

## ENGINEERING UTILITIES LIMITED GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY OF GOODS AND/OR SERVICES

The Customer's attention is particularly drawn to the provisions of clause 14.

### 1. Interpretation

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

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

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.7.

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

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

**Deliverables:** the deliverables (if any) set out in the Specification.

**Delivery Location:** has the meaning set out in clause 4.1.

**Force Majeure Event:** has the meaning given to it in clause 17.1.

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

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Limit of Indemnity:** the maximum amount of the limit of indemnity remaining from time to time in accordance with the public/products liability insurance policy effected by the Supplier (a copy of which shall be provided to the Customer on request) for all occurrences during any one period of insurance.

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

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

**Specification:** any specification for the Goods and/or Services, including any relevant descriptions, designs, plans or drawings, that is agreed in writing by the Customer and the Supplier and confirmed in writing by the Supplier as being agreed.

**Supplier:** Engineering Utilities Limited, a company incorporated in England and Wales with company number 07698622 whose registered office is at 75 Swinnow Lane, Bramley, Leeds, West Yorkshire, LS13 4TY.

**Supplier Materials:** has the meaning set out in clause 10.1(h).

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

## **2. Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Goods or Services contained in the Supplier's catalogues, website or other publications are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They shall not form part of the Contract or any other contract between the Customer and the Supplier for the supply of Goods and/or Services.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, no terms or conditions endorsed on, delivered with or contained in the Customer's purchase order,

confirmation of order, specification or other document shall form part of the Contract as a result of such document being referred to in the Contract.

- 2.6 These Conditions apply to all the Supplier's sales and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Supplier. The Supplier's sales representatives have no authority to accept, vary or amend any of these Conditions.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Supplier receives a copy signed by the Customer of the written acknowledgement of order issued by the Supplier to the Customer in respect of such order. Any quotation is valid for the period set out on the quotation or, in the absence thereof, for 30 days, provided that the Supplier has not previously withdrawn it.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3. Goods**

- 3.1 The quantity and description of the Goods shall be as set out in the Specification or, in the absence thereof, in the Supplier's written acceptance of the Order.
- 3.2 All Goods shown in the Supplier's catalogues, website or other publications are subject to availability. The Supplier will inform the Customer as soon as practicable if the Goods the Customer has ordered are not available and the Supplier will not process the Customer's order or purchase if made.
- 3.3 To the extent that the Goods are to be manufactured in accordance with a 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 reasonable 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 that specification. This clause 3.3 shall survive termination of the Contract.
- 3.4 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### **4. Delivery of Goods and Services**

- 4.1 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.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 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 or provision of Services 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.

4.4 If the Customer fails to accept or take delivery of the Goods within 10 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 11th Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

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

4.5 If 45 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken 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.

4.6 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.

4.7 In relation to Goods, delivery shall be deemed to be made where a quantity of 10% in excess of or less than the amount of Goods ordered is delivered.

## **5. Non-Delivery**

5.1 The quantity of any consignment of Goods as recorded on despatch from the Supplier's place of business shall be conclusive evidence of the quantity received on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Customer gives written notice to the Supplier of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been delivered.

5.3 If the Supplier fails to deliver the Goods, its liability shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoiced raised for such 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.

## **6. International Delivery**

- 6.1 If the Delivery Point is outside of the UK, delivery charges will be agreed between the Customer and the Supplier. Any tariffs, taxes or import duties which are applied at any stage of the delivery shall be borne by the Customer, and the Customer hereby agrees to indemnify the Supplier for all tariffs, taxes or import duties the Supplier incurs in connection with such delivery.
- 6.2 The Customer must comply with all applicable laws and regulations of the country in which the Delivery Point is located. The Supplier will not be responsible to the Customer if any applicable laws or regulations are broken.

## **7. Quality of Goods**

- 7.1 The Supplier warrants that on delivery, the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 7.2 For the avoidance of doubt, the warranties given in clause 7.1 are given in lieu of all warranties, conditions and other terms implied by statute or common law and all such warranties, conditions and other terms are, to the fullest extent permitted by law, hereby excluded from the Contract.
- 7.3 Subject to clauses 7.4 and 7.5, if:
- (a) the Customer gives notice in writing within a reasonable time of discovery, and in any event within one month of delivery of the relevant Goods, that some or all of the Goods do not comply with the warranty set out in clause 7.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods at the pro rata Contract rate.
- 7.4 Where the Goods sold are manufactured by the Supplier to the Customer's specification, or are outside the Supplier's normal range, or are sourced by the Supplier at the Customer's request, the Supplier's obligation is limited to manufacturing or sourcing such Goods within the specifications provided by the Customer (except to the extent the Supplier in its own discretion has decided to vary the same, taking into account the current custom and practice) and the Customer shall otherwise have no right to reject such Goods or to cancel an order in respect of such Goods.

