



**Dated**

**February 2022**

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**2TECK LIMITED**

Master Services Agreement

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2Teck Ltd, Leydene House, Waterberry Drive, Waterlooville, Hampshire, PO7 7XX

## 1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms & Conditions the following definitions apply:

"**2Teck**" means 2Teck Limited, a company incorporated and registered in England & Wales (Company Registration Number: 04834894) and having its principal office at Leydene House, Waterberry Drive, Waterlooville, Hampshire, PO7 7XX, United Kingdom;

"**2Teck Personnel**" all employees, officers, staff, other workers, agents and consultants of 2Teck, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;

"**Affiliate**" means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

"**Asset**" means any item of the Customer's plant to be the subject of the Electrical Maintenance Services or the Mechanical Maintenance Services, and as set out in the asset list;

"**Bribery Laws**" means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;

"**Business Day**" means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

"**Confidential Information**" means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets, which is obviously confidential or has been identified as such, or which is developed by 2Teck in performing its obligations under, or otherwise pursuant to the Contract;

"**Contract**" means the agreement between 2Teck and the Customer for the sale and purchase of the Deliverables incorporating these Terms & Conditions, the Order, and where relevant, the Service Level Agreement;

"**Control**" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;

"**Controller**" shall have the meaning given in applicable Data Protection Laws from time to time;

"**Customer**" means the person who purchases the Deliverables from 2Teck and whose details are set out in the Order;

"**Data Protection Laws**" means, as binding on either party or the Services:

- (a) The GDPR;
- (b) The Data Protection Act 2018;
- (c) Any laws which implement any such laws; and
- (d) Any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

"**Data Subject**" shall have the meaning in applicable Data Protection Laws from time to time;

"**Deliverables**" means the Materials or Services or both as the case may be;

"**Electrical Services**" means installation services in respect of any Materials relating to lighting and power, data communications, fire alarm systems or access control as set out in the Electrical Services Schedule;

"**Electrical Maintenance Services**" means maintenance and support services relating to lighting and power, data communications, fire alarm systems or access control as set out in the Electrical Maintenance Services Schedule;

"**Force Majeure**" means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; pandemic or mass-illness or governmental controls arising out of or in connection with pandemic or mass-illness, war, riot or civil unrest;

interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving 2Teck's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

"**GDPR**" means the General Data Protection Regulation, Regulation (EU) 2016/679;

"**Intellectual Property Rights**" means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (e) Whether registered or not
- (f) Including any applications to protect or register such rights
- (g) Including all renewals and extensions of such rights or applications
- (h) Whether vested, contingent or future
- (i) To which the relevant party is or may be entitled, and
- (j) In whichever part of the world existing;

"**International Organisation**" has the meaning given in the applicable Data Protection Laws from time to time;

"**Location**" means the address(es) for delivery of the Materials and performance of the Services as set out in the Order;

"**Materials**" means the goods and any relevant related accessories, spare parts and documentation and other physical material set out in the Order and to be supplied by 2Teck to the Customer in connection with the Services;

"**Mechanical Services**" means installation services in respect of any Materials relating to plumbing and heating, air conditioning, ventilation or extraction as set out in the Mechanical Services Schedule;

"**Mechanical Maintenance Services**" means maintenance and support services relating to plumbing and heating, air conditioning, ventilation or extraction as set out in the Mechanical Maintenance Services Schedule;

"**Order**" means the Customer's order for the Deliverables as provided to 2Teck by the Customer;

"**Personal Data**" has the meaning given in the applicable Data Protection Laws from time to time;

"**Personal Data Breach**" has the meaning given in the applicable Data Protection Laws from time to time;

"**Price**" has the meaning given in clause 3.1;

"**processing**" has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process, processed, processing, and processes shall be construed accordingly);

"**Processor**" has the meaning given to it in applicable Data Protection Laws from time to time;

"**Protected Data**" means Personal Data received from or on behalf of the Customer in connection with the performance of 2Teck's obligations under the Contract;

"**Service Level Agreement**" means the terms and conditions for the provision of the Electrical Maintenance Services or the Mechanical Maintenance Services;

"**Services**" means Electrical Services, Mechanical Services, Electrical Maintenance Services or Mechanical Maintenance Services as set out in the Order and to be supplied by 2Teck to the Customer;

"**Specification**" means the description or specification of the Deliverables set out or referred to in the Order;

