

Terms and conditions for the sale of goods and services

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Acceptance Tests means the mutually agreed tests in accordance with the Contract to assess whether the Goods conform with the Specification;

Business Day means a day other than a Saturday, Sunday or bank or public holiday in England;

Conditions means the Supplier's terms and conditions of sale set out in this document;

Confidential Information means any and all confidential information (whether in oral, written or electronic form) including commercial, financial or technical information, information relating to the Deliverables, plans, technology, Intellectual Property Rights, know-how, products, customers or trade secrets or which is developed by the Supplier in performing its obligations under, or otherwise pursuant to the Contract;

Contract means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order Confirmation Form;

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

Customer means the person who purchases the Deliverables from the Supplier and whose details are set out in the Order Confirmation Form;

Deliverables means the Goods or Services or both as the case may be;

Force Majeure means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

Goods means the goods (which may include systems such as any hardware, Software and related documentation) and other physical

material set out in the Order Confirmation Form and/or referred to in the Specification and to be supplied by the Supplier to the Customer;

Intellectual Property Rights means copyright, patents, rights in inventions, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, database rights, rights in data, rights in computer software, rights to sue for passing off, domain names and all similar rights of whatever nature and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; and (e) in whichever part of the world existing;

Location means the address for delivery of the Goods and/or performance of the Services as set out in the Order Confirmation Form;

Order Confirmation Form means the order confirmation form that the Supplier shall provide to the Customer as written acceptance of the Customer's Order;

Order means the Customer's order for the Deliverables ;

Price has the meaning given in clause 3.1;

Services means the services set out in the Order Confirmation Form and/or referred to in the Specification and to be supplied by the Supplier to the Customer;

Software means any software and related documentation and any updates, upgrades, new versions or releases of the same that Supplier agrees to supply in performance of the Contract;

Specification means the description or specification of the Deliverables set out or referred to in the Order Confirmation Form;

Supplier means Fisher Smith Ltd of Ringstead Business Centre, 1-3 Spencer Street, Ringstead, Northamptonshire, NN14 4BX, Fisher Smith Ltd is registered in England and Wales under Company No. 11278545 Registered office: Carlton House, High Street, Higham Ferrers, Northamptonshire, NN10 8BW, VAT number GB846421231, Telephone: 01933 625162, Fax: 01933 625223;

Test Period means the period of 30 days from delivery of the Deliverables to Customer or such longer period as agreed in writing by the Supplier; and

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

1.2 In these Conditions, unless the context otherwise requires:

- (a) a reference to the Contract includes these Conditions, the Order Confirmation Form, and their respective schedules, appendices and annexes (if any);
- (b) any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- (c) a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- (d) a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns
- (e) a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- (f) a reference to a gender includes each other gender;
- (g) words in the singular include the plural and vice versa;
- (h) any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- (i) a reference to legislation is a reference to that legislation as in force at the date of the Contract except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and

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

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply. The Customer shall accept the Order Confirmation Form and Contract subject to these Conditions.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order Confirmation Form or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each party.
- 2.4 The Supplier may issue quotations to the Customer from time to time. Quotations are not an offer to supply Deliverables and are incapable of being accepted by the Customer. All quotations will be valid for 30 days from the date of issue.
- 2.5 Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to these Conditions.
- 2.6 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.
- 2.7 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier for 14 Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 2.8 The Supplier may amend, accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the Supplier has provided an Order

Confirmation Form to the Customer as written acceptance of the Order and received the Customer's deposit in full for the Deliverables.

- 2.9 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.10 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract. The Customer agrees that, in submitting an Order, it has not relied on any representations or statements by the Supplier other than those expressly set out in these Conditions.

3 Price

- 3.1 The Customer must pay the Supplier a deposit, unless otherwise agreed by the Supplier in writing, when the Customer places an Order with the Supplier. The deposit sum shall be set out in the quotation supplied to the Customer or as otherwise set out by the Supplier in writing to the Customer.
- 3.2 The price for the Deliverables shall be calculated in accordance with the Supplier's scale of charges in force from time to time (**Price**).
- 3.3 The Price will take into account the deposit paid.
- 3.4 The Prices are exclusive of:
- (a) packaging and delivery which shall be charged in addition at the Supplier's standard rates, and
 - (b) VAT.
- 3.5 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.6 The Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Deliverables.