- 7.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 7.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 7.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's or the relevant product manufacturer's oral or written instructions or published guidance as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - (c) the defect arises because the Customer put the Goods to use in a manner which if carried out by the Supplier would render void any warranty provided by any manufacturer or supplier of which the Supplier has the benefit;
  - (d) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
  - (e) the Goods delivered are used improperly or for any purpose other than that for which they are meant or are maintained and/or stored improperly or contrary to any agreed or legal regulations or if the defect of the Goods can be ascribed to the Customer or any other third party in any way;
  - (f) without the written consent of the Supplier, the Customer carries out repairs itself or brings about changes in the nature, composition or packaging of the Goods delivered, or has these carried out or brought about by a third party;
  - (g) the Customer makes any further use of such Goods after giving notice to the Supplier pursuant to clause 7.2;
  - (h) the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions, or extreme weather conditions;
  - (i) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 7.6 Except as provided in this clause 7, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.7 For the avoidance of doubt, the Supplier gives no warranty as to the fitness of the Goods for any particular purpose and the Supplier shall not be liable for failure to attain in connection with the Goods any performance figures, speed or efficiency ratings or similar. Any estimates or specifications provided in respect of the same are offered in good faith but are intended to be approximate only and shall not be deemed to constitute representations or form part of the Contract in any way whatsoever.
- 7.8 For the avoidance of doubt, any advice or recommendation given by the Supplier, its employees, representatives or agents to the Customer or its employees, representatives or agents as to the storage, application or use of the Goods which is

not confirmed in writing by a director of the Supplier to the Customer is followed or acted upon entirely at the Customer's own risk and accordingly the Supplier shall not be responsible or liable for any such advice or recommendation which is not so confirmed in writing.

7.9 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 7.3 or 7.4.

**8. Title and risk**

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

8.2 Where applicable, risk in transit shall remain with the Supplier until delivery at the Delivery Point provided that in the event of any damage to the Goods during transit the Supplier will replace any goods proved to the Supplier's satisfaction to have been damaged in transit subject to having received from the Customer within 48 hours after delivery notification in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

8.3 Subject to clause 8.5, title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Goods;
- (b) any Services supplied to the Customer in connection with those Goods; and
- (c) other goods or services that the Supplier has supplied to the Customer.

8.4 Subject to clause 8.5, until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) not install, attach or incorporate the Goods to or into any premises, structures, materials or other goods without the prior consent of the Supplier;
- (e) 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;
- (f) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l); and
- (g) give the Supplier such information relating to the Goods and allow the Supplier access to premises where the Goods are located as the Supplier may require from time to time.

8.5 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and

- (b) shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale, and in such circumstances, title to the Goods shall pass from the Supplier to the Customer immediately before the time at which the resale by the Customer occurs and the proceeds of such sale shall be held by the Customer on trust for the Supplier in a manner which enables the proceeds to be identified as such until such time as the Customer has paid in full all sums owing (for the avoidance of doubt, in respect of the Goods and/or Services or otherwise) from the Customer to the Supplier.
- 8.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, and without limiting any other right or remedy the Supplier may have, the Customer's right to possession of the Goods shall terminate immediately and the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are located in order to recover them and such rights or remedies shall apply regardless of whether the Goods have been incorporated into or attached to or form part of any other goods, materials or structures.
- 8.7 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.
- 8.8 On termination of the Contract, the Supplier's (but not the Customer's) rights in this condition 8 shall remain in effect.
- 9. Supply of Services**
- 9.1 The Supplier shall provide the Services to the Customer in accordance with the Specification in all material respects.
- 9.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 9.3 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.
- 9.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill. For the avoidance of doubt, the warranty given in this clause 9.4 is given in lieu of all warranties, conditions and other terms implied by statute or common law and all such warranties, conditions and other terms are, to the fullest extent permitted by law, hereby excluded from the Contract.
- 9.5 Unless specifically agreed by the Supplier and Customer in writing, any price quoted or agreed for the Goods and Services:



- (a) does not include any provision for reinstatement (including without limitation any redecoration, sealing or trimming) of surrounding areas, which if required will be charged in addition;
- (b) does not include the commissioning of any Goods (or other goods of which the Goods form part) or Services;
- (c) assumes structural, building and ground conditions appropriate for the installation of the Goods and carrying out of the Services and does not take into account any work required to bring about such conditions which if required will be charged in addition;
- (d) does not include locating services situated within areas where works are to be carried out, which if required will be charged in addition;
- (e) does not include the alteration or redirection of any services that may be present, which if required will be charged in addition;
- (f) does not include any structural or engineering calculations, which if required will be charged in addition; and
- (g) does not include any reinstatement or repositioning of equipment, machinery or chattels, which if required will be charged in addition.