**"Sub-Processor"** means any agent, subcontractor or other third party (excluding its employees) engaged by 2Teck for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;

**"Terms & Conditions"** means 2Teck's terms and conditions of sale set out in this document; and

**"VAT"** means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.

1.2. In these Terms & Conditions, unless the context otherwise requires:

1.2.1. A reference to the Contract includes these Terms & Conditions, the Order, and where relevant, the terms and conditions of the Service Level Agreement, and their respective schedules, appendices and annexes (if any);

1.2.2. Any clause, schedule or other headings in these Terms & Conditions are included for convenience only and shall have no effect on the interpretation of these Terms & Conditions;

1.2.3. A reference to a 'party' means either 2Teck or the Customer and includes that party's personal representatives, successors and permitted assigns;

1.2.4. A reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.5. A reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.6. A reference to a gender includes each other gender;

1.2.7. Words in the singular include the plural and vice versa;

1.2.8. Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.9. A reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;

1.2.10. A reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and

1.2.11. A reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## **2. APPLICATION OF THESE TERMS & CONDITIONS**

2.1. These Terms & Conditions, and where relevant, the terms and conditions of the Service Level Agreement, apply to and form part of the Contract between 2Teck and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2. No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that 2Teck otherwise agrees in writing.

2.3. No variation of these Terms & Conditions, and where relevant, the terms and conditions of the Service Level Agreement, or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of 2Teck.

2.4. Each Order by the Customer to 2Teck shall be an offer to purchase the Deliverables subject to these Terms & Conditions, and where relevant, the terms and conditions of the Service Level Agreement.

- 2.5. An Order may be withdrawn or amended by the Customer at any time before acceptance by 2Teck. If 2Teck is unable to accept an Order, it shall notify the Customer promptly.
- 2.6. The offer constituted by an Order shall remain in effect and capable of being accepted by 2Teck until withdrawn by the Customer giving notice to 2Teck after the expiry of 5 Business Days from the date on which the Customer submitted the Order.
- 2.7. 2Teck may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
  - 2.7.1. 2Teck's written acceptance of the Order; or
  - 2.7.2. 2Teck delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.8. Rejection by 2Teck of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9. 2Teck may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.
- 2.10. Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract.

### **3. PRICE**

- 3.1. The price for the Deliverables shall be as set out in the Order and in Schedule 3 in respect of Electrical Services, Schedule 4 in respect of Mechanical Services, Schedule 5 in respect of Electrical Maintenance Services, or Schedule 6 in respect of Mechanical Maintenance Services or, in default of such provision, shall be calculated in accordance with 2Teck's scale of charges in force from time to time ("**Price**").
- 3.2. The Prices are exclusive of:
  - 3.2.1. Any item which may be set out in any quotation provided by 2Teck and which may include packaging, delivery, insurance, waste removal, main contractor discount, and retention, which shall be charged in addition at 2Teck's standard rates; and
  - 3.2.2. VAT.
- 3.3. The Customer shall pay any applicable VAT to 2Teck on receipt of a valid VAT invoice.
- 3.4. 2Teck may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing provided that the increase does not exceed 20% of the Prices in effect immediately prior to the increase.
- 3.5. Notwithstanding clause 3.4, 2Teck may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to 2Teck of supplying the relevant Deliverables which is due to any factor beyond the control of 2Teck.

### **4. PAYMENT**

- 4.1. 2Teck shall invoice the Customer for the Deliverables at any time after delivery or performance (as the case may be) of the Deliverables.
- 4.2. The Customer shall pay all invoices:
  - 4.2.1. In full without deduction or set-off, in cleared funds within 20 Business Days of the date of each invoice; and
  - 4.2.2. To the bank account nominated by 2Teck.
- 4.3. Time of payment is of the essence. Where sums due under these Terms & Conditions, or where relevant, the terms of the Service Level Agreement, are not paid in full by the due date:

- 4.3.1. 2Teck may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of Barclays Bank Plc from time to time in force; and
- 4.3.2. Interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.4. In the event that the Customer fails to pay any sum due in respect of the Deliverables, including any sum due in respect of Services in accordance with the Service Level Agreement, 2Teck will be entitled forthwith to suspend provision of the Services until such time as all outstanding payments have been made and without prejudice to any other rights or remedies 2Teck may have under the Contract. For the avoidance of doubt, the Customer acknowledges and agrees that any sums due in respect of the Deliverables, including any sum due in respect of Services in accordance with the Service Level Agreement, will continue to accrue during any such period of suspension and will be due to 2Teck as if the Services had not been suspended.

