

**The Customer's attention is particularly drawn to the provisions of clause 13.**

## **1. INTERPRETATION**

1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** has the meaning set out in clause 2.

**Completion of the Order:** for Goods and Services this means the date at which some or all of the Goods comprised in the Order are complete and ready for installation. For Services only this means the date at which the Services are begun.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.7

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Deliverables:** the deliverables set out in the Order.

**Delivery Location:** has the meaning set out in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 15.1.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification below.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Supplier:** James Robertshaw & Sons (1954) Ltd registered in England and Wales with company number 539194.

**Supplier Materials:** has the meaning set out in clause 9.1(g).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 Business Days from its date of issue unless otherwise stated.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.8 The Customer shall indemnify the Supplier 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 and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier by a third party in relation to the Goods or Services. This clause 2.8 shall survive termination of the Contract.

### 3. **GOODS**

- 3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

### 4. **DELIVERY AND INSTALLATION OF GOODS**

- 4.1 The Supplier shall ensure that:
- (a) each delivery or installation of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered or installed by instalments, the outstanding balance of Goods remaining to be delivered or installed;
  - (b) each instalment of the Goods is accompanied with an installation completion form; and
  - (c) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver or install the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready. Alternately, the Customer may collect the Goods from the Supplier's premises or such other location as may be advised by the Supplier before delivery (**Delivery Location**).
- 4.3 When collecting Goods from the Supplier the Customer must under all circumstances report to the Supplier's office administrative or sales team so that the collection can be recorded.
- 4.4 Delivery or installation of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.5 Any dates quoted for delivery or installation of the Goods are approximate only, and the time of delivery or installation is not of the essence. The Supplier shall not be liable for any delay in delivery or installation of the Goods that is caused by a Force Majeure Event, failure by a third party delivery company, inaccuracies in the technical and structural information provided by any third party, failure by a third party supplier, unforeseen delays due to adverse weather conditions, unforeseen delays caused by third party

contractors or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.6 If the Supplier fails to deliver or install the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.7 If the Customer fails to accept or take delivery of the Goods within 14 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) Delivery and installation of the Goods shall be deemed to have been completed at 9.00 am on the fourteenth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery or installation takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If 21 Business Days after the Supplier notified the Customer that the Goods were ready for delivery or installation the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods. The Customer accepts that the Goods are bespoke and agrees that if they can not be resold, the Customer will remain liable for the full price of the Goods as set out within the Contract despite not responding to notification that they are ready for delivery.
- 4.9 The Supplier may deliver or install by instalments. The Supplier may agree in its absolute discretion that the Customer may collect the Goods by instalments, such consent must be in writing from the Supplier. The instalments shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 The Customer shall adequately prepare its premises for delivery and installation. Any time lost by the Supplier as a result of the Customer's failure to comply with this clause will be charged to the Customer at a rate to be decided by the Supplier.
- 4.11 The preparation and construction of foundations, access and supporting structures, structural or other building alterations and the provision of appropriate electricity supply (**Works**) are not included within the Contract and should be provided by the Customer prior to the date arranged for delivery and installation unless otherwise agreed in writing by the Supplier. The Supplier reserves the right to charge an additional amount following the Works being carried out if it is found that the Supplier is required to carry out additional work as a result of the Works.
- 4.12 The Supplier is not responsible for the adequacy of any structure to which the Goods are affixed, whether or not affixed by the Supplier and the Customer must satisfy itself that the relevant structure is fit for its purpose. The Supplier reserves the right to charge an additional amount to the Customer where it is

found that further work is required due to the inadequacy of the structure. The Supplier will not be liable for any delays caused as a result of the inadequacy of the structure.

