

## TERMS & CONDITIONS OF BUSINESS

### 1 Interpretation

#### 1.1 In these Conditions:

- (a) **'Business Day'** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
- (b) **'Business Hours'** means the period from 9:00 am to 5:00 pm on any Business Day;
- (c) **'Commencement Date'** has the meaning given in clause 2.2;
- (d) **'Conditions'** means these terms and conditions of business as amended or varied in accordance with clause 24;
- (e) **'Consumer Prices Index'** means the UK Consumer Prices Index as from time to time published by the Office for National Statistics;
- (f) **'Contract'** means the contract between the Supplier and the Customer for the supply of Goods or the provision of Services or the supply and provision of Goods and Services (as the case may be) incorporating these Conditions;
- (g) **'Customer'** means the person who purchases Goods or Services or Goods and Services (as the case may be) from the Supplier;
- (h) **'Data Protection Legislation'** means all applicable data protection and privacy legislation in force from time to time in the UK, including the UK GDPR, the Data Protection Act 2018 and the Privacy & Electronic Communications Regulations 2003 (SI 2003/2426);
- (i) **'Deliverables'** means any deliverables relating to the Services (not being Goods) produced by the Supplier for the Customer;
- (j) **'Force Majeure Event'** means has the meaning given to it in clause 16;
- (k) **'Goods'** means the goods (or any part of them) supplied by the Supplier to the Customer as set out or referred to in the Order Acknowledgement together with such other or additional goods as the parties may have agreed in writing, in each case as modified by any Goods Specification;
- (l) **'Goods Specification'** means any specification(s) for the Goods which are set out or referred to in the Order Acknowledgement together with such other or additional specifications as the parties may have agreed in writing;
- (m) **'Incoterms'** means Incoterms® 2020 as published by the International Chamber of Commerce;
- (n) **'Intellectual Property Rights'** means 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;

- (o) **'Order'** means the Customer's order for the supply of Goods or the provision of Services or the supply and provision of Goods and Services (as the case may be) described in the Customer's purchase order form or acceptance of the Supplier's quotation;
- (p) **'Order Acknowledgement'** means a written acceptance of the Order issued by the Supplier as described in clause 2.2;
- (q) **'Services'** means the services (or any part of them), including any Deliverables, provided by the Supplier to the Customer as set out or referred to in the Order Acknowledgement together with such other or additional services as the parties may have agreed in writing, in each case as modified by any Service Specification;
- (r) **'Service Specification'** means any specification(s) for the Services which are set out or referred to in the Order Acknowledgement together with such other or additional specifications as the parties may have agreed in writing;
- (s) **'Supplier'** means ebm-Papst UK Limited a private limited company incorporated and registered in England & Wales with company number 01212237 whose registered office is at Chelmsford Business Park, Chelmsford, Essex CM2 5EZ; and
- (t) **'UK GDPR'** means has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 The following rules of interpretation apply in these Conditions:

- (a) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (b) a **'person'** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (c) the Contract shall be binding on, and enure to the benefit of, its parties and where applicable their respective personal representatives, successors and permitted assigns, and references to either party shall include that party's personal representatives, successors and permitted assigns;
- (d) a reference to legislation or a legislative provision is a reference to it as amended or re-enacted, and a reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision;

- (e) any words following the terms **'including'**, **'include'**, **'in particular'**, **'for example'** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms;
- (f) a reference to **'writing'** or **'written'** includes email but excludes fax; and
- (g) any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

## **2 Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services (as the case may be) in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, whereupon the Contract (incorporating these Conditions) shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services described in the Supplier's published catalogues or brochures for the time being are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor 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 law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 days from its date of issue or such other period as may be specified in the quotation or as the Supplier may agree in writing.
- 2.6 All of these Conditions shall apply to both the supply of Goods and the provision of Services, except where application to one or the other is specified.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

## **3 Goods**

- 3.1 The Supplier shall use reasonable endeavours to supply the Goods to the Customer in accordance with any Goods Specification in all material respects.
- 3.2 The Goods are as described in the Supplier's catalogues or brochures for the time being, in each case as modified by any Goods Specification.

- 3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by or on behalf of 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 3.3 shall survive termination of the Contract.
- 3.4 The Supplier reserves the right to amend or vary any Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.5 Responsibility for any specified purpose or use or suitability of any Goods shall only be assumed by the Company to the extent expressly and specifically agreed in writing by the Company. In all other respects the suitability and application risk are the sole responsibility of the Customer. The basic technical conditions and requirements of the Goods are described in the relevant published documentation relating to those Goods. Any other use or application of the Goods is prohibited. The Customer shall impose the same conditions and requirements upon its customers and end-users of the Goods.

#### **4 Delivery of Goods**

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which refers to the Order, the date of the Order Acceptance, the contract number, and the type and quantity of the Goods, and if the Order is being delivered by instalments the outstanding balance of Goods remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging materials that fact is clearly stated on the delivery note, and in which case the Customer shall make such packaging materials available for collection at such times as the Supplier may reasonably request. Otherwise, the Goods will be delivered with disposable packaging.
- 4.2 The Supplier shall use reasonable endeavours to procure the delivery of the Goods to the location set out or referred to in the Order Acknowledgement or such other location(s) as the parties may have agreed in writing, or if no location is set out or referred to in the Order Acknowledgement or agreed then the Goods shall be supplied Ex-Works under Incoterms (i.e. the Supplier shall place the Goods at the disposal of the Customer at the Supplier's premises or at another named place) ('**Delivery Location**'). The Supplier or its representative making the delivery is entitled to deliver the Goods to any person at the Delivery Location with apparent authority to accept delivery, and acceptance by that person shall be deemed acceptance of the Goods by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of the loading or unloading (as the case may be) of the Goods at the Delivery Location. Any claims regarding quantities and/or loss and/or damage in transit shall only be considered if made within seven days from delivery of the Goods.

- 4.4 Any dates 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 that is caused by a Force Majeure Event or the Customer's failure to give the Supplier adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to give the Supplier adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within 7 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 first Business Day following expiry of the said 7 day period; and
  - (b) the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses, including insurance.
- 4.7 If 14 days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose 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.
- 4.8 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.
- 4.9 Unless alternative arrangements have been agreed in writing between the Company and the Customer, where the Goods supplied by the Company are products within the scope of the Waste Electrical & Electronic Equipment Regulations 2013 SI 2013/3113 ('WEEE'), it shall be the Customer's responsibility to undertake and finance the cost of collection, treatment, recovery and environmentally sound disposal of such Goods in full compliance with WEEE, and the Customer shall indemnify the Company against all actions, proceedings, costs, claims and expenses suffered or incurred by the Company through any breach or non-compliance or non-performance by the Customer in relation to the same.

## **5 Quality of Goods**

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery ('Warranty Period'), the Goods shall:
- (a) conform in all material respects with their description and any Goods Specification; and

(b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period and within 7 days from the date of discovery that the Goods do not comply with the warranty in clause 5.1;
- (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 Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Where the Goods are products within the scope of WEEE, the Company shall only accept their return if they are clean and free of hazardous material in accordance with the requirements of WEEE.

5.3 The Supplier shall not be liable for any failure of any Goods to comply with the warranty in clause 5.1 if:

- (a) any further use of such Goods is made after the giving of a notice in accordance with clause 5.2; or
- (b) the defect has arisen because such Goods were not used strictly in accordance with the relevant operating instructions, manuals and other similar user documentation; or
- (c