## **5. CREDIT LIMIT**

- 5.1. 2Teck may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

## **6. DELIVERY AND PERFORMANCE**

- 6.1. In respect of delivery and performance:
  - 6.1.1. The Materials shall be delivered by 2Teck to the Location on the date(s) specified in the Order. The Materials shall be deemed delivered by 2Teck only on arrival of the Materials at the Location.
  - 6.1.2. The Services shall be performed by 2Teck at the Location on the date(s) specified in the Order. The Services shall be deemed delivered by 2Teck only on completion of the performance of the Services at the Location.
- 6.2. 2Teck may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.3. Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
  - 6.3.1. The date of the Order;
  - 6.3.2. The relevant Customer and 2Teck details;
  - 6.3.3. If Materials, the product numbers and type and quantity of Materials in the consignment;
  - 6.3.4. If Services, the category, type and quantity of Services performed; and
  - 6.3.5. Any special instructions, handling and other requests.
- 6.4. Time is not of the essence in relation to the performance or delivery of the Deliverables. 2Teck shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only.
- 6.5. 2Teck shall not be liable for any delay in or failure of performance caused by:
  - 6.5.1. The Customer's failure to: (i) Make the Location available; (ii) Prepare the Location in accordance with 2Teck's instructions or as required for the Deliverables; or (iii) Provide 2Teck with adequate instructions for performance or delivery or otherwise relating to the Deliverables;
  - 6.5.2. Force Majeure.

## **7. RISK**

- 7.1. Risk in the Materials shall pass to the Customer on delivery.

## **8. TITLE**

- 8.1. Title to the Materials shall pass to the Customer once 2Teck has received payment in full and cleared funds for the Materials.
- 8.2. Until title to the Materials has passed to the Customer, the Customer shall:
  - 8.2.1. Hold the Materials as bailee for 2Teck;
  - 8.2.2. Store the Materials separately from all other material in the Customer's possession;
  - 8.2.3. Take all reasonable care of the Materials and keep them in the condition in which they were delivered;
  - 8.2.4. Insure the Materials from the date of delivery: (i) With a reputable insurer; (ii) Against all risks; (iii) For an amount at least equal to their Price; (iv) Noting 2Teck's interest on the policy;
  - 8.2.5. Ensure that the Materials are clearly identifiable as belonging to 2Teck;
  - 8.2.6. Not remove or alter any mark on or packaging of the Materials;
  - 8.2.7. Inform 2Teck immediately if it becomes subject to any of the events or circumstances set out in clauses 17.1.1 to 17.1.4 or 17.2.1 to 17.2.11; and
  - 8.2.8. On reasonable notice permit 2Teck to inspect the Materials during the Customer's normal business hours and provide 2Teck with such information concerning the Materials as 2Teck may request from time to time.
- 8.3. If, at any time before title to the Materials has passed to the Customer, the Customer informs 2Teck, or 2Teck reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 17.1.1 to 17.1.4 or clauses 17.2.1 to 17.2.11, 2Teck may:
  - 8.3.1. Require the Customer at the Customer's expense to re-deliver the Materials to 2Teck; and
  - 8.3.2. If the Customer fails to do so promptly, enter any premises where the Materials are stored and repossess them.

## **9. WARRANTY**

- 9.1. 2Teck warrants that, for a period of 12 months from delivery ("**the Warranty Period**"), the Deliverables shall:
  - 9.1.1. Conform in all material respects to any sample, their description and to the Specification;
  - 9.1.2. Be free from material defects in design, material and workmanship;
  - 9.1.3. If Materials, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - 9.1.4. If Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13;
  - 9.1.5. Be fit for purpose and any purpose held out by 2Teck and set out in the Order; and
  - 9.1.6. Any media on which the results of the Services are supplied shall be free from defects in material and workmanship and of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2. The Customer warrants that it has provided 2Teck with all relevant, full and accurate information as to the Customer's business and needs.
- 9.3. 2Teck shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 9, provided that the Customer:

- 9.3.1. Serves a written notice on 2Teck not later than 5 Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
- 9.3.2. Such notice specifies that some or all of the Deliverables do not comply with clause 9.1 and identifying in sufficient detail the nature and extent of the defects; and
- 9.3.3. Gives 2Teck a reasonable opportunity to examine the claim of the defective Deliverables.
- 9.4. The provisions of these Terms & Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.
- 9.5. Except as set out in this clause 9:
  - 9.5.1. 2Teck gives no warranty and makes no representations in relation to the Deliverables; and
  - 9.5.2. Shall have no liability for their failure to comply with the warranty in clause 9.1.
- 9.6. All warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

**10. ANTI-BRIBERY**

- 10.1. For the purposes of this clause 10 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2. Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
  - 10.2.1. All of that party's personnel;
  - 10.2.2. All others associated with that party; and
  - 10.2.3. All of that party's subcontractors;
 Involved in performing the Contract so comply.
- 10.3. Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 10.4. Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 10.