9.6 For the avoidance of doubt, unless specifically agreed by the Supplier and Customer in writing, the following items are specifically excluded from the Contract:

- (a) the commissioning of any Goods (or any goods of which the Goods form part) or Services;
- (b) the off-loading of any Goods and the storage of such Goods following delivery;
- (c) the provision of any equipment or tooling required to lift or transport the Goods or to provide the personnel who are carrying out the Services with safe access to work at height;
- (d) any service or utility alterations, redirections or connections including without limitation any electrical installation or field wiring required in connection with the installation or operation of the Goods;
- (e) all fuels and reusables as are required to operate the Goods (including without limitation gas, oil, compressed air and water) and any work required in connection with the installation, supply, connection or extraction of such fuels and reusables;
- (f) any building or roofing work of any nature whatsoever including without limitation any basic, civil, wall, boring, stemming and concrete works;
- (g) any works of any nature whatsoever that are required to ensure the installation area and all other areas located in and around the Customer's premises comply with the law or any regulations thereunder including without limitation those associated with fire safety, hazardous materials, air purity or general health and safety compliance;

- (h) removal from site of packaging and waste generated at any time during the supply of the Goods and/or Services;
  - (i) the provision of any building or equipment alternations or other works as may be required to install or operate the Goods; and
  - (j) the obtaining of any planning permission or other consent or approval required for the installation or operation of the Goods.
- 9.7 Where preparation works are to be carried out by third parties and on inspection by the Supplier are not satisfactory, the Supplier reserves the right to raise abortive charges and/or contra-charge the Customer for hire of equipment, materials and labour to rectify the area to make good and enable installation.
- 9.8 Where a lead time has been quoted for the provision of Services, this is indicative only.
- 9.9 Where advice has been given by the Supplier, its employees, representatives or agents relating to planning permission or any other regulatory consent or approval, it is given in good faith but without liability on behalf of the Supplier and the Customer is responsible for seeking its own professional advice in relation to planning or related matters.
- 9.10 Unless specifically agreed by the Supplier and Customer in writing, no guarantee is given that the Supplier's or sub-contractor staff on site will conform to any specific accreditation, training or industry standards.
- 9.11 The Customer will make available appropriate welfare facilities to the Supplier's or sub-contractor staff on site.

## **10. Customer's obligations**

- 10.1 The Customer shall:
- (a) ensure that the terms of the Order and the information in the 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 free and uninterrupted access to the Customer's premises, the installation area, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
  - (d) access referred to in clause 10.1(c) above shall, unless otherwise agreed in writing, be available from 7.00am until 11.00pm, 7 days a week (including for the avoidance of doubt public holidays) and if the Supplier is not able to gain such access, or the Supplier is otherwise unable to perform the Services due to the Customer's fault or due to any of the matters referred to in clause 9, then additional charges shall apply as follows:
    - (i) from 7.00am at a rate of £75 per hour until work can commence;
    - (ii) a charge of £500 per day if a site visit is fully aborted.

- (e) 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;
- (f) prepare the Customer's premises for the supply of the Services by providing a flat and level installation area clear of obstruction;
- (g) 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;
- (h) ensure the installation area is serviced with electricity and provide the Supplier with access to electrical outlets and such other utilities as the Supplier shall require;
- (i) provide a working environment that complies with all relevant safety legislation, regulations and guidance and inform the Supplier in writing before the commencement of any Services of such safety requirements and potential risks in and around the installation area and provide all other information as would be required to prepare a risk assessment for carrying out the Services;
- (j) provide at the installation area, at no cost to the Supplier, such equipment as is requested at any time by the Supplier for the installation of the Goods;
- (k) where the Goods are to be stored for a period at the Delivery Location (or such other premises as the Customer requests) prior to commencement of the Services, the Customer shall be responsible at its own cost for providing appropriate storage facilities and ensuring that the conditions are secure and appropriate for the Goods;
- (l) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (m) indemnify the Supplier against all liabilities, costs or claims arising out of damage caused above, below, on or around the location where the Goods are to be installed or erected or Services provided, where such damage arises due to the failure of the Customer to inform the Supplier of the location of drains, pipes, cables or other services.

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

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the

Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10.2; 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.

**11. Charges and payment**

11.1 The price for the Goods and/or Services shall be the price set out in the Specification or, if no price is set out in the Specification, the price set out in the Supplier's written acceptance of the Order for the Goods and/or Services or, in the absence thereof, in the Supplier's published price list as at the date of delivery.

11.2 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 of the Goods or performance of the Services, to reflect any increase in the cost of the Goods or Services 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, services to be provided, or the Specification; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods or Services.

