

## TERMS AND CONDITIONS OF SALE

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 2.2.

**Computer Virus:** a program or similar that automatically copies itself and infects programs or discs and thereby causes data or programs to disappear or to be damaged.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.7

**Consequential Loss:** pecuniary loss consequent upon physical injury or damage to property.

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

**Contract Price:** the price payable to the Supplier by the Customer under the Contract as set out in clause 10.1

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

**Data Protection Legislation:** means (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

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

**Delivery Location:** has the meaning set out in clause 4.8

**Financial Loss:** pecuniary loss not consequent upon physical injury or damage to property.

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

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

**GDPR:** means the General Data Protection Regulation (EU) 2016/679

**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.

**Non-Prime:** second hand or obsolete goods.

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

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

**Supplier:** the member of the Hawkins Group of Companies named as the Supplier on the Quotation or Acknowledgement of Order.

**Supplier Materials:** materials, equipment, documents and other property of the Supplier which have been manufactured for and/or allocated to the Customer for use under the Contract whether or not delivered to the Customer.

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

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3. 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;
- 1.2.4. 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
- 1.2.5. a reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT

- 2.1. Any quotation given by the Supplier is an invitation to the Customer to make an offer only and shall be valid for a period of 15 Business Days from its date of issue.
- 2.2. No order placed by the Customer with the Supplier in pursuance of a quotation or otherwise shall be binding on the Supplier unless and until it is accepted in writing by the Supplier's acceptance of order form or despatch note or delivery note, or the Goods are despatched or the Services are commenced.
- 2.3. Any contract made with the Supplier for the sale of Goods or Services shall incorporate and be subject to these Conditions only and any representation or warranty, written or orally made or given prior to the contract is hereby expressly excluded and all brochures, specifications, drawings, catalogues, particulars, shapes, descriptions and illustrations, price lists and other advertising matter are intended only to present a general idea of the Goods described therein.
- 2.4. In the event that no quotation is given by the Supplier and the Supplier has received an Order from the Customer then provided that the Customer shall have notice of these Conditions, in such circumstances all Goods are sold and all Services are provided subject to these Conditions.

## 3. GOODS

- 3.1. The Goods are described in the 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 3.23.2 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.
- 3.4. All orders are accepted by the Supplier subject to materials and components being available to the Supplier from its suppliers and by accepting an order the Supplier does not give a warranty as to availability.
- 3.5. The Supplier reserves the right to vary the Goods Specification if, in its opinion, the finished product will be of an equivalent or higher standard.
- 3.6. Goods that are modified specifically for the Customer or sourced specifically for the Customer are non-returnable or cancellable after order.
- 3.7. The Goods are sold on the basis of weighed weight or calculated weight or quantity according to the Supplier's practice for that product. Sizes are supplied within the tolerances as laid down by the manufacturers of

the product. Where weighed weight is chargeable, the count is not guaranteed and claims based solely upon count cannot be accepted. The Goods shall be deemed to be within reasonable tolerances and the Supplier shall have fulfilled the contract if the Goods delivered are within a tolerance of 10 per cent above or below the quantity ordered.

3.8. The Goods will only be supplied within the tolerances stated in the current British Standard or European Standard for the appropriate product, where such a standard exists, or if it has been expressly requested in writing by the Customer and expressly specified by the Supplier on its delivery note and invoice.

3.9. Any statement in a British or European Standard as to suitability of the Goods for any purpose is excluded.

3.10. The Supplier shall not be responsible for the accuracy or suitability of any drawing design or specification supplied by the Customer to the Supplier in relation to the Goods notwithstanding that the Supplier may have inspected, commented or relied upon the same in the manufacture and/or supply of the Goods.

3.11. Whilst every care will be taken by the Supplier to provide accurate drawings if requested to do so by the Customer, it is the Customer's responsibility to check the accuracy of such drawings and the Supplier will not be liable for errors or in accuracies.