**11. INDEMNITY AND INSURANCE**

- 11.1. The Customer shall indemnify, and keep indemnified, 2Teck from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by 2Teck as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 11.2. The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

**12. LIMITATION OF LIABILITY**

- 12.1. The following provisions set out all parties' entire liability (including any liability for the acts or omissions of their respective employees, agents or subcontractors) to each other in respect of:
  - 12.1.1. Any breach of their respective obligations under the Contract; and
  - 12.1.2. Any representation, statement or tortious act or omission, including negligence, or otherwise arising under or in connection with the Contract.



- 12.2. Subject to clauses 12.5 and 12.6, 2Teck's total liability shall not exceed the value of the Contract.
- 12.3. Subject to clauses 12.5 and 12.6, 2Teck shall not be liable for consequential, indirect or special loss or damage.
- 12.4. Subject to clauses 12.5 and 12.6, 2Teck shall not be liable for any of the following (whether direct or indirect):
  - 12.4.1. Loss of profit;
  - 12.4.2. Loss or corruption of data;
  - 12.4.3. Loss of use;
  - 12.4.4. Loss of production;
  - 12.4.5. Loss of contract;
  - 12.4.6. Loss of opportunity;
  - 12.4.7. Loss of savings, discount or rebate (whether actual or anticipated);
  - 12.4.8. Harm to reputation or loss of goodwill.
- 12.5. The limitations of liability set out in clauses 12.2 to 12.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 12.6. Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
  - 12.6.1. Death or personal injury caused by negligence;
  - 12.6.2. Fraud or fraudulent misrepresentation;
  - 12.6.3. Any other losses which cannot be excluded or limited by applicable law;
  - 12.6.4. Any losses caused by wilful misconduct.
- 12.7. In connection with the Customer's use of the Materials outside of the recommended scope of use as set out in the Materials' user manuals, the Customer agrees that 2Teck shall not be liable to the Customer or any third party for any losses, howsoever caused, incurred by the Customer or any third party as a result of such use of the Materials by the Customer, including, but not limited to:
  - 12.7.1. Loss of profits or revenues;
  - 12.7.2. Loss of, or damage to (howsoever caused), data or information systems;
  - 12.7.3. Loss of, or damage to (howsoever caused), physical Assets of the Customer;
  - 12.7.4. Loss of, or damage to (howsoever caused), property of the Customer;
  - 12.7.5. Loss resulting from fire, water, or formulation damage;
  - 12.7.6. Loss of contract or business opportunities;
  - 12.7.7. Loss of anticipated savings; or
  - 12.7.8. Loss of goodwill.
- 12.8. 2Teck gives no warranties and makes no representations in respect of the Materials except as expressly set out in these Terms & Conditions or any relevant user manuals relating to the Materials.
- 12.9. For the avoidance of doubt, 2Teck does not offer professional advice in respect of the Customer's use of the Materials outside of the recommended scope of use as set out in the Materials' user manuals, or the Customer's business, and the Customer acknowledges and agrees that no statement made by 2Teck in respect of the Customer's use of the Materials outside of the recommended scope of use as set out in the Materials' user manuals, or the Customer's business, shall be construed as 2Teck offering professional advice.
- 12.10. Each party acknowledges that it considers the provisions of this clause 12 to be reasonable, taking account of the other terms of these Terms & Conditions and its ability to insure against the losses which might arise from a breach of these Terms & Conditions.
- 12.11. The provisions of this clause 12 shall survive the expiry or termination of the Contract.