## 5. RETURNS AND REFUNDS

- 5.1 If upon installation of the Goods the Customer notices any defect to the Goods this should be notified to the Supplier within 48 hours of the Goods being installed. When signing for the Goods the Customer should sign for the Goods as damaged. If the Customer fails to comply with this clause it may invalidate any subsequent claim against the Supplier.
- 5.2 All Goods should be opened and inspected by the Customer and any damage, defect or omission to the Goods be reported to the Supplier in writing within 5 Business Days of the Goods being delivered to the Customer. If the Customer fails to comply with this clause it may invalidate any subsequent claim against the Supplier.
- 5.3 If the Customer wishes to return the Goods for reason of defect a returns note should be obtained from the Supplier (**Returns Note**). The Goods should be returned to an address to be specified by the Supplier in writing along with the invoice number and the delivery note. Delivery costs of the returned Goods are to be paid by the Customer in full without deduction. Alternatively the Supplier will arrange for collection of the Goods. The Supplier must be given the opportunity to inspect the Goods and remedy the alleged defect.
- 5.4 The Customer should specify in writing the reason for returning the Goods and the action that it wishes for the Supplier to take.
- 5.5 The Supplier reserves the right to refuse any Goods returned without the appropriate information and documentation.
- 5.6 The Supplier will not be liable for any damage caused to the Goods by reason of the misuse of the Goods by the Customer. Where it is found, in the Supplier's absolute discretion, that the damage to the Goods has been caused by the Customer's misuse, the Supplier charge the Customer for any subsequent repairs required to the Goods.
- 5.7 If the Supplier is required to attend the Customer's premises in order to inspect the damaged Goods the Supplier reserves the right to charge the Customer a call out fee if the damage is unrelated to manufacture of the Goods.

## 6. QUALITY OF GOODS

- 6.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery, unless otherwise agreed in writing by the Supplier (**warranty period**), the Goods shall:
- (a) conform in all material respects with their description and any applicable Goods Specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Supplier.

6.2 Subject to clause 6.3, if:

- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,  
the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 The Customer accepts that once installed, the Goods may be subject to snagging requirements by the Supplier. The Supplier shall use its reasonable endeavours to carry out the snagging requirements within a reasonable timeframe however time shall not be of the essence in carrying out the snagging requirements.

6.4 The Supplier shall not be liable for any delay in carrying out the snagging requirements that is caused by a Force Majeure Event, failure by a third party delivery company, inaccuracies in the technical and structural information provided by any third party, failure by a third party supplier, unforeseen delays due to adverse weather conditions, unforeseen delays caused by third party contractors or the Customer's failure to provide the Supplier with adequate instructions that are relevant to the snagging requirements.

6.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, lack of care when opening and unpacking the Goods or abnormal working conditions;
- (f) the defect arises as a result of the inadequacy of the Works;
- (g) the defect arises as a result of the inadequacy of the structure upon which the Goods are affixed; or
- (h) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.6 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

- 6.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 6.2.
- 6.8 Whilst every effort is made to match colours and fabrics of the Goods this is not guaranteed by the Supplier.
- 6.9 Where the Supplier offers wind and rain sensors on the Goods no guarantee is made as to the suitability of such sensors. It remains the responsibility of the Customer to ensure that the Goods are not used in inclement weather conditions. The Supplier cannot accept any liability for the Customer's failure to comply with this clause. Any damage caused to the Goods as a result of a failure by the Customer to adhere to this clause will be chargeable to the Customer.

## **7. TITLE AND RISK**

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery. Until such time as the title to the Goods passes to the Customer the Customer shall:
- (a) indemnify and keep indemnified the Company against all loss and damage to the Goods and against any reduction in the resale value of the Goods below the price to be paid by the Customer;
  - (b) insure and keep insured the Goods with a reputable insurer in an amount at least equal to the price of the Goods to be paid by the Customer; and
  - (c) hold upon trust for the Company all proceeds of such insurance.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
  - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.5.
- 7.3 The Supplier reserves the right to remove any Goods from the Customer's possession even if such Goods have been installed at any time until Title to the Goods passes to the Customer.
- 7.4 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(m); and

- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.5 Subject to clause 7.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- (c) It shall hold any proceeds from such sale on trust for the Supplier in a separate bank account, such funds being readily identifiable as the Supplier's money.

7.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(m), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
  - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8. SUPPLY OF SERVICES**

8.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Supplier shall not be liable for any delay in the supply of Services that is caused by a Force Majeure Event, failure by a third party delivery company, inaccuracies in the technical and structural information provided by any third party, failure by a third party supplier, unforeseen delays due to adverse weather conditions, unforeseen delays caused by third party contractors or the Customer's failure to provide the Supplier with adequate instructions that are relevant to the supply of the Services.

