

LANGBOW LIMITED – TERMS AND CONDITIONS OF SALE OF GOODS

THE CUSTOMER’S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 9

1. APPLICATION OF TERMS

- 1.1. Each order for Equipment and request for Services from the Customer to the Company shall be deemed to be an offer by the Customer to purchase the Equipment and/or Services subject to these terms and conditions (“**Terms**”). Subject to any variation under clause 1.2 the Contract will be on these Terms to the exclusion of all other terms and conditions, including any terms or conditions which the Customer seeks to impose or incorporate under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing.
- 1.2. These Terms apply to all the Company’s sales and any variation to these Terms and any representations, warranties or other statements about the Equipment and Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 1.3. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Equipment and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 1.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 1.5. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company commences work to fulfil the order when a contract for the provision of Equipment and Services under these Terms will come into effect.

2. ORDER AND CUSTOMER INFORMATION

- 2.1. Before providing the Quotation the Company may conduct an initial meeting with the Customer in which the Company may conduct a survey of the Site (“**Survey**”).
- 2.2. The Customer will supply to the Company the Customer Information and any other information required under the Contract.
- 2.3. The Customer acknowledges that the Customer is solely responsible for providing the Customer Information.
- 2.4. The Customer warrants that the Customer Information and any further information supplied by the Customer to the Company under the Contract is complete and accurate in all respects.
- 2.5. The Customer acknowledges that the Company shall rely on the Customer Information in determining and selecting the appropriate Equipment and Services and preparing the Quotation.
- 2.6. The Company shall be entitled to rely upon the specification and any advice given by the Customer (in relation to the suitability of the Equipment and/or Services for meeting the Customer’s requirements) such that to the extent that the Equipment and Services comply with such specification and or such advice then the Company shall be deemed to have supplied in accordance with these Terms without limitation, notwithstanding the Customer Information.

- 2.7. The Company will send the Customer a Quotation on the basis of any Survey carried out and the Customer Information.
- 2.8. If the Customer wishes to proceed with the provision of the Equipment and the Services by the Company in accordance with the Quotation the Customer must return its purchase order to the Company, signed by an authorised party on behalf of the Customer prior to the commencement of work by the Company, as confirmation that the Quotation accurately sets out the Customer's requirements.
- 2.9. Any Quotation given is valid only for the period stated in the Quotation or if no period is stated a period of 30 days from its date, provided that the Company has not previously withdrawn it.
- 2.10. Without prejudice to clause 2.2, the Customer shall provide to the Company without charge or delay on request from the Company all reasonable assistance as may be so requested by the Company and all additional information and data reasonably requested by the Company to enable the Company to provide the Equipment and carry out the Services.
- 2.11. Any Customer Information supplied by the Customer shall include:
- (a) Any past or present use of the Site which may have an adverse effect on the Services or the Equipment;
 - (b) Details of any hazardous materials present at the Site which may have an adverse effect on the Services or the Equipment or on the health and safety of the Company's officers, employees and agents;
 - (c) Whether the Site is a listed building, is within a conservation area or is subject to any other restrictions that may restrict or prevent the installation of the Equipment.
- 2.12. Any information not supplied to the Company by the Customer is deemed to be unknown to the Company.
- 2.13. No changes to the Customer Information, the Quotation, the Equipment and the Services will form part of the Contract unless agreed in writing by the parties. The Customer understands that as a condition to agreeing a change the Company may alter these Terms for the provision of the Equipment and the Services (including increasing the Price).
- 2.14. No order which has been accepted by the Company may be cancelled by the Customer, except with the agreement in writing of the Company and provided that the Customer indemnifies the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

3. COMPANY'S OBLIGATION

- 3.1. The Company will supply the Equipment and provide the Services as set out in the Quotation.
- 3.2. The Company reserves the right to supply alternative equipment of the same or better quality as the Equipment described in the Quotation at the same price, should the Equipment be discontinued upon placement of the Customer's order.
- 3.3. The Company reserves the right to amend the specification of the Equipment if required by any applicable statutory or regulatory requirements.