### **13. INTELLECTUAL PROPERTY**

- 13.1. All Intellectual Property Rights arising out of or in connection with the Contract or the Deliverables, including all documents, drawings, materials and other information produced by or on behalf of 2Teck, and the rights to know-how developed in connection with the Contract, shall vest in and remain with 2Teck.
- 13.2. 2Teck shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use of the Deliverables infringes the Intellectual Property Rights of any third party ("**IPR Claim**"), provided that 2Teck shall have no such liability if the Customer:
- 13.2.1. Does not notify 2Teck in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
- 13.2.2. Makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of 2Teck;
- 13.2.3. Does not let 2Teck at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
- 13.2.4. Does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
- 13.2.5. Does not, at 2Teck's request, provide 2Teck with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.
- 13.3. If any IPR Claim is made or is reasonably likely to be made, 2Teck may at its option:
- 13.3.1. Procure for the Customer the right to continue receiving the benefit of the relevant Deliverables; or
- 13.3.2. Modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Deliverables remain in material conformance to their Specification.
- 13.4. 2Teck's obligations under clause 13.2 shall not apply to Deliverables modified or used by the Customer other than in accordance with the Contract or 2Teck's instructions. The Customer shall indemnify 2Teck against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by 2Teck in connection with any claim arising from such modification or use.

### **14. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 14.1. The Customer shall keep confidential all Confidential Information of 2Teck and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 14.1.1. Any information which was in the public domain at the date of the Contract;
- 14.1.2. Any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- 14.1.3. Any information which is independently developed by the Customer without using information supplied by 2Teck; or
- 14.1.4. Any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- Except that the provisions of clauses 14.1.1 to 14.1.3 shall not apply to information to which clause 14.4 relates.
- 14.2. This clause shall remain in force in perpetuity.
- 14.3. The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

- 14.4. To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any provisions of clause 15.

**15. PROCESSING OF PERSONAL DATA**

- 15.1. The parties agree that the Customer is a Controller and that 2Teck is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to 2Teck in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws.
- 15.2. 2Teck shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 15.3. The Customer shall indemnify and keep indemnified 2Teck against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 15.
- 15.4. 2Teck shall:
- 15.4.1. Only process (and shall ensure 2Teck Personnel only process) the Protected Data in accordance with schedule 1 and the Contract (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 15.4.2. If 2Teck believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 15.5. Taking into account the state of technical development and the nature of processing, 2Teck shall implement and maintain the technical and organisational measures set out in Part 3 of schedule 1 to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 15.6. 2Teck shall:
- 15.6.1. Not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of the Customer;
- 15.6.2. Prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 15 that is enforceable by 2Teck and ensure each such Sub-Processor complies with all such obligations;
- 15.6.3. Remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
- 15.6.4. Ensure that all persons authorised by 2Teck or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

- 15.7. The Customer authorises the appointment of the Sub-Processors as may be notified to the Customer from time to time.
- 15.8. 2Teck shall (at the Customer's cost):
  - 15.8.1. Assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to 2Teck; and
  - 15.8.2. Taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 15.9. 2Teck shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written consent of the Customer.
- 15.10. 2Teck shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate 2Teck's compliance with the obligations placed on it under this clause 15 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of 1 audit request in any 12 month period under this clause 15.10).
- 15.11. 2Teck shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.
- 15.12. On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, 2Teck shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires 2Teck to store such Protected Data. This clause 15 shall survive termination or expiry of the Contract.

## **16. FORCE MAJEURE**

- 16.1. A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
  - 16.1.1. Promptly notifies the other of the Force Majeure event and its expected duration; and
  - 16.1.2. Uses reasonable endeavours to minimise the effects of that event, provided that 2Teck will not thereby incur any additional costs unless previously authorised in writing by the Customer.
- 16.2. If, due to Force Majeure, a party:
  - 16.2.1. Is or shall be unable to perform a material obligation; or
  - 16.2.2. Is delayed in or prevented from performing its obligations for a continuous period exceeding 20 Business Days or a total of more than 40 Business Days in any consecutive period of 80 Business Days;  
The parties shall, within 20 Business Days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

- 16.3. The Price shall be reduced during any period to which this clause 16 applies only to the extent that 2Teck makes any savings in the cost of providing the Services by reason of the occurrence or existence of the Force Majeure event in question.

