

## TERMS AND CONDITIONS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 13 (LIMITATION OF LIABILITY).

### SPECIFICATION

<b>Customer:</b>	
<b>Services:</b>	
<b>Initial Period:</b>	
<b>Renewal Period:</b>	
<b>Location:</b>	
<b>Equipment:</b>	
<b>Delivery date and other key dates:</b>	
<b>Fees:</b>	
<b>Agreed Payment terms (including any deposit requirements):</b>	
<b>Additional obligations:</b>	
<b>[Maintenance Services:]</b>	
<b>[Maintained Equipment:]</b>	
<b>[Number of visits for Preventative Maintenance:]</b>	
<b>[Response times for Reactive Service Calls:]</b>	

## 1. Interpretation

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

### 1.1 Definitions:

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

**Commencement Date:** has the meaning given in clause 2.3.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.5.

**Contract:** the contract formed between the Supplier and the Customer in accordance with clause 2.3 for the supply of Equipment, Services and/or Maintenance Services which shall incorporate these Conditions (including the Specification).

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Customer:** the person or firm set out in the Specification who purchases the Equipment, Services and/or Maintenance Services from the Supplier.

**Customer Default:** has the meaning set out in clause 9.3.

**Data Protection Legislation:** (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

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

**Equipment:** the equipment set out in the Specification.

**Excluded Causes:** has the meaning set out in clause 8.4.

**Excluded Maintenance:** any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.

**Fees:** the fees set out in the Specification payable by the Customer to the Supplier for the supply of the Equipment, Services and/or Maintenance Services in accordance with clause 10.

**Force Majeure Event:** shall have the meaning set out in clause 16.1.

**Good Working Order:** the Maintained Equipment operates in accordance with the Operating Manuals.

**Initial Period:** the initial period set out in the Specification commencing on the Commencement Date.

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

**Location:** the location specified in the Specification, or any other location as may be agreed by the parties in writing from time to time.

**Maintained Equipment:** the equipment set out in the Specification.

**Maintenance Services:** any maintenance services set out in the Specification which may include all or either of the Preventative Maintenance and/or Reactive Service Calls of the Maintained Equipment.

**Normal Business Hours:** 8:30am to 5:00pm GMT on a Business Day.

**Operating Manuals:** all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment.

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

**Preventative Maintenance:** means:

- (a) testing that the Maintained Equipment is functional; and
- (b) making any adjustments as may be required to ensure the Maintained Equipment remains in Good Working Order,

in accordance with clause 8.2.

**Reactive Service Calls:** in accordance with clauses 8.3 and 10.2:

- (a) making any adjustments to the Maintained Equipment; and
- (b) replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order.

**Renewal Period:** the period set out in the Specification which shall commence after the Initial Period.

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

**Specification:** the description or specification of the Equipment, Services and/or Maintenance Services (including any relevant plans or drawings and Deliverables) set out in these Conditions or as otherwise provided in writing by the Supplier to the Customer.

**Supplier:** Watford Refrigeration and Air Conditioning Limited incorporated and registered in England and Wales with company number 00457930 whose registered office is at Wiggshall Industrial Estate, Wiggshall Road, Watford, WD18 0FT.

**Supplier Materials:** has the meaning set out in clause 9.1(i).

- 1.2 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.
- 1.3 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.
- 1.4 A reference to **writing** or **written** includes fax and email.
- 1.5 The Specification forms part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any reference to these Conditions includes the Specification.
- 1.6 If there is any inconsistency between any of the provisions in the main body of these Conditions and the Specification, the provisions in the main body of these Conditions shall prevail.

## **2. Basis of contract**

- 2.1 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.2 The Order constitutes an offer by the Customer to purchase the Equipment, Services and/or Maintenance Services in accordance with these Conditions.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order and, where applicable, receives the Customer's deposit in accordance with the Specification, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Equipment, Services and/or Maintenance Services described in them. They shall not form part of the Contract or have any contractual force. If the Customer's Order for the Equipment, Services and/or Maintenance Services is rejected or withdrawn by the Supplier or the Customer, the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all samples, drawings or other materials provided to the Customer in its possession, custody or control and, in the case of destruction, certify to the Supplier that the Customer has done so.

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.

2.6 All of these Conditions shall apply to the supply of Equipment, Services and/or Maintenance Services except where application to one or the other is specified.

### **3. Supply of Equipment**

3.1 The Equipment is as described in the Specification.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### **4. Delivery of the Equipment**

4.1 The Supplier shall ensure that each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered.

4.2 The Supplier shall deliver the Equipment to the Location at any time after the Supplier notifies the Customer that the Equipment is ready.