4 Payment

- 4.1 The Supplier shall invoice the Customer for the Deliverables at any time before delivery or performance (as the case may be) of the Deliverables.
- 4.2 The Customer shall pay all invoices:

- (a) in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice;
 - (b) in the currency specified in the Order Confirmation Form; and
 - (c) to the bank account nominated by the Supplier.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date the Supplier may:
 - (a) without limiting its other rights, charge interest on such sums 4% a year above the base rate of the Bank of England from time to time in force, and interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment; and
 - (b) suspend delivery or performance of the Deliverables.
- 4.4 In the event that the Customer's procedures require that an invoice be submitted against a purchase order, the Customer shall be responsible for issuing such purchase order before the Deliverables are supplied.

5 Delivery and performance

- 5.1 The Goods shall be delivered by the Supplier to the Location at the estimated time and date agreed in writing between the Supplier and the Customer. The Goods shall be deemed delivered by the Supplier only on arrival of the Goods at the Location.
- 5.2 The Services shall be performed by the Supplier at the Location at the estimated times and dates agreed in writing between the Supplier and the Customer. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.
- 5.3 The Supplier may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.4 Time is not of the essence in relation to the performance of delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated time and dates for delivery and performance, but any such times and dates are approximate only.
- 5.5 The Supplier shall not be liable for any delay in or failure of performance caused by:

- (a) the Customer's failure to: (i) make the Location available, (ii) prepare the Location in accordance with the Supplier's instructions or (iii) provide the Supplier with adequate instructions for performance or delivery or otherwise relating to the Deliverables;
- (b) Force Majeure.

6 Risk

Risk in the Goods shall pass to the Customer on delivery and accordingly the Customer shall be responsible for insuring the Goods against all normal risks with effect from the time the risk passes.

7 Title

7.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.

7.2 The Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clause 20.1 has occurred or is likely to occur.

7.3 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clause 20.1, the Supplier may:

- (a) require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
- (b) if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

8 Warranty

8.1 The Supplier warrants that, for a period of 12 months (unless otherwise agreed in writing) from delivery (the Warranty Period), the Deliverables shall:

- (a) conform in all material respects to any sample, their description and to the Specification;
- (b) be free from material defects in design, material and workmanship;

- (c) if Goods, be of satisfactory quality;
 - (d) if Services, be supplied with reasonable care and skill; and
 - (e) any media on which the results of the Services are supplied shall be of satisfactory quality.
- 8.2 The Supplier shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 8, provided that the Customer:
- (a) serves a written notice on Supplier not later than 5 Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
 - (b) such notice specifies that some or all of the Deliverables do not comply with clause 8.1 and identifying in sufficient detail the nature and extent of the defects; and
 - (c) gives the Supplier a reasonable opportunity to examine the claim of the defective Deliverables.
- 8.3 The provisions of these Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.
- 8.4 Except as set out in this clause 8:
- (a) the Supplier gives no warranty and makes no representations in relation to the Deliverables; and
 - (b) shall have no liability for their failure to comply with the warranty in clause 8.1,
and all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

9 Customer obligations

- 9.1 The Customer shall at its own cost provide or procure for the Supplier:
- (a) access to the Customer's premises and facilities;
 - (b) relevant information, instructions and assistance, including reasonable access to and cooperation by Customer personnel; and

(c) prepare the premises in accordance with the Supplier's instructions in each case as is reasonably necessary for the Supplier to perform its obligations under the Contract.

- 9.2 The Customer shall ensure that any operating system and/or any other hardware or software which the Supplier is asked by the Customer to use or modify for the purposes of performing the Deliverables is either the property of the Customer or is legally licensed to the Customer and that the Supplier is authorised to use the same.
- 9.3 The Customer must comply with such other requirements as may be set out in the Order Confirmation Form or otherwise agreed between the parties in writing.
- 9.4 The Supplier shall not be liable for any failure to perform its obligations under the Contract to the extent that the Supplier is prevented from performing its obligations as a result of a breach by the Customer of any of its obligations under the Contract or an event of Force Majeure.
- 9.5 The Customer shall be liable to indemnify the Supplier for any costs it incurs as a result of the Customer's failure to comply with clauses 9.1 to 9.3.