## **17. TERMINATION**

- 17.1. 2Teck may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- 17.1.1. The Customer commits a material breach of the Contract and such breach is not remediable;
  - 17.1.2. The Customer commits a material breach of the Contract which is not remedied within 10 Business Days of receiving written notice of such breach;
  - 17.1.3. The Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 20 Business Days after 2Teck has given notification that the payment is overdue; or
  - 17.1.4. Any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 17.2. 2Teck may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 17.2.1. Stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 17.2.2. Is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if 2Teck reasonably believes that to be the case;
  - 17.2.3. Becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 17.2.4. Has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 17.2.5. Has a resolution passed for its winding up;
  - 17.2.6. Has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 17.2.7. Is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 5 Business Days of that procedure being commenced;
  - 17.2.8. Has a freezing order made against it;
  - 17.2.9. Is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
  - 17.2.10. Is subject to any events or circumstances analogous to those in clauses 17.2.1 to 17.2.9 in any jurisdiction;
  - 17.2.11. Takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.2.1 to 17.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 17.3. 2Teck may terminate the Contract at any time by giving not less than 20 Business Days' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 17.4. The right of 2Teck to terminate the Contract pursuant to clause 17.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger

(where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.

- 17.5. If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle 2Teck to terminate the Contract under this clause 17, it shall immediately notify 2Teck in writing.
- 17.6. In respect of Electrical Maintenance Services and/or Mechanical Maintenance Services provided to the Customer in accordance with the Service Level Agreement, either party may terminate the provision of the Electrical Maintenance Services and/or the Mechanical Maintenance Services by giving not less than 60 Business Days' notice in writing to the other party.
- 17.7. Termination or expiry of the Contract shall not affect any accrued rights and liabilities of 2Teck at any time up to the date of termination.

## **18. DISPUTE RESOLUTION**

- 18.1. Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 18.
- 18.2. The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 18.3. The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
  - 18.3.1. Within 5 Business Days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.
  - 18.3.2. If the dispute has not been resolved within 5 Business Days of the first meeting of the contract managers, then the matter shall be referred to the divisional directors (or persons of equivalent seniority). The divisional directors (or equivalent) shall meet within 5 Business Days to discuss the dispute and attempt to resolve it.
  - 18.3.3. If the dispute has not been resolved within 5 Business Days of the first meeting of the divisional directors, then the matter shall be referred to the operation/managing director (or persons of equivalent seniority). The operation/managing director (or equivalent) shall meet within 5 Business Days to discuss the dispute and attempt to resolve it
- 18.4. The specific format for the resolution of the dispute under clause 18.3.1 and, if necessary, clause 18.3.2 and clause 18.3.3 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 18.5. If the dispute has not been resolved within 10 Business Days of the first meeting of the operation/managing director (or equivalent) under clause 18.3.3 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 18.6. Until the parties have completed the steps referred to in clauses 18.3 and 18.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

## **19. NOTICES**

- 19.1. Any notice given by a party under these Terms & Conditions shall:
  - 19.1.1. Be in writing and in English;
  - 19.1.2. Be signed by, or on behalf of, the party giving it (except for notices sent by e-mail); and
  - 19.1.3. Be sent to the relevant party at the address set out in the Contract.
- 19.2. Notices may be given, and are deemed received:

- 19.2.1. By hand: On receipt of a signature at the time of delivery;
  - 19.2.2. By Royal Mail Recorded Signed For post: At 9.00 am on the second Business Day after posting;
  - 19.2.3. By Royal Mail International Tracked & Signed For post: At 9.00 am on the fourth Business Day after posting; and
  - 19.2.4. By fax: On receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
  - 19.2.5. By e-mail provided confirmation is sent by first class post: On receipt of a read receipt e-mail from the correct address.
- 19.3. Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 19.1 and shall be effective:
- 19.3.1. On the date specified in the notice as being the date of such change; or
  - 19.3.2. If no date is so specified, 10 Business Days after the notice is deemed to be received.
- 19.4. All references to time are to the local time at the place of deemed receipt.
- 19.5. This clause does not apply to notices given in legal proceedings or arbitration.

## **20. CUMULATIVE REMEDIES**

- 20.1. The rights and remedies provided in the Contract for 2Teck only are cumulative and not exclusive of any rights and remedies provided by law.

## **21. TIME**

- 21.1. Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Customer's obligations only.

## **22. FURTHER ASSURANCE**

- 22.1. The Customer shall at the request of 2Teck, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## **23. ENTIRE AGREEMENT**

- 23.1. The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 23.2. Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 23.3. Nothing in these Terms & Conditions purports to limit or exclude any liability for fraud.

## **24. VARIATION**

- 24.1. No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Terms & Conditions and is duly signed or executed by, or on behalf of, 2Teck.

## **25. ASSIGNMENT**

- 25.1. The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without 2Teck's prior written consent, which it may withhold or delay at its absolute discretion.