4.3 Delivery of the Equipment shall be completed on the completion of unloading of the Equipment at the Location.

4.4 Any dates quoted for delivery of the Equipment 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 Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions, prepare the Location in accordance with the Supplier's instructions or any other instructions that are relevant to the supply of the Equipment.

4.5 If the Supplier fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement equipment of similar description and quality in the cheapest market available, less the price of the Equipment. The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.

- 4.6 If the Customer fails to accept delivery of the Equipment on the delivery date specified in the Contract, 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 Equipment:
- (a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the date following the delivery date specified in the Contract; and
  - (b) the Supplier shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 7 days after the delivery date specified in the Contract the Customer has not accepted delivery of the Equipment, the Supplier may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 4.8 The Supplier may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. Quality of the Equipment**

- 5.1 Any Equipment and spare parts supplied to the Customer shall be subject to the respective manufacturer's warranty. The Supplier shall provide a copy of the manufacturer's warranty upon request by the Customer.
- 5.2 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier.

## **6. Title and risk**

- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment, in which case title to the Equipment shall pass at the time of payment of all such sums.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- (a) store the Equipment 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 Equipment;
  - (c) maintain the Equipment 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 clauses 14.3(b) to 14.3(d); and
- (e) give the Supplier such information relating to the Equipment as the Supplier may require from time to time.

6.4 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clauses 14.3(b) to 14.3(d), then, without limiting any other right or remedy the Supplier may at any time:

- (a) require the Customer to deliver up all Equipment in its possession, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is 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 Specification in all material respects.

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

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

7.4 The Supplier reserves the right to suspend the Services or terminate the Contract if it is unsafe for the Supplier to carry out the Services, and the Supplier shall notify the Customer in any such event.

7.5 The Supplier shall provide the Services using reasonable care and skill.

## **8. Maintenance Services**

8.1 If the Contract is for or includes the supply of Maintenance Services, this clause 8 shall apply and the Supplier shall provide the Customer with the Maintenance Services for the Maintained Equipment at the Location during the period set out in the Specification.

8.2 The Supplier shall attend at the Location during Normal Business Hours at a frequency as is reasonably determined by the Supplier to perform Preventative Maintenance of the Maintained Equipment. The Supplier shall arrange with the Customer the dates and times for such visits in advance and in writing.

- 8.3 On the Customer informing the Supplier that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall:
- (a) use reasonable endeavours to attend at the Location within the relevant response times set out in the Specification; and
  - (b) use reasonable endeavours to perform Reactive Service Calls of the Maintained Equipment within the relevant timescales set out in the Specification.
- 8.4 The Supplier is not obliged to perform any Excluded Maintenance. Where the Supplier is performing or has performed the Maintenance Services in circumstances where it is established that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge, and the Customer shall pay, additional fees in respect of that work. Excluded Causes shall mean:
- (a) a defect in the manufacturer's design of the Maintained Equipment;
  - (b) faulty materials or workmanship in the manufacture of the Maintained Equipment;
  - (c) use of the Maintained Equipment with equipment or materials not supplied or approved in writing by the Supplier;
  - (d) any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents unless prior approval by the Supplier has been given in writing;
  - (e) the Customer or a third party moving the Maintained Equipment;
  - (f) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied;
  - (g) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
  - (h) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;
  - (i) damage caused by a failure to report a known fault or malfunction;
  - (j) replacement of capital and major items of plant or equipment due to external effect, age related failure obsolete equipment and obsolescent spares;
  - (k) scaffolding, builders work or heavy lifting of Maintained Equipment or any other equipment;
  - (l) fitting of spares parts to the Maintained Equipment which are not supplied by or on behalf of the Supplier;
  - (m) replacement of batteries within the Maintained Equipment; or
  - (n) the neglect or misuse of the Maintained Equipment.



- 8.5 In performing the Maintenance Services, the Supplier shall use reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order while in attendance at the Location. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours, the Supplier shall either arrange with the Customer for a further visit to the Location within Normal Business Hours to complete the repair, or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site.
- 8.6 The Supplier shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.
- 8.7 Replacements and spare parts:
- (a) In performing the Maintenance Services, the Supplier shall use reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. Where the Supplier can reasonably source individual spare parts, the Supplier shall have the right to charge the Customer for the spare parts and shall provide a quotation for the cost of the spare parts.
  - (b) All spare parts and/or replacements provided by the Supplier to the Customer shall become part of the Maintained Equipment and the property of the Customer. All parts and components removed from the Maintained Equipment by the Supplier in the course of performing the Maintenance Services shall no longer constitute part of the Maintained Equipment and will be the property of the Supplier. The Customer will transfer ownership to the Supplier, with full title guarantee and free from all third-party rights, all parts and components removed from the Maintained Equipment by the Supplier in accordance with this clause 8.7(b).