11.3 In all circumstances the Supplier reserves the right to demand in full (in cash or cleared funds) from the Customer, at the time an order is placed or at any time up to and including delivery of the Goods and/or commencement of the Services (as applicable), all sums due or to become due to the Supplier in respect of:

- (a) the Goods;
- (b) the Services; and/or
- (c) all other sums which are or may become due from the Customer to the Supplier.

11.4 Subject to clause 11.3 and unless otherwise agreed in writing, if the Customer does not have an approved credit account with the Supplier, all Goods and/or Services shall be paid for on or before delivery of the Goods or commencement of the Services (whichever is the earlier) in full and in cleared funds to a bank account nominated in writing by the Supplier.

- 11.5 Subject to clause 11.3 and unless otherwise agreed in writing, if the Customer has an approved credit account with the Supplier, all Goods and/or Services shall be paid for in full and in cleared funds to a bank account nominated in writing by the Supplier within 30 days of the date on which the invoice in respect of such Goods and/or Services is issued.
- 11.6 The Supplier may approve, refuse or withdraw a Customer's or potential customer's credit account at its absolute discretion (without specifying any reason for doing so) by service written notice to such effect on the Customer. Where a credit account is withdrawn, all amounts owing by the Customer to the Supplier in respect of that account shall become immediately due.
- 11.7 Time for payment shall be of the essence of the Contract.
- 11.8 If a Customer who has an approved credit account with the Supplier is subject to any of the events mentioned in 15.1(b) to 15.1(l) (both inclusive), all amounts payable from such Customer to the Supplier under any Contract or otherwise shall become due immediately.
- 11.9 All amounts payable to the Supplier under the Contract shall become due immediately on its termination.
- 11.10 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.
- 11.11 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the base lending rate from time to time of the Bank of England or, if higher, the then current rate prescribed under the Late Payment of Commercial Debts (Interest) Act 1988. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 11.12 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer (or any company or corporate entity which is a holding company, subsidiary or associate of the Customer) against any amount payable by the Supplier to the Customer.

11.13 Without prejudice to any other right or remedy of the Supplier, any payment by the Customer which results in a cheque being referred to the drawer for whatever reason, will incur a charge of £50.00 plus VAT per cheque payable by the Customer.

11.14 Operation and Maintenance manuals will not be submitted until payment is received in full. Any of the Operation and Maintenance manuals submitted to the Customer before all amounts due from the Customer to the Supplier under the Contract are received in full by the Supplier shall be held on trust by the Customer for the Supplier absolutely until such time as the Supplier receives payment in full.

## **12. Intellectual property rights**

12.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by the Supplier.

12.2 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.

12.3 All Supplier Materials are the exclusive property of the Supplier.

## **13. Confidentiality**

13.1 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 or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13 shall survive termination of the Contract.

13.2 No part of any drawing supplied by the Supplier to the Customer at any stage prior to or during or after the Contract may be copied, reproduced, scanned or stored in any electronic database or made available to any third party whether in whole or in part by any form or by any means.

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

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

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;

- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

14.2 Subject to clause 14.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of opportunity or depletion of goodwill, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the higher of: (i) the price of the Goods and/or Services; and (ii) £50,000.

14.3 In the event that the limitation on liability set out in clause 14.2 is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable then subject to clause 14.1, the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the Contract, the provision of Goods or the Services shall be limited to the Limit of Indemnity.

14.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

14.5 This clause 14 shall survive termination of the Contract.

## **15. Termination**

15.1 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:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 45 days after receipt of notice in writing of the breach;
- (b) 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (c) the 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;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the 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;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) 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 15.1(b) to clause 15.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) 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.

15.2 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.



- 15.3 Without limiting its other rights or remedies, the Supplier shall have the right to 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:
- (a) the Customer fails to pay any amount due under this Contract on the due date for payment; or
  - (b) the Customer becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

**16. Consequences of termination**

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services or Goods supplied or costs incurred by the Supplier but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them and the Customer grants the Supplier, its agents and employees, an irrevocable licence at any time to enter any premises where the Supplier Materials or Deliverables are or may be stored in order to recover them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**17. Force majeure**

- 17.1 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 party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, inclement weather conditions or default of suppliers or subcontractors.
- 17.2 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.

17.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 24 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other.

**18. General**

**18.1 Assignment and subcontracting.**

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

**18.2 Notices.**

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission.
- (c) This clause 18.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

18.3 **Waiver.** A waiver of any right under the Contract 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 preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**18.4 Severance.**

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted,

and the validity and enforceability of the other provisions of the Contract shall not be affected.

- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

18.6 **Third parties.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

18.7 **Variation.** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

18.8 **Governing law and jurisdiction.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.