#### **4. DELIVERY OF GOODS**

4.1. Delivery shall be deemed to take place at the moment of discharge from the delivery vehicle at the Delivery Location or, in the event that the Customer collects and/or transports the Goods from the Supplier, or the moment of loading onto the Customer's or Customer's contractor's vehicle or handing to the Customer.

4.2. 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.

4.3. Statements as to time(s) and date(s) for delivery of the Goods shall be treated as estimates only. Time shall not be of the essence of the Contract nor may be made so.

4.4. The Supplier will refuse to deliver any Goods over roads or other ground which the Supplier considers unsuitable and any resultant abortive costs incurred will be paid by the Customer to the Supplier.

4.5. It is the Customer's responsibility to offload the Goods at the Delivery Location in a safe manner and to provide, free of charge, adequate labour and equipment for this purpose.

4.6. If the Customer refuses to accept delivery of the Goods or fails to give the Supplier adequate delivery instructions, then the Supplier may:

4.6.1. store the Goods until actual delivery to the Customer or until the Goods are disposed of under clause 4.6.2. The Customer shall be liable to pay a charge for handling, transportation, storage and insurance of the Goods under this clause.

4.6.2. sell the Goods at the best price readily obtainable. The Customer shall be liable to pay the costs of the sale. Further, if the Goods are sold for less than the price payable by the Customer, the Customer shall be liable to pay to the Supplier the difference in price.

This does not affect any other right or remedy the Supplier may have.

4.7. A delivery note which is signed by or on behalf of the Customer shall be conclusive proof of delivery of the Goods described in the delivery note.

4.8. The Supplier shall deliver the Goods to the location set out in the accepted 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.

4.9. 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.

4.10. 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 the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.11. If the Customer fails to accept or take delivery of the Goods within 10 (ten) 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:

4.11.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the 5th (fifth) Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.11.2. the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.12. If 5 (five) Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted 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.

4.13. The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 10% (ten per cent) more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

## 5. QUALITY OF GOODS

5.1. Subject to clauses 6 and 13, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

5.1.1. conform in all material respects with their description and the Goods Specification;

5.1.2. be free from material defects in design, material and workmanship;

5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

5.1.4. be fit for any purpose held out by the Supplier.

5.2. Subject to clauses 6 and 13, the Supplier shall:

5.2.1. at its option, repair or replace the defective Goods; and

5.2.2. make a contribution not exceeding 4 (four) times the price of the defective Goods towards the reasonable costs actually incurred by the Customer in connection with the delivery and installation by the Supplier of the repaired or replaced Goods in accordance with clause 5.2.1.

5.3. Except as provided in clause 5.2, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

## 6. NON PRIMES

6.1. Goods sold as "Non-Prime" or Goods which the Supplier and the Customer agree to be "Non-Prime" are sold in their actual state, as seen, without warranty and with all faults whether or not the Goods have been inspected by the Customer prior to delivery.

6.2. Any statement, specification, description or other information provided by the Supplier in respect of Non-Primes is given in good faith but the Supplier can accept no responsibility for its accuracy.

6.3. The Supplier shall have no obligation to replace or make good Non-Prime goods or entertain any claim whatsoever in respect thereof and the Customer shall indemnify the Supplier against all claims made against it and all losses, liabilities, costs and expenses which arise out of loss or damage to property or injury to or death of any person caused or alleged to be caused by or consequent upon the supply of a product (as defined in Section 1 of the Consumer Protection Act 1987) to the Customer as "Non-Prime" or to any third party by the Customer which comprises Non-Prime goods sold to the Customer by the Supplier or which has a component or components or includes or is otherwise manufactured from any Non-Prime goods supplied by the Supplier whether or not such claim or made pursuant to the said Act.

6.4. If the Customer shall resell Non-Prime goods the Customer shall ensure that a provision in similar form to this condition is incorporated in the contract for such resale unless prior to reselling such goods the Customer has caused the goods or such part thereof as the Customer resells to comply with a recognised specification or standard.