10 Acceptance Tests

- 10.1 This clause shall apply where Acceptance Tests of the Goods are to be conducted. The timing of the parties' respective obligations under this clause shall be agreed between the parties in writing. The parties shall work together to agree a set of Acceptance Tests which shall be sufficient to test whether or not the Goods have the facilities and functions specified in, and perform in accordance with, the Specification or other agreed test standards, with such agreement not to be unreasonably withheld or delayed.
- 10.2 The Supplier shall perform the Acceptance Tests within the Test Period. The Customer shall be given reasonable notice of and be entitled to attend the Acceptance Tests. The Supplier shall notify the Customer if it is unable to perform the Acceptance Tests and in such circumstances the Customer shall carry out the Acceptance Tests within the Test Period.
- 10.3 If the Goods being tested perform in accordance with the agreed Specification or other agreed test standards and meet the agreed testing

criteria for the Acceptance Tests, they shall be deemed to have passed the Acceptance Tests. If the Goods fail to pass the Acceptance Tests, the Customer shall cooperate with the Supplier in identifying in what respects the Goods failed to conform to the Specification or otherwise failed to pass the Acceptance Tests. The Goods shall not be deemed to have failed the Acceptance Tests by reason of any failure to provide any facility or function not specified in the Specification or other agreed test standards.

10.4 If the Supplier is unable to remedy any failure of the Goods so that they conform with the Specification within a further test period agreed by the parties ('Extended Test Period'), then:

- (a) the Customer shall be entitled forthwith to reject the Goods without further liability to the Supplier; and
- (b) the Supplier shall promptly repay to the Customer the sums that the Customer has paid to the Supplier in respect of the rejected Goods;

provided that in the case of a minor non-conformity with the Specification or other agreed test standards, the Customer shall not unreasonably delay in its acceptance of the Goods so long as the Supplier uses its reasonable endeavours in accordance with good industry practice to rectify such non-conformity as soon as possible. For the purposes of this sub-clause, 'minor non-conformity' means a cosmetic defect or a failure of the Goods to conform with the Specification but which does not have a material effect on any specified functionality.

10.5 The Customer shall promptly issue a written statement of acceptance to the Supplier when the relevant Goods have passed all the Acceptance Tests. In the event that the Customer is unable to attend the Acceptance Tests or otherwise is unable to issue a written statement of acceptance, the Supplier shall complete the statement of acceptance on the Customer's behalf.

10.6 Save where the Customer has rejected the Goods as stated above, the Customer's acceptance of the Goods shall occur at the earliest of:

- (a) the Customer providing written acceptance of the Goods to Supplier;

- (b) the Goods passing the Acceptance Tests in accordance with this clause;
- (c) the expiration of the Test Period and of the Extended Test Period (if any) in circumstances where the Customer has failed to complete the Acceptance Tests.

11 Change or alterations to the Order Confirmation Form

- 11.1 Where the Customer or the Supplier wishes to make a change to the Order Confirmation Form, whether to amend the Goods or Services as set out in the Order Confirmation Form or otherwise, the Customer may at any time request, and the Supplier may at any time recommend, such change and a new order shall be submitted by the party requesting the change to the other party. Such change shall be agreed by the parties only once the new order is signed by both parties.
- 11.2 Until a change is made in accordance with this clause, the Customer and the Supplier shall, unless otherwise agreed in writing, continue to perform the Contract in compliance with its terms prior to such change.
- 11.3 Any Deliverables provided or performed by the Supplier for the Customer which have not been agreed in accordance with the provisions of this clause 10 shall be charged to the Customer at the fee rates set out in the new Order Confirmation Form or the Supplier's standard fee rates from time to time in force or such other rates as are reasonably agreed between the parties.

12 Anti-bribery

- 12.1 For the purposes of this clause 9 the expressions adequate procedures and associated with shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 12.2 Each party shall comply with applicable bribery laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
 - (a) all of that party's personnel;
 - (b) all others associated with that party; and
 - (c) all of that party's subcontractors;involved in performing the Contract so comply.

