

GWF LTD
TERMS AND CONDITIONS FOR THE SALE OF GOODS AND ANCILLIARY SERVICES

The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Business Hours: the period from 8.30 am to 4.30 pm on any Business Day.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.8.

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

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

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

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 17.

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, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off [or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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 the Customer's written acceptance of the Supplier's quotation.

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

Service Specification: the description or specification for the Services set out in the Supplier's quotation by the Supplier to the Customer.

Supplier: **GWF LTD** registered in England and Wales with company number 13472125 whose registered office is located at Studio 5, Capability House, Building 31, Wrest Park, Silsoe, Bedfordshire, England, MK45 4HR.

Supplier Materials: has the meaning given in clause 9.1(h).

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Warranty Period: has the meaning given in clause 5.1.

1.2 Interpretation:

- (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 and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes email but not fax.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Goods and 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 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 Goods and/or Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 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 law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 3. Goods**
- 3.1 The Goods are described in the Supplier's sales documentation as modified by any applicable Goods Specification.
- 3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 4. Delivery of Goods**
- 4.1 The Supplier shall ensure that: each delivery 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 by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver 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.

- 4.3 Subject to the Supplier's agreement, the Customer may collect the Goods from the Supplier's premises.
- 4.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location, or you loading the Goods onto the Customer's carrier, in the case of collection by the Customer.
- 4.5 Subject to any agreed terms regarding delivery, delivery of the Goods may take place anytime between 8.00 a.m. and 8.00 p.m. on the delivery date.
- 4.6 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event 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.
- 4.7 If the Supplier fails to deliver 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. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event 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.
- 4.8 If the Customer fails to take delivery of the Goods on the delivery date, or within five 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 of the Goods shall be deemed to have been completed at 9.00 am on the third 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 actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.9 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.10 The Supplier may deliver the Goods by instalments, which 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.

5. Quality of Goods

5.1 The Customer shall inspect the Goods on delivery or collection.

5.2 Subject to clauses 5.4 and 5.5, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**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.

5.3 Subject to clause 5.4, if:

- (a) the Customer gives notice in writing to the Supplier 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 5.2;
- (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. The Supplier shall not be responsible for the costs of removal of the defective Goods, shipping of the replacement Goods, the cost of reinstallation of the replacement Goods or any other ancillary costs, which shall be borne by the Customer.

5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;
- (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 regarding the same;

- (c) the defect arises as a result of the Supplier following any drawing, design or 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, or abnormal working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 The warranty set out in clause 5.2, shall not apply to:

- (a) to consumable parts, such as protective coatings that are designed to diminish over time, unless failure has occurred due to a defect in materials or workmanship;
- (b) to cosmetic damage, including but not limited to scratches, dents and broken plastic on ports;
- (c) to any failure, non-conformity or defect of the Goods or component thereof caused by aggressive environmental conditions;
- (d) to damage caused by use with another product that is not approved by the Supplier;
- (e) to damage caused by accident, abuse, vandalism, deliberate tampering, theft, mishandling, misapplication, misuse, fire, earthquake or other external cause;
- (f) to improper installation and/or damage caused by operating the Products outside our guidelines;
- (g) to damage caused by services (including but not limited to upgrades, maintenance, repairs and expansions) performed by anyone who is not a representative of the Supplier or authorised by the Supplier to undertake such work;
- (h) if the Goods are used in temperatures exceeding the maximum specified in the technical specification;
- (i) to defects caused by normal wear and tear or otherwise due to the normal aging of the Goods;
- (j) to defects caused by exposure to direct sunlight;
- (k) to negligent acts or omissions or malfeasance of the Customer or any third party;
- (l) to damage to the Goods caused by the Customer or any third party or other conditions beyond the control of the Supplier;

- (m) if any serial number or security seals have been removed or defaced from the Goods;
- (n) if the Goods are connected or interrogated by equipment that is not approved by the Supplier for use with the Goods;
- (o) to Goods that have been modified to alter their functionality or capability without the written permission of the Supplier.

5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.2.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods and services 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.

6.3 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 15.1(b) to clause 15.1(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, 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.

6.5 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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.

7. Supply of Services

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

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Hire of Equipment

8.1 A Customer hiring equipment shall hereinafter be referred to as the 'Hirer'. Items hired shall hereinafter be referred to as the 'Equipment'

8.2 The minimum hire contract period shall be one calendar month inclusive, unless otherwise agreed in writing by the Supplier. Any period of hire of less than one calendar week shall be rounded up to the next whole week for the purposes of invoicing. The charges on each contract shall be at the hire rates quoted by the Supplier unless otherwise agreed in writing by the Supplier. Carriage charges in either direction shall be included in addition to the quoted weekly hire rates.

8.3 The hire contract period shall commence from the date of despatch or the date of collection from the Supplier's premises unless otherwise agreed in writing. The period of hire shall cease on the day the Equipment is collected from the Hirer's premises or delivered back to the Supplier's premises.

