

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

### 1.1 Definitions:

<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Commencement Date:</b>	has the meaning given in clause 2.2.
<b>Conditions:</b>	these terms and conditions as amended from time to time in accordance with clause 17.8.
<b>Contract:</b>	the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
<b>Control:</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
<b>Customer:</b>	the person or firm who purchases the Goods and/or Services from the Supplier.
<b>Data Protection Legislation:</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
<b>Delivery Location:</b>	has the meaning given in clause 4.2.
<b>Force Majeure Event:</b>	has the meaning given to it in clause 16.
<b>Goods:</b>	the goods (or any part of them) set out in the Order.
<b>Goods Specification:</b>	any specification for the Goods, including any relevant plans and drawings, that is agreed in writing by the Customer and the Supplier.
<b>Intellectual Property Rights:</b>	patents, rights to inventions, utility models, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information

(including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

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

**Services:** the services supplied by the Supplier to the Customer as set out in the Service Specification, which may include, without limitation, technical support services relating to the Goods supplied.

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

**Supplier:** **PFEIFER DRAKO LTD.** registered in England and Wales with company number 1515817 whose registered office is at Marshfield Bank, Woolstanwood, Crewe, Cheshire, CW2 8UY.

**Supplier Materials:** has the meaning given in clause 8.1(j).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Interpretation:**

- 1.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 a reference to a party includes its personal representatives, successors and permitted assigns.
- 1.4 a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 a reference to **writing** or **written** includes fax and email.

## **2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order by way of an order confirmation at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, data sheets, price lists, plans, particulars of weights and dimensions, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer and may be subject to change, and unless specified otherwise by the Supplier in writing, shall only be valid for a period of 20 Business Days from its date of issue.

2.6 The Customer acknowledges and accepts that the Supplier may require access to the Customer's premises or the relevant site in order to supply a quotation and, accordingly, the Customer shall permit or procure such access for the Supplier and its representatives as agreed between the parties.

2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## **3. GOODS**

3.1 The Goods are described in the Supplier's catalogue as modified by the applicable Goods Specification, as may be confirmed in a declaration of conformity issued by the Supplier to the Customer.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement.

**4. DELIVERY OF GOODS**

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the contract number, the type and quantity of the Goods (including the code/reference number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed when the Supplier places the Order at the Customer's disposal at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall be entitled to reasonably postpone or delay deliveries and shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to:
- (a) provide the Supplier with any relevant information, including without limitation, security, certification, drawings or reports or any required advance payment;
  - (b) provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or
  - (c) permit access or procure the grant of access for the Supplier and its personnel to the site for the purposes of performing the Supplier's obligations under the Contract.
- 4.5 In the event that the Customer hinders or fails to permit access or procure the grant of access for the Supplier and its personnel to the site for the purposes of performing the Supplier's obligations under the Contract upon the date(s) and/or at the time(s) agreed between the parties, the Customer shall reimburse the Supplier upon demand for any costs and expenses incurred by the Supplier arising from such prevention or delay.
- 4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by:

- (a) a Force Majeure Event; or
  - (b) the Customer's failure to
    - (i) provide the Supplier with any relevant information, including without limitation, security, certification, drawings or reports or any required advance payment;
    - (ii) provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction or information related to the supply of the Goods; or
    - (iii) permit access or procure access for the Supplier and its personnel to the relevant site.
- 4.7 If the Customer fails to accept delivery of the Goods within 3 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 5<sup>th</sup> 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).
- 4.8 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.9 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.
- 4.10 Any performance data provided by the Supplier is based on previous experience but the Supplier does not accept any liability for failure of Goods to meet any anticipated performance figures, unless it expressly agrees to guarantee the same in writing.
- 4.11 The Customer assumes all liability and responsibility for the capacity and performance of the Goods being sufficient and suitable for the Client's intended purposes.
- 4.12 Unless specified otherwise by the Supplier in writing, Goods where deemed appropriate by the Supplier may be delivered unpackaged and not protected against environmental elements. Where packaging materials are used (including without limitation, paper, plastic, jute, disposal pallets and reels), subject to clause 4.1(b) these are charged for and non-returnable.

## **5. QUALITY OF GOODS**

- 5.1 The Supplier warrants that on delivery, the Goods shall:

- (a) conform in all material respects with the Goods 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).
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace defective Goods, or refund the price of defective Goods in full if:
- (a) the Customer gives notice in writing within 5 Business Days of delivery or within a reasonable time of discovery (in respect of latent defects only) that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods and taking samples on site as the Supplier deems appropriate; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- 5.3 Notwithstanding clause 5.2, if it transpires that allegedly defective Goods were not defective and the Customer's request to rectify a defect unwarranted, the Supplier may require the Customer to reimburse the Supplier on request for the reasonable costs and expenses incurred by the Supplier in carrying out further work in connection with the allegedly defective Goods (including, without limitation, transport. Travel, labour and material costs).
- 5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.7 The Customer is responsible for obtaining all necessary consents and licences in relation to the Goods as required from time to time, including any applicable import licences and consents.

## **6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery pursuant to clause 4.3.

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

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

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

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

## **7. SUPPLY OF SERVICES**

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 The Supplier will ensure that its personnel comply with site security and health and safety policies and procedures applicable to the Delivery Location, provided always that such policies and procedures are made known to the Supplier in writing in advance.