4. PAYMENT

- 4.1. The price for the Equipment and Services and any Operating Manuals shall be the price set out in the Quotation.
- 4.2. Unless otherwise specified in respect of each Quotation, the following shall apply.
- 4.3. Unless otherwise specified the Price shall be exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other sales tax, tariffs, charges and duties or other local, national government or European Community levies of which amounts the Customer will pay in addition when it is due to pay for the Equipment and Services.
- 4.4. The Price is based on the cost of materials, wages, overhead costs, statutory obligations and foreign currency exchange rates ruling at the date of the Quotation. Unless stated otherwise in the Quotation, the Company reserves the right to increase the Price without notice in the event of increase in any of the foregoing costs prior to delivery of the Equipment and Services.
- 4.5. All sums due under the Contract shall be paid as follows: -
 - (a) For Equipment built to order 30% deposit is payable within 7 days of the Company sending the Customer its order acknowledgement and the remaining 70% balance shall be payable immediately upon notification that the Equipment has arrived at a UK port;
 - (b) In relation to Equipment sold from stock 30% deposit is payable within 7 days of the Company sending the Customer its order acknowledgement and the remaining 70% balance shall be payable 7 days before delivery.
- 4.6. No payment shall be deemed to have been received until the Company has received cleared funds.
- 4.7. Time for payment is of the essence of the Contract.
- 4.8. The Company reserves the right to charge interest at an annual rate of 8% above the base rate of the Bank of England calculated on a daily basis in respect of any sum which is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by the Company of the full amount, whether before or after judgment.
- 4.9. The Company may suspend or cancel the provision of the Equipment and/or Services or may at its discretion request security for payment from the Customer in the event of late payment.
- 4.10. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

5. DELIVERY AND INSTALLATION OF THE EQUIPMENT

- 5.1. Unless otherwise agreed in writing by the Company, delivery of the Equipment shall take place at the Customer's premises or such other location as is specified in the Quotation.
- 5.2. The Company will use reasonable endeavours to give the Customer prior notice of any delivery and installation date.
- 5.3. The Customer must take delivery at the time so notified (or if delivery takes place at some other time then as soon as practicable) and afford the Company access to the Site to check and install the Equipment and ancillary materials delivered to the Site.

- 5.4. All Equipment and Services supplied to the Customer which conform in all material respects with the Quotation shall be deemed accepted by the Customer.
- 5.5. Any dates specified by the Company for delivery of the Equipment and performance of the Services are intended to be an estimate and time shall not be of the essence for delivery, installation and any other obligations under the Contract and shall not be made of the essence by notice. If no dates are so specified, delivery of the Equipment and performance of the Services will be within a reasonable time.
- 5.6. The Customer understands that delivery of Equipment is conditional upon availability and the Company shall not be liable if prevented from meeting the Contract because the Equipment is not readily available by reason of any circumstances outside the control of the Company.
- 5.7. If for any reason the Customer will not accept delivery and installation of any of the Equipment when they are ready for delivery and installation, or the Company is unable to deliver or install the Equipment on time because the Customer has not provided or obtained appropriate instructions, documents, licences, consents or authorisations (“**Customer Caused Event**”), the Equipment will be deemed to have been delivered, risk in the Equipment will pass to the Customer and the Customer shall pay to the Company any additional costs and expenses incurred by the Company as a result of the Customer Caused Event (including storage and insurance).
- 5.8. Where the Company is providing Equipment only, and unless otherwise stated in the Quotation, the Customer will provide at its expense at the place where delivery for the Equipment is to take place adequate and appropriate equipment and manual labour for loading or unloading the Equipment.
- 5.9. The Company reserves the right to make partial deliveries. The Customer shall not be entitled to object to or reject the delivery by reason of the surplus or shortfall.
- 5.10. The Customer must give notice in writing of any damage to the Equipment to the Company within 5 working days of delivery of the Equipment giving full particulars including the condition of parcels received, failing which the Company is discharged from any liability in respect of such damage and the Equipment is deemed to be compliant.
- 5.11. Subject to clause 5.7, upon delivery risk in the Equipment will pass to the Customer, the Customer shall (at the Customer’s cost) store any Equipment safely and securely and be responsible for the security for all such Equipment while such Equipment is on the Site including the provision of adequate fencing and supervision until the Installation Services have been completed.
- 5.12. Any tests that the Customer wishes the Company to carry on the Equipment in the presence of the Customer (other than those usually carried out by the Company in the performance of the Installation Services) will only be carried out if agreed in writing by the Company and if the Customer pays the Company’s charges for such tests.