- 12.3 Without limitation to clause 12.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 12.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 9.

13 Indemnity and insurance

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

14 Limitation of liability

- 14.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 14.
- 14.2 Subject to clauses 14.5 and 14.7, the Supplier's total liability shall not exceed £1,000,000 or 200% of the total value of the order set out in the Order Confirmation Form whichever is the lower amount.
- 14.3 Subject to clauses 14.5 and 14.7, the Supplier shall not be liable for consequential, indirect or special losses.
- 14.4 Subject to clauses 14.5 and 14.7, the Supplier shall not be liable for any of the following (whether direct or indirect):
- (a) loss of profit;
 - (b) loss of data;

- (c) loss of use;
 - (d) loss of production;
 - (e) loss of contract;
 - (f) loss of opportunity;
 - (g) loss of savings, discount or rebate (whether actual or anticipated);
 - (h) harm to reputation or loss of goodwill.
- 14.5 The limitations of liability set out in clauses 14.2 to 14.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 14.6 Except as expressly stated in the Contract, and subject to clause 14.7, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 14.7 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other losses which cannot be excluded or limited by applicable law;

15 Intellectual property

- 15.1 Except as expressly stated in this clause no Intellectual Property Rights of the Supplier are transferred or licensed as a result of the Contract.
- 15.2 All Intellectual Property Rights in the Deliverables shall belong to and vest in the Supplier.
- 15.3 While the Contract is in force, the Supplier grants the Customer a non-exclusive, non-transferable and royalty-free licence to use for its own benefit, the Deliverables to the extent necessary to enable the Customer to make use of the Services and otherwise perform its obligations under the Contract.
- 15.4 The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from the Customer's modification or use of the Deliverables.

16 Permitted Software rights

16.1 The Customer's right to use any Software licensed under the Contract (if any) does not permit it:

- (a) to distribute or resell the Software;
- (b) to use the Software to provide outsourcing for any third party;
- (c) to use the Software contrary to any restriction expressly stated in the Contract.

16.2 Where any Software is licensed under the Contract, Customer shall not:

- (a) make copies of the Software, except for such back-up copies as are reasonably necessary, provided that Customer keeps accurate and up-to-date records of such copying containing such information as Supplier reasonably requests;
- (b) translate, adapt, disassemble, reverse engineer or decompile the Software or any part of it, nor arrange or create derivative works based on the Software;
- (c) make any modifications, additions or enhancements to the Software;
- (d) permit the Software or any part of it to be combined or merged with or become incorporated in any other program;
- (e) assign, distribute, license, sell or otherwise deal in or encumber the Software;
- (f) use the Software on behalf of or make it available to any third party or allow or permit a third party to do so; or
- (g) remove or alter any copyright or other proprietary notice on the Software,

except in each case to the extent such activities are expressly permitted by applicable English law or are expressly agreed by the Supplier.

16.3 The Customer must obtain the Supplier's prior written consent to use the Software on different equipment or at any different location where these have been expressly agreed in the Contract.

16.4 Notwithstanding clause 16.3, the Customer may at its sole risk and expense use the Software temporarily at a back-up location for not more

than 7 days where the Software cannot be used at the agreed location if the relevant location becomes unusable provided that such back-up location or equipment is under the Customer's direct control and the Customer promptly provides Supplier with details of the same and notifies Supplier of the dates on which the Customer's temporary use of the Software in this way begins and ceases.

16.5 The rights in the Software licensed to the Customer shall not include the right of any group company of the Customer to use and have access to the Software unless expressly agreed by Supplier, and in any event the Customer shall ensure that all such use:

- (a) does not exceed the Customer's permitted use;
- (b) is controlled by the Customer; and
- (c) is otherwise subject to and in accordance with the terms of the Contract.

16.6 The Customer shall be liable for all acts, omissions or liability of any group company of the Customer arising in connection with the Customer's obligations under the Contract with respect to the licensed Software as if it were the Customer's own acts, omissions or liability.