8.4 Hirer's responsibilities

- (a) The Hirer will ensure that the Equipment is checked upon receipt for damage or defects. The Supplier shall not be responsible for damage to the Equipment if the Hirer fails to report any damage to the Equipment within 24 hours of the date of the Hirer receiving the Equipment.
- (b) Equipment should be kept in a good and sound condition during use and storage.
- (c) Equipment should not be subjected to any misuse or unfair wear and tear during use or storage.
- (d) The Hirer shall preserve the Supplier's or Manufacturer's identification numbers or marks on the Equipment.
- (e) The Hirer shall comply with the Supplier's or Manufacturer's instructions and other regulations that may be issued for the proper use of the Equipment and the Hirer will be responsible for any damage caused to the Equipment arising from the Hirer's failure to observe such instructions or regulations.
- (f) The Hirer shall indemnify the Supplier in respect of any loss or damage, however caused, during use and storage of the Equipment. In the event of such loss or damage, the Hirer will immediately inform the Supplier. A replacement or repair cost will be quoted including any shortfall in income as a result of the loss or damage. The agreed hire charges will continue until the Supplier has been reimbursed in full.
- (g) The Hirer is responsible for checking that the Equipment is suitable for use in the particular environment in which it shall be situated, with particular attention to any hazardous environments.
- (h) The Hirer shall arrange adequate insurance to cover the full replacement cost of the Equipment and ensure it has suitable top up or additional insurance as may be required if the Equipment is used in hazardous environments.
- (i) The Hirer shall not, without the prior consent of the Supplier, use the Equipment outside the United Kingdom.
- (j) The Hirer shall not, without prior consent of the Supplier, sell or offer for sale, mortgage, pledge, lend or otherwise dispose of or part with possession of the Equipment.

- (k) Data retained in the Equipment should be downloaded and/or deleted by the Hirer before returning the Equipment to the Supplier. Note that the Supplier may, at its discretion, delete any remaining instrument data in the Equipment after its return and it will not be possible to retrieve any data after the return of the equipment

9. Customer's obligations

9.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and 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 in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services, if applicable;
- (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;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep 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; and
- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

9.2 If the Supplier's performance of any of its obligations under the Contract 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) without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case 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:

- (a) shall be the price set out in the Supplier's quotation; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

10.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Supplier's quotation;
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.30 am to 4.30 pm worked on Business Days;
- (c) the Supplier reserves the right to charge an overtime rate of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.2(b); and
- (d) 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 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.

10.3 The Supplier reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

- (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

10.4 In respect of Goods and Services (if applicable) , the Supplier shall invoice the Customer in accordance with the payment timeframes set out in the Supplier's quotation.

10.5 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

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

10.6 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.

10.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 15, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. Intellectual property rights

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

- 11.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 11.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

12. Data protection

- 12.1 The following definitions apply in this clause 12:
- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
 - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*).
 - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.3 The parties acknowledge that when providing the Goods to the Customer, the Supplier must gain access to and or acquire the ability to transfer, store or process personal data of the employees of the Customer. For the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor of the Personal Data.
- 12.4 Without prejudice to the generality of clause 12.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- 12.5 Without prejudice to the generality of clause 12.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;

- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 12.

12.6 The Customer consents to the Supplier appointing third-party processors of Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 12 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12.6.

12.7 Either party may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

13. Confidentiality

13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 14.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 14.2 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 14.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987.
- 14.5 Subject to clause 14.4, the Supplier's total liability to the Customer occurring within any contract year shall not exceed the cap.
- 14.6 In clause 14.5:
- (a) **cap.** The cap is the sum equal to the total charges payable by the Customer to the Supplier for the Goods (and Services if applicable) under the contract;
 - (b) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
 - (c) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.
- 14.7 This clause 14.7 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 14.3 and clause 14.4, clause 14.7(b) excludes specified types of loss.
 - (b) The following types of loss are wholly excluded:

- (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill;
 - (vii) indirect or consequential loss; and
 - (viii) any fines, penalties investigations or demands from regulators or any other public body.
- (c) The following types of loss and specific loss are not excluded:
- (i) sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;
 - (ii) wasted expenditure;
 - (iii) additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;
 - (iv) direct losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier in connection with the Contract; and
 - (v) anticipated savings in respect of purchasing the Goods and /or Services from the Supplier.

14.8 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.9 This clause 14 shall survive termination of the Contract.

15. Termination

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within seven days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

15.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

15.3 Without affecting any other right or remedy available to it, 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 the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16. Consequences of termination

16.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has 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 or Goods 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.

16.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

16.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

17. **Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

18. **General**

18.1 **Assignment and other dealings**

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

18.2 **Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the email addresses routinely used by the Supplier or the Customer during the course of the Contract (or an address substituted in writing by the party to be served).

- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) 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;
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause **18.3** the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

18.4 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

18.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

18.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18.7 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

18.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

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

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