8.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill. The Customer accepts that once the Services have been carried out there may be some necessary

snagging requirements. The Supplier shall use its reasonable endeavours to carry out the snagging requirements within a reasonable timeframe however time shall not be on the essence in carrying out the snagging requirements.

- 8.5 The Supplier shall not be liable for any delay in carrying out the snagging requirements that is caused by a Force Majeure Event, failure by a third party delivery company, inaccuracies in the technical and structural information provided by any third party, failure by a third party supplier, unforeseen delays due to adverse weather conditions, unforeseen delays caused by third party contractors or the Customer's failure to provide the Supplier with adequate instructions that are relevant to the snagging requirements.

## 9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the delivery of Goods and the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- (h) Upon completion of the Contract the Customer shall sign a Certificate of Satisfaction whereupon the Contract shall be deemed to be complete and the Goods and Services are accepted without reservation.
- (i) Allow the Supplier to take photographs of the Goods at the Customer's premises and grant consent for such photographs to be used as seen fit by the Supplier.

9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **10. CHARGES AND PAYMENT**

- 10.1 The price for Goods and Services shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.
- 10.2 The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 10.3 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 10.4 The Supplier reserves the right to increase its charges for Goods or Services providing that it provides reasonable notice to the Customer.
- 10.5 The Customer shall pay the price to the Supplier as follows:-
- (a) 50% of the value of the Contract is payable upon the order being placed for the Goods and/or Services;
  - (b) 40% of the value of the Contract is payable upon the Goods being delivered in accordance with these Conditions and/or the Services being carried out by the Supplier. The Supplier will not deliver the Goods and/or carry out the Services until payment is made in accordance with this clause; and
  - (c) the balance of the value of the Contract is payable upon any snagging requirements being carried out in accordance with these Conditions. In the event that there are no snagging requirements, the balance is due within 7 days of the Goods being delivered and/or the Services being carried out.
- 10.6 Where the Goods are to be delivered by instalments the Supplier shall be entitled to payment in full prior to the delivery of each instalment.
- 10.7 The Customer shall pay each invoice submitted by the Supplier:
- (a) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
  - (b) any retention monies shall be paid as agreed between the Customer and Supplier.

time for payment shall be of the essence of the Contract.

- 10.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.9 If the Customer fails to make any payment due to the Supplier (including retention monies due and owing to the Supplier) under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 10.11 The Supplier will charge the Customer £20 plus VAT for a cheque that is not paid on presentation.
- 10.12 The Supplier shall raise an invoice for any additional services requested by the Customer to the price agreed along with any additional charges that become payable by reason of these Conditions as and when required. The invoice raised in accordance with this clause shall become immediately due and payable by the Customer.
- 10.13 The Supplier is entitled to request that the Customer evidence its ability to make payment under the Contract at its discretion. If such evidence is not provided by the Customer within three Business Days of such a request being made then the Supplier will be entitled to suspend installation of the Goods and the value of the Contract will become immediately due and owing.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 11.3 All Supplier Materials are the exclusive property of the Supplier.

## 12. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 12 shall survive termination of the Contract.

## 13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1:

- (a) the Supplier 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 Supplier'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 value of the Contract.

13.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.4 This clause 13 shall survive termination of the Contract.

## 14. TERMINATION

14.1 Without limiting its other rights or remedies, The Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) The Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
- (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
- (h) the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(b) to clause 14.1(i) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 14.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 14.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 14.4 If the Customer terminates the Contract it will remain liable for the full costs of the Goods and Services.
- 14.5 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 15. **FORCE MAJEURE**

- 15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

**16. GENERAL**

**16.1 Assignment and other dealings.**

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

**16.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with this 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 or sent by prepaid first-class post or other next working day delivery service, or by 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 agreed in writing by the Supplier; 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 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

**16.3 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 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.

**16.4 Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.

- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.7 **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 agreed in writing and signed by the Supplier.
- 16.8 **Governing law.** This agreement 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.
- 16.9 **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).