17 Confidentiality and announcements

17.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

- (a) any information which was in the public domain at the date of the Contract;
- (b) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

17.2 This clause shall remain in force for a period of 5 years from the date of the Contract and, if longer, 3 years after termination of the Contract.

17.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

17.4 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the

Supplier may incur or suffer as a result of or arising from any breach by the Customer of its obligations under clause 17.

18 Data protection

18.1 Each party must comply with any data protection, privacy and any similar or equivalent laws in each relevant jurisdiction relating to personal data, including but not limited to, the Data Protection Act 1998 and the data protection principles that apply and shall comply with all data protection laws relating to the processing of personal data.

19 Force majeure

19.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force majeure, provided that it:

- (a) promptly notifies the other of the Force majeure event and its expected duration; and
- (b) uses best endeavours to minimise the effects of that event.

19.2 If, due to Force majeure, a party:

- (a) is or shall be unable to perform a material obligation; or
- (b) is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or total of more than 30 days in any consecutive period of 60 days;

the other party may, within 30 days, terminate the Contract on immediate notice.

20 Termination

20.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

- (a) the Customer commits a material breach of the Contract and such breach is not remediable;
- (b) the Customer commits a material breach of the Contract which is not remedied within 30 days of receiving written notice of such breach;
- (c) the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within

30 days after the Supplier has given notification that the payment is overdue;

- (d) any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled;
- (e) the Customer stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- (f) the Customer is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
- (g) the Customer becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- (h) the Customer has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- (i) the Customer has a resolution passed for its winding up;
- (j) the Customer has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- (k) the Customer is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced;
- (l) the Customer has a freezing order made against it;
- (m) the Customer is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items; and
- (n) the Customer is subject to any events or circumstances analogous to those in clauses (e) (e) to (e) (m) in any jurisdiction.

20.2 The Supplier may terminate the Contract at any time by giving not less than 4 weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.

- 20.3 The right of the Supplier to terminate the Contract pursuant to clause (e) shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 20.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 20, it shall immediately notify the Supplier in writing.
- 20.5 Termination or expiry of the Contract shall not affect any accrued rights of the Supplier at any time up to the date of termination.
- 20.6 Subject to the other provisions of the Contract and without prejudice to any right of action then accrued to either party on termination the Supplier will be entitled to payment of all costs for:
- (a) all Deliverables delivered and/or properly performed and completed at the date of termination of the Contract; and
 - (b) any third party costs to which the Supplier has committed and which cannot be mitigated.

21 Dispute resolution

- 21.1 If any dispute arises between the parties out of or in connection with the Contract, the matter shall be referred to the senior representatives of each party who shall use their reasonable endeavours to resolve it.
- 21.2 If the dispute is not resolved within 14 days of the referral being made under clause 21.1, the parties may resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 21.3 Until the parties have completed the steps referred to in clauses 21.1 and 21.2 have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

22 Notices

- 22.1 Any notice given by a party under these Conditions shall:

- (a) be in writing and in English;
- (b) be signed by, or on behalf of, the party giving it; and
- (c) be sent to the relevant party at the address set out in the Contract

22.2 Notices may be given, and are deemed received:

- (a) by hand: on receipt of a signature at the time of delivery;
- (b) by post: at 9.00 am on the second Business Day after posting;
- (c) by Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting; and
- (d) by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
- (e) by email: on receipt of a delivery.

22.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 22.1 and shall be effective:

- (a) on the date specified in the notice as being the date of such change; or
- (b) if no date is so specified, 2 Business Days after the notice is deemed to be received.

22.4 All references to time are to the local time at the place of deemed receipt.

22.5 This clause does not apply to notices given in legal proceedings or arbitration.

23 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

24 Further assurance

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

25 Entire agreement

25.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and

supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

- 25.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 25.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

26 Variation

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

27 Assignment

- 27.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.

28 Set off

- 28.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.
- 28.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

29 No partnership or agency

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

30 Equitable relief

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

31 Severance

- 31.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 31.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable.

32 Waiver

- 32.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 32.2 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

33 Compliance with law

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

34 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order Confirmation Form, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

35 Third party rights

35.1 Except as expressly provided for in clause 35.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

35.2 Any group company of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

36 Governing law

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

37 Jurisdiction

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