## **8. CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
  - (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, Delivery Location, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;



- (e) prepare or procure that the Customer's premises/relevant site are prepared for the supply of the Services;
- (f) provide the Supplier, its employees, agents, consultants and subcontractors, with details of any site specific policies and procedures as referred to in clause 7.5;
- (g) ensure that it keeps the end customer fully updated in relation to timescales and requirements of the Supplier relating to the delivery of the Goods and/or supply of the Services;
- (h) 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;
- (i) comply with all applicable laws, including health and safety laws;
- (j) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (k) comply with any additional obligations as set out in the Service Specification and the Goods Specification or as otherwise advised to the Customer in writing by the Supplier.

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

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; 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. For the avoidance of any doubt, such charges may include aborted visit charges arising as a result of the Supplier being unable to access the relevant premises for delivery of the Goods and/or the supply of the Services.

## **9. CHARGES AND PAYMENT**

9.1 The price for Goods:

- (a) shall be the price set out in the Order; and

- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

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

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Supplier's order acknowledgment;
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day worked on usual working days of the Supplier;
- (c) unless agreed otherwise by the Supplier in writing, the Supplier shall be entitled to charge an overtime rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside its usual working hours referred to in clause 9.2(b); and
- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

- (a) increase the charges for the Services on an annual basis provided that the Supplier gives the Customer not less than 2 months' prior written notice of such increase;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing and supply costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods and/or Services.

9.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.

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

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

(c) in pounds sterling

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

- 9.6 If at any time the creditworthiness of the Customer is called into question, the credit standing of the Customer has in the Supplier's sole opinion been impaired for any reason, the Customer is in arrears in respect of any payments due to the Supplier or the Supplier otherwise deems in its sole opinion that payment in advance is appropriate, the Supplier reserves the right to request that money is paid on account by the Customer prior to the supply of Goods and/or Services.
- 9.7 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**) or any other applicable sales tax. Where any taxable supply for VAT or sales tax purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT or other sales tax invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT or any other applicable sales tax 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.
- 9.8 Without limiting any other right or remedy of the Supplier, if the Customer fails to make a payment due to the Supplier under the Contract by the due date, the Supplier shall have the right to charge the Customer interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law), provided that of the Customer is required under any applicable law to withhold or deduct an amount from payments due to the Supplier, it shall increase the sum it pays to the Supplier such that the Supplier receives a sum equal to the sum it would have received if no such withholdings or deductions have been made.
- 9.10 The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 10.2 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 upon the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to licence such rights to the Customer.

10.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

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

## **11. CONFIDENTIALITY**

11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

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

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2(a); and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **12. DATA PROTECTION**

12.1 Both parties agree to comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation.

12.2 If the Customer requires the Supplier to provide personal data relating to its personnel to the Customer as part of its tender requirements or otherwise (as "personal data" is defined under the Data Protection Legislation), the Customer undertakes to the Supplier that it will:

- (a) comply with all provisions contained within the Data Protection Legislation so far as the same shall apply to a data processor;
- (b) maintain sufficiently secure technical and security systems and procedures as to comply with the provisions of Data Protection Legislation;
- (c) process that personal data only on the documented written instructions of the Supplier;
- (d) ensure that all personnel who have access to and/or process the personal data are obliged to keep the personal data confidential;
- (e) not transfer the personal data outside of the European Economic Area unless the prior written consent of the Supplier has been obtained;

- (f) notify the Supplier without undue delay upon becoming aware of a data protection breach;
- (g) at the written direction of the Supplier, delete or return personal data and copies thereof to the Supplier on termination of the Contract unless required by applicable law to store the personal data; and
- (h) use all reasonable endeavours to ensure that its employees, agents and sub-contractors comply with this clause 12.

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

13.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.2 Subject to clause 13.1,

- (a) the Supplier shall in no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of or damage to goodwill; or (vi) indirect or consequential loss arising under or in connection with the Contract;
- (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 greater of:
  - (i) 125% of the price paid by the Customer to the Supplier in respect of the Goods and Services provided by the Supplier; and
  - (ii) £1,000,000 (one million pounds).

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

13.4 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.5 This clause 13 shall survive termination of the Contract.

#### **14. TERMINATION**

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

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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

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

14.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

#### **15. CONSEQUENCES OF TERMINATION**

15.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all of the Supplier Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

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

## **16. FORCE MAJEURE**

For the purposes of this clause 16, "**Force Majeure Event**" means an event beyond the reasonable control of the Supplier, including but not limited to, strikes, lock outs or other industrial disputes (whether involving the workforce of the Supplier or a third party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

16.1 The Supplier shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event.

16.2 If the Force Majeure Event prevents the Supplier from providing any of its Services and/or Goods for more than 60 days, the Supplier may, without limiting any other right or remedy available to it, terminate the Contract immediately by giving notice to the Customer.

## **17. GENERAL**

### **17.1 Assignment and other dealings**

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

### **17.2 Notices.**

- (a) Any notice or similar communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
  - or

- (ii) sent by fax to its main fax number or sent by email to the address specified in the Order.
  - (b) Any notice or similar communication shall be deemed to have been received:
    - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
    - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
    - (iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
  - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.6 **Entire agreement.**
- (a) The Contract constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.



- (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 17.7 **Third parties rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 17.9 **Language.** The Contract is drafted in the English language and any notice given under or in connection with it shall be in English. If translated, the English version of the Contract (and any notice or other document relating to the Contract) shall prevail if there is a conflict.
- 17.10 **Governing law and jurisdiction.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.