Employer; or
- 19(2) any wastage, loss or contamination during its use in any plant of any process consumable which shall be deemed to include feed stocks, chemicals, biochemicals, catalysts and utilities; or
- 19(3) any loss or damage arising from any design or information which the Employer has specifically instructed the Contractor to use; except to the extent that recoveries in respect thereof are obtained under insurance effected pursuant to Clause 14 (Insurance).



## 20 Code of Conduct

- 20(1) Supplier recognises AstraZeneca's commitment to working only with suppliers who embrace standards of ethical behaviour that are consistent with AstraZeneca's *Code of Conduct* (<http://www.astrazeneca.com/responsibility>), as described in AstraZeneca's document *Responsible Procurement Supplier Expectation (v0.3May09)* (a part of the AstraZeneca Global Standard – Responsible Procurement).
- 20(2) Supplier represents and warrants and undertakes that it:
- (a) shall perform this Agreement and operate its business in compliance with all applicable laws and regulations;
  - (b) has received and read AstraZeneca's *Code of Conduct* and AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*; and
  - (c) shall perform this Agreement and operate its business to ethical standards consistent with those set out in AstraZeneca's *Code of Conduct* and as described in AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*, and
  - (d) cause its suppliers and sub-contractors to operate their business in compliance with all applicable laws and regulations and in a manner consistent with AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*.
- 20(3) In the event that Supplier fails to meet or maintain such ethical standards, the Parties shall agree upon what measures should be taken by Supplier to improve Supplier's performance (the "Improvement Plan"). If the Parties are unable to agree upon an Improvement Plan or Supplier does not implement the Improvement Plan within an agreed reasonable timescale (which shall in any event not be in excess of twelve (12) calendar months) AstraZeneca shall be entitled to terminate this Agreement with immediate effect, to be relieved of any obligations and to seek compensation from Supplier.
- 20(4) Supplier agrees that any material breach or violation by Supplier of the above representations, warranties and undertakings shall give AstraZeneca the right to terminate this Agreement according to Article 17.

## **21 Notices**

- 21(1) All notices and communications to be given or made under this Contract shall be given or made in writing and delivered either by hand, by post in a pre-paid letter, or by facsimile transmission confirmed by post in a pre-paid letter, addressed to the other party.
- 21(2) Notices to be given to the Employer by the Contractor shall be addressed to the AstraZeneca UK Engineering Purchasing Manager, Alderley House, Alderley Park, Macclesfield, Cheshire SK10 4TF. Other communications shall be addressed as for notices or to such other address as is from time to time specified by the Employer for the purpose of communications.
- 21(3) Notices and communications to be given or made to the Contractor by the Employer shall be addressed as specified from time to time by the Seller for the purpose.
- 21(4) The notices or other communications shall be deemed to be duly made or given on the day of delivery if delivered by hand, after two days for a letter or after four hours for a facsimile transmission, save that if a letter is returned as being undelivered within seven days of its despatch, or a facsimile is reported as being received in incomplete or illegible form within two hours of transmission during normal office hours, that notice or communication shall not be deemed to have been made.

## **22 Dispute Resolution**

- 22(1) The Employer and the Contractor shall give effect forthwith to every decision of the Adjudicator on a dispute given under sub-clause 22(3) unless and until that decision is revised by agreement of the Employer and Contractor or pursuant to this Clause 22.
- 22(2) (a) The Employer and the Contractor each has the right to refer a dispute as to a matter under the Contract for adjudication and either party may give notice in writing (hereinafter called the "Notice of Adjudication") to the other at any time of its intention so to do. The adjudication shall be conducted under the Institution of Civil Engineers' Adjudication Procedure (1997) or any amendment or modification thereof being in force at the time of the said Notice.

- (b) Unless the Adjudicator has already been appointed he is to be appointed by a timetable with the object of securing his appointment and referral of the dispute to him within 7 days of such notice.
  - (c) The Adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.
  - (d) The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
  - (e) The Adjudicator shall act impartially.
  - (f) The Adjudicator may take the initiative in ascertaining the facts and the law.
- 22(3) The decision of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings or by arbitration (if the Contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement.
- 22(4) The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the Adjudicator is similarly not liable.
- 22(5) (a) All disputes arising under or in connection with the Contract or the carrying out of the Maintenance Services other than failure to give effect to a decision of an Adjudicator shall be finally determined by reference to arbitration. The party seeking arbitration shall serve on the other party a notice in writing (called the "Notice to Refer") to refer the dispute to arbitration.
- (b) Where an Adjudicator has given a decision under sub-clause 22(2) in respect of the particular dispute the Notice to Refer must be served within three months of the giving of the decision otherwise it shall be final as well as binding.
- 22(6) (a) The arbitrator shall be a person appointed by agreement of the parties.
- (b) If the parties fail to appoint an arbitrator within one month of either party serving on the other party a notice in writing (hereinafter called the "Notice to Concur") to concur in the appointment of an arbitrator the dispute shall be referred to a person to be appointed on the application of either party by the President for the time being of the Institution of Civil Engineers.

- (c) If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one month of the vacancy arising fill the vacancy then either party may apply to the President for the time being of the Institution of Civil Engineers to appoint another arbitrator to fill the vacancy.
  - (d) In any case where the President for the time being of the Institution of Civil Engineers is not able to exercise the functions conferred on him by this sub-clause 22(6) the said functions shall be exercised on his behalf by a vice-president for the time being of the said Institution.
- 22(7)
- (a) Any reference to arbitration under this Clause shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force. The reference shall be conducted in accordance with the Institution of Civil Engineers' Arbitration Procedure (1997) or any amendment or modification thereof being in force at the time of the appointment of the arbitrator. The arbitrator shall have full power to open up review and revise any decision, opinion, instruction, direction, or valuation of the Employer or the Adjudicator.
  - (b) Neither party shall be limited in the arbitration to the evidence or arguments put to any adjudicator pursuant to sub-clause 22(2).
  - (c) The award of the arbitrator shall be binding on all parties.
  - (d) Unless the parties otherwise agree in writing any reference to arbitration may proceed notwithstanding that the Maintenance Services are not then complete or alleged to be complete.

## **23 Law**

The construction validity and performance of the Contract shall be governed by the Law of England.