6. ACCESS AND PREPARATION OF SITE

- 6.1. Unless otherwise agreed in writing the Customer shall complete the preparation of the Site on or before the date for delivery of the Equipment and/or performance of the Services in such manner as set out in the Quotation or as the Company shall reasonably require.
- 6.2. The Customer shall at all reasonable times provide the Company, its employees, contractors and agents, with access to the Site, adequate and safe working space, and any lighting, power and water facilities and any lifting equipment and scaffolding as are reasonably required to enable the Company to inspect the Site and perform the Services while at the Site;

- 6.3. If there is a change to the Site between inspection of the Site and commencement of the Services the Company will be entitled to alter these Terms for the provision of the Services (including increasing the Price).
- 6.4. The Customer shall afford reasonable safe and adequate access and space in which the Company may operate (including loading and unloading), without risk or damage to any vehicle, its driver, or its load and without obstruction to the public highway.
- 6.5. The Customer undertakes to the Company throughout the term of the Contract to take all reasonable precautions to protect the health and safety of the Company's employees agents and sub-contractors while on the Site.
- 6.6. The Customer shall obtain all necessary permits, licences and consents including any planning consents required for the Installation Services.
- 6.7. Before and during the supply of the Equipment and Services the Customer undertakes to identify, monitor, remove and dispose of any hazardous material from the Site in accordance with all applicable laws.
- 6.8. The Company reserves the right to refuse to carry out the Services where the Company at its sole discretion considers that the work required might place at risk any person, vehicle, equipment or property.
- 6.9. If for any reason (other than as a direct result of the Company's negligence), access is delayed, the Customer shall be liable for any loss or damage suffered by the Company as a result of such delay.
- 6.10. The Customer shall be solely responsible for any masons, smiths, bricklayers, carpenters or other third party contractors which may be required to enable the Company to perform the Installation Services.
- 6.11. The Company shall not have any liability for any damage or other effect that drilling or work carried out to structures at the Site.
- 6.12. Unless otherwise agreed in writing by the Company, all Services to be performed at the Site shall be performed during the Company's usual working hours.
- 6.13. The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company by a third party arising out of or in connection with the provision of the Services at the Site to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Customer, its employees, agents or subcontractors.

7. RISK/TITLE

- 7.1. The Equipment is at the risk of the Customer from the time of delivery.
- 7.2. Ownership of the Equipment shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Equipment.
- 7.3. Until ownership of the Equipment has passed to the Customer, the Customer must:
 - (a) Hold the Equipment on a fiduciary basis as the Company's bailee;
 - (b) Not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment;

- (c) Maintain the Equipment in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
 - (d) Hold the proceeds of the insurance referred to in clause 7.3(c) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4. Until ownership has passed the Customer's right to possession of the Equipment shall terminate immediately if the Customer ceases trading or is unable to pay its debts as they fall due or a petition is presented or meeting convened for the purpose of winding the Customer up or the Customer enters into liquidation, whether voluntarily, or compounds with its creditors generally or has a receiver appointed of all or any part of its assets or the Customer encumbers or in any way charges any of the Equipment or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly or if the Company terminates the Contract.
- 7.5. The Company shall be entitled to recover payment for the Equipment notwithstanding that ownership of any of the Equipment has not passed from the Company.

8. WARRANTY

- 8.1. The Company shall use all reasonable care and skill to provide the Equipment and provide the Services in a professional and efficient manner.
- 8.2. The Company warrants that during the Warranty Period, the Equipment shall conform to its description and any applicable specification in all material respects.
- 8.3. Subject to clause 8.4, if:
- (a) The Customer gives notice in writing to the Company during the Warranty Period within 21 days of discovery that some or all of the Equipment do not comply with the Warranty set out in clause 8.2;
 - (b) The Company is given a reasonable opportunity of examining such Equipment; and
 - (c) The Customer (if asked to do so by the Company) returns such Equipment to the Company's place of business or to another place specified by the Company in the United Kingdom at the Supplier's cost, The Company shall, at its option, repair or replace the defective Equipment (excluding tooling and consumable items), or refund the price of the defective Equipment in full.
- 8.4. The Company shall not be liable for a breach of the Warranty contained in Clause 8.2 or under any obligation to comply with clauses 8.2 if:
- (a) The Customer makes any use of the Equipment in respect of which it has given written notice under Clause 8.3(a); or
 - (b) The defect arises because the Customer failed to follow the Company's oral or written instructions as to the installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice.
 - (c) The defect arises as a result of the Company following any drawing, design or Equipment specification supplied by the Customer;
 - (d) The defect is caused by improper use of the Equipment or use outside its normal application; or