## **9. Customer's obligations**

- 9.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification or otherwise in connections with the supply of Services and/or Maintenance Services are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (e) prepare the Customer's premises for the supply of the Services as notified by the Supplier from time to time;

- (f) provide the Supplier with 24 hours' notice if the Supplier is unable to provide the Services on a particular day or at a particular time (e.g. access to the Location is unavailable).
- (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) comply with all applicable laws, including health and safety laws;
- (i) 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
- (j) comply with any additional obligations as set out in the Specification.

9.2 In addition to the obligations set out in clause 9.1, if the Contract includes the supply of Maintenance Services, the Customer shall:

- (a) ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions as the Supplier may give from time to time;
- (b) notify the Supplier promptly if the Maintained Equipment is discovered to be operating incorrectly;
- (c) not allow any person other than the Supplier to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of the Supplier;
- (d) not move the Maintained Equipment from the Location without the prior written approval of the Supplier (approval not to be unreasonably withheld or delayed);
- (e) store any reserve equipment only in conditions approved by the Supplier, and make this equipment available for periodic maintenance, as with all other Maintained Equipment; and
- (f) only use supplies or materials supplied or approved by the Supplier (approval not to be unreasonably withheld or delayed).

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

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.3; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **10. Fees and payment**

- 10.1 For the performance of the Services, the Customer shall pay the Fees to the Supplier at such times and at such intervals as set out in the Specification.
- 10.2 Where applicable and unless otherwise set out in the Contract or agreed in writing by the parties, Reactive Service Calls shall not be included in the Fees and the Customer shall be charged such additional fees for each of the Supplier's personnel reasonably required to attend the Location. Any additional fees shall be calculated from when the personnel arrive at the Location until they leave the Location.
- 10.3 The Supplier reserves the right to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 10.4 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 terms agreed by the Supplier and confirmed in writing to the Customer; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

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

- 10.5 All Fees are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate for the time being prescribed by law. 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 at the same time as payment is due for the supply of the Services.
- 10.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14:
  - (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.6 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%;

- (b) the Supplier may suspend all or part of the Services and/or Maintenance Services until payment has been made in full.

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

## **11. Intellectual property rights**

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier and/or its licensors.

## **12. Data protection and data processing**

12.1 Each party shall 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 under the Data Protection Legislation.

12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).

12.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the Contract.

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

13.1 Nothing in the Contract 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; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

13.2 Subject to clause **13.1**, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;

- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; or
- (g) any indirect or consequential loss.

13.3 Subject to clause 13.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the lower amount of either £200,000 or 150% of the total Fees paid under the Contract.

13.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.5 This clause 13 shall survive termination of the Contract.

#### **14. Termination**

14.1 If the Contract is for the supply of Maintenance Services, the Contract shall commence on the Commencement Date. Unless terminated earlier in accordance with this clause 10, the Contract shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Period or the relevant Renewal Period, to terminate the Contract at the end of the Initial Period or the relevant Renewal Period, as the case may be.

14.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the other party one months' written notice.

14.3 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 it:

- (a) commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
- (b) 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;
- (c) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- (d) financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.4 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.

14.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services 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 14.3(b) to clause 14.3(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 supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables 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 or 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 come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **16. General**

16.1 **Force majeure.** Neither party shall 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 events, circumstances or causes beyond its reasonable control (**Force Majeure Event**).

#### 16.2 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, 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.

#### 16.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of 12 months 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 16.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) 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 16.3;
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority;
  - (iii) if the parties agree in writing is not confidential or may be disclosed; and
  - (iv) if the Confidential Information is or becomes generally available to the public (other than as a result of its disclosure by a party in breach of clause 11).
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

#### 16.4 **Entire agreement.**

- (a) The Contract constitutes 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 misstatement based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

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

16.6 **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 breach or default. 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.

16.7 **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.

16.8 **Notices.**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by fax to its main fax number or sent by email to the address specified in the Order or Specification.

(b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

16.9 **Third party rights.**

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.



- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**16.10 Dispute resolution.**

- (a) Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 16.10.
- (b) The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- (c) The parties shall use all reasonable endeavours to reach a negotiated resolution by meeting to discuss the dispute and attempting to resolve it.
- (d) If the dispute has not been resolved within 14 days of the meeting then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- (e) The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to a dispute under clause 16.12 (Jurisdiction), which clause shall apply at all times.

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

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