## **7. TITLE AND RISK**

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

7.2. Title to the Goods shall not pass to the Customer until the earlier of:

7.2.1. 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

7.2.2. The Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.

7.3. Until title to the Goods has passed to the Customer, the Customer shall:

7.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

7.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.3. 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;

7.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1.1 to clause 14.1.12; and

7.3.5. give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4. Subject to clause 7.5, 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:

7.4.1. it does so as principal and not as the Supplier's agent; and

7.4.2. title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

7.5. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.1 to clause 14.1.2, then, without limiting any other right or remedy the Supplier may have:

7.5.1. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

7.5.2. the Supplier may at any time:

a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

b) 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.

7.6. Where the Supplier recovers the Goods under clause 7.5.2 b) it shall:

7.6.1. not be liable to the Customer for any damage that it causes during the recovery of the Goods, and/or

7.6.2. be indemnified by the Customer for any claim made against it by a third party for any damage it causes to any property during the recovery of the Goods to the extent that such damage caused by the Supplier is reasonably required in order for it to recover the Goods.

## **8. SUPPLY OF SERVICE**

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 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.

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.

8.5. Subject to clause 13, if some or all of the Services have not been supplied in accordance with clause 8.4, the Supplier shall at its option, re-perform or refund the price of the defective Services.

8.6. Except as provided in clause 8.5, the Supplier shall have no liability for breach of its obligations in respect of its performance of the Services.

## 9. CUSTOMER'S OBLIGATIONS

9.1. The Customer shall:

9.1.1. ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification and the Services Specification are complete and accurate;

9.1.2. co-operate with the Supplier in all matters relating to the Services;

9.1.3. 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;

9.1.4. 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;

9.1.5. prepare the Customer's premises for the supply of the Services including as stipulated by the Supplier in the Services Specification;

9.1.6. 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;

9.1.7. keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) which are 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;

9.1.8. ensure that the Customer's premises where any Goods are delivered or stored or Services are carried out are free of pollutants, asbestos, chrysolite and flammable materials.

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**):

9.2.1. 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;

9.2.2. 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

9.2.3. 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 OF PAYMENT

10.1. The price for Goods and Services shall be the price set out in the Supplier's quotation or acknowledgement and acceptance of the Order. 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.

10.2. The Supplier reserves the right to increase the price of the Goods and Services, 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:

- a) 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);
- b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- c) 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.

10.3. In respect of Goods, the Supplier shall invoice the Customer on or at any time after the Commencement Date.

10.4. Unless agreed otherwise in writing, the Customer shall pay each invoice submitted by the Supplier:

10.4.1. upon receipt of the invoice; and

10.4.2. 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.

10.5. 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.

10.6. If the Customer fails to make any payment due 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 6% (six per cent) per annum above Barclays Bank'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.

10.7. 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.

## 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. Notwithstanding any other provision of this Agreement, but subject to clause 13.6, the obligations of the Supplier to the Customer in respect of defective Goods or Services are subject to the following limitations:

13.1.1. the Supplier shall not be liable if:

- a) the Customer makes any further use of the Goods or Services complained of (the "Defective Items") after giving a notice in accordance with clause 13.1.5;
- 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, Goods Specification or Services Specification supplied by the Customer;
- d) the Customer alters or repairs the Defective Items 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;
- f) the Goods differ from the Goods Specification or the Services differ from the Services Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
- g) the Supplier is not given a reasonable opportunity of examining such Goods; and
- h) the Customer (if asked to do so by the Supplier and where reasonably practicable) does not return such Goods to the Supplier's place of business at the Customer's cost,

13.1.2. any liability of the Supplier to the Customer for:

- a) Financial Loss shall be limited to £10,000;
- b) Consequential Loss shall be limited to the greater of sums due under clause 5.2.2 and £50,000;

13.1.3. the Supplier shall not be liable to the Customer for any claims or losses arising from:

- a) actions taken by the Supplier upon the instruction from the Customer or any of its employees, agents or sub-contractors which were outside the scope of the Services; or
- b) Computer Viruses; or
- c) the Customer's failure to comply with its obligations contained herein;

13.1.4. the Supplier's total liability to the Customer, whether directly to the Customer or by reason of indemnity or contribution in respect of the Customer's liability to any third party, for any and all acts or omissions of the Supplier's employees, agents or sub-contractors shall be limited to the Contract Price; and

13.1.5. the Supplier shall not be liable for any loss damage or expense unless advised thereof in Writing within 20 (twenty) Business days and the claim is made in Writing within 30 (thirty) Business days, after delivery of the Goods or the provision of the relevant part of the Services. Provided that if the Customer proves that it was not reasonably possible for the Customer to advise the Supplier or make a claim in Writing within the time limit applicable and such advice or claim was given or made within a reasonable time, the Supplier shall not have the benefit of the exclusion of liability afforded by this Condition; and

13.1.6. the Supplier shall in any event be discharged from all liability for any loss damage or expense whatsoever and howsoever arising in respect of the Supplier's supply or performance of the Defective Items unless proceedings are issued and served upon the Supplier within 1 (one) year of the date when the Defective Items were delivered or performed.

13.2. The terms of these Conditions shall apply to any repaired or replacement Goods or re-performed Services supplied by the Supplier under clause 5.2 or 8.5.



13.3. Each of the sub-clauses of clause 13.1 comprises a separate limitation of the Supplier's liability to the Customer.

13.4. In respect of each of the sub-clauses of clause 13.1, the financial limit of liability set out therein shall apply separately to each and every claim against the Supplier made in the circumstances described in that clause provided that where any one act or omission or series of two or more connected acts or omissions give rise to more than one claim, the limit shall apply to the aggregate of all of the claims as though they were a single claim.

13.5. Subject to clause 13.6, the express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise and which but for this sub-clause would be binding upon the Supplier, all of which are excluded to the fullest extent permitted by law.

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

13.6.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

13.6.2. fraud or fraudulent misrepresentation;

13.6.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

13.6.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

13.6.5. defective products under the Consumer Protection Act 1987.

13.7. It is understood, agreed and acknowledged that the Contract Price has been calculated on the basis that the Supplier will exclude or limit its liability set out in this clause 13 and that these exclusions and limitations are reasonable.

13.8. This clause 13 shall survive termination of the Contract.

#### **14. TERMINATION**

14.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.1.1. the other party 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;

14.1.2. the other party 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 that other party with one or more other companies or the solvent reconstruction of that other party;

14.1.3. 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 other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

14.1.4. the other party (being an individual) is the subject of a bankruptcy petition or order;

14.1.5. a creditor or encumbrancer of the other party 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 7 (seven) days;

- 14.1.6. 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 other party (being a company);
- 14.1.7. the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 14.1.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.1.9. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.1 to clause 14.1.8 (inclusive);
- 14.1.10. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 14.1.11. the other party'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
- 14.1.12. the other party (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 14.1.1 to clause 14.1.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 14.4. On termination of the Contract for any reason:
- 14.4.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Supplier's Materials 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;
- 14.4.2. the Customer shall return all of the Supplier Materials and any Deliverables in its possession 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;
- 14.4.3. 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
- 14.4.4. 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, terrorism, 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 3 (three) months, 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. DATA PROTECTION AND DATA PROCESSING**

16.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relive, remove or replace, a party's obligations under the Data Protection Legislation.

16.2. Further information on how we process personal data is available in our Privacy Policy, copy available on our website and upon request.

## **17. GENERAL**

17.1. Assignment and other dealings.

17.1.1. 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.

17.1.2. 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.

17.2. **Notices.**

17.2.1. 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].

17.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2.1; 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.

17.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.3. **Severance.**

17.3.1. 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.

17.3.2. 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.

17.4. **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.

17.5. **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.

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

17.7. **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.

17.8. **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.

17.9. **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).