- (e) The defect arises due to fair wear and tear, accidental or wilful damage, negligence, or abnormal working conditions; or
 - (f) The Customer (or any of its employees, agents or sub-contractors) alters or repairs the Equipment without the written consent of Company.
- 8.5. Any Equipment repaired or replaced by the Company pursuant to this Clause 8 shall be under warranty for the unexpired portion of the warranty period given by the Company under Clauses 8.2.
- 8.6. If any defect resulting from faulty works cannot be expeditiously carried out on the Site, the Company may remove the Equipment (or any part of the Equipment) from the Site for the purpose of repair.
- 8.7. Except as set out in this clause 8 or as otherwise agreed by the Company in writing, the Company shall not be liable for any labour expense or transportation cost incurred by the Customer in repairing or replacing the Equipment covered by the warranty in clause 8.2.
- 8.8. The Customer shall indemnify and hold the Company harmless against all charges, costs, expenses and liabilities incurred by the Company or their agents as a result of any work carried out pursuant to Clause 8.2 if in the Company's sole opinion, the defect arose as set out in clause 8.4.
- 8.9. Except as provided in this clause 8, the Supplier shall have no liability to the Customer in respect of the Equipment failure to comply with the warranty set out in clause 8.2.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- (a) the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Equipment.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes

(whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 Assignment and other dealings

- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

11.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Waiver

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

11.5 Third party rights

A person who is not a party to the Contract shall not have any rights to enforce its terms.

11.6 **Variation**

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by an authorised representative of the Company.

11.7 **Governing law**

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

11.8 **Jurisdiction**

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

12. **INTELLECTUAL PROPERTY RIGHTS**

12.1. The Customer acknowledges that any and all Intellectual Property Rights in or arising out of or in connection with the Services and the Equipment shall be owned by the Company.

12.2. At the Customer's expense the Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as the Company may require for the purpose of giving full effect to clause 12.1.

13. **INTERPRETATION**

13.1. In these Terms the following words have the following meanings:

“**Contract**”: any Contract between the Company and the Customer for the sale and purchase of the Equipment and the Services, incorporating these Terms and formed in accordance with clause 1.5;

“**Customer**”: the person(s), firm or company who purchases the Equipment and Services from the Company;

“**Company**”: **Langbow Limited**;

“**Confidential Information**”: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its **Representatives**) to the other party and that party's Representatives in connection with the Contract, concerning: (a) the existence and terms of the Contract; (b) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); (c) any information developed by the parties in the course of carrying out the Contract;

“**Customer Information**”: the information that the Company requires the Customer to provide to the Company in relation to the Equipment and/or the Services and information described in clause 2.11;

“**Equipment**”: collectively or individually the equipment agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them) as more particularly described in the Quotation in accordance with clause 3.2;

“**Initial Period**”: a period of 60 months commencing on the date that the Company confirms that the Equipment is commissioned and ready for operational use by the Customer;

“**Installation Services**”: the installation and commissioning of the Equipment;

“**Intellectual Property Rights**”: all vested, contingent and future intellectual property rights including copyright, trade marks, trade names, patents, service marks, design rights (whether registered or unregistered) know-how, trade secrets, inventions, get up, database rights and any applications for the

protection or registration of these rights and all renewal and extensions thereof existing in any part of the world whether now known or in the future created to which the Company may be entitled and other intellectual property rights created, developed, subsisting or used in or in connection with the Company;

“**Operating Manuals**”: all operating manuals, specifications, risk assessment method statements and other manufacturer documentation relating to the Equipment;

“**Price**”: the price for Equipment and the Services as notified to the Customer by the Company in the Quotation;

“**Quotation**”: the Quotation attached to these Terms containing details of the Equipment and the Services, delivery and Price;

“**Site**”: the site for installation of the Equipment and provision of the Maintenance Services as set out in the Quotation;

“**Warranty Period**”: the period from the date of delivery of the Equipment and ending 60 months after the date of delivery of the Equipment, or such other period as may be specified in the Quotation as long as the equipment has been serviced annually by the Company.

13.2. In these Terms, the following rules apply: (a) Words in the singular include the plural and in the plural include the singular; (b) A reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (c) A reference to a statute or statutory provision is a reference to it as it is in force for the time being (d) taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; (e) Unless the context otherwise requires, the words **including**, **include** and **in particular** and words of similar effect shall not be deemed to limit the general effect of the words which precede them (f) The headings in this Contract are for ease of reference only and shall not affect its construction or interpretation (g) A reference to **writing** or **written** includes faxes and e-mails.

13.3. In the case of any inconsistency between the Quotation and these Terms, these Terms will prevail.