25.2. Notwithstanding clause 25.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives 2Teck prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

**26. SET OFF**

26.1. 2Teck shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which 2Teck has with the Customer.

26.2. The Customer shall pay all sums that it owes to 2Teck under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

**27. NO PARTNERSHIP OR AGENCY**

27.1. The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

**28. EQUITABLE RELIEF**

28.1. The Customer recognises that any breach or threatened breach of the Contract may cause 2Teck irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to 2Teck, the Customer acknowledges and agrees that 2Teck is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

**29. SEVERANCE**

29.1. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

29.2. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

**30. WAIVER**

30.1. No failure, delay or omission by 2Teck in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

30.2. No single or partial exercise of any right, power or remedy provided by law or under the Contract by 2Teck shall prevent any future exercise of it or the exercise of any other right, power or remedy by 2Teck.



- 30.3. A waiver of any term, provision, condition or breach of the Contract by 2Teck shall only be effective if given in writing and signed by 2Teck, and then only in the instance and for the purpose for which it is given.

**31. COMPLIANCE WITH LAW**

- 31.1. The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

**32. CONFLICTS WITHIN CONTRACT**

- 32.1. If there is a conflict between the terms contained in the Terms & Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of Part 2 and Part 3 of schedule 1, and any relevant commercial terms contained in schedule 3, schedule 4, schedule 5, or schedule 6 shall prevail.

**33. COSTS AND EXPENSES**

- 33.1. The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

**34. THIRD PARTY RIGHTS**

- 34.1. Except as expressly provided for in clause 34.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 34.2. Any Affiliate of 2Teck shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

**35. NON-SOLICITATION**

- 35.1. The Customer shall not (except with the written consent of 2Teck) directly or indirectly solicit or entice away from the employment of 2Teck (or attempt to do so) any 2Teck Personnel employed or engaged by 2Teck in the provision of the Services under this Agreement or the Service Level Agreement, or at any time during any relevant Term (as defined in the Service Level Agreement), or for a period of 12 months after the termination or expiry of this Agreement or the Service Level Agreement.
- 35.2. If the Customer breaches clause 35.1, it shall pay to 2Teck as compensation an amount equal to 12 months' salary or contractor fee of the relevant 2Teck Personnel as an employee or a contractor (as the case may be), and the parties acknowledge that this represents a genuine pre-estimate of the loss likely to be suffered by 2Teck as a result of the breach of clause 35.1.
- 35.3. If the periods or amounts above are held by a court or tribunal of competent jurisdiction to be void or unenforceable, such provisions shall apply with such modification to the relevant wording and/or reduction to the periods or amounts as required to make them valid and enforceable.

**36. GOVERNING LAW**

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

### **37. JURISDICTION**

- 37.1. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

## **1.**

### **Data processing details**

Processing of the Protected Data by 2Teck under the Contract shall be for the subject-matter, duration, nature and purposes and involve the types of personal data and categories of Data Subjects set out in this Part 2 of schedule 1.

#### **1. SUBJECT-MATTER OF PROCESSING:**

Any and all information provided by the Customer for the purposes of 2Teck and the Customer carrying out the parties' respective obligations in accordance with the Contract.

#### **2. DURATION OF THE PROCESSING:**

The duration of the Contract.

#### **3. NATURE AND PURPOSE OF THE PROCESSING:**

The collection, recording, organisation, storage, retrieval, erasure and destruction of Protected Data for the purposes of 2Teck and the Customer carrying out the parties' respective obligations in accordance with the Contract.

#### **4. TYPE OF PERSONAL DATA:**

Name, address, telephone number, of the Customer, and any and all information provided by the Customer.

#### **5. CATEGORIES OF DATA SUBJECTS:**

Customers.

#### **6. SPECIFIC PROCESSING INSTRUCTIONS:**

## **2.**

### **Technical and organisational security measures**

1. 2Teck shall implement and maintain the following technical and organisational security measures to protect the Protected Data:
- 1.1. In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Contract, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, 2Teck shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.
- 1.2. The Customer acknowledges and agrees that 2Teck engages a third party service for the storage of protected data, and accordingly, the protected data may be stored on servers outside of the United Kingdom.

**Signed by:**

*Darren Evans*

**Darren Evans**  
**Operations Director**

For & on behalf of 2Teck Limited ("2Teck")

**Date:**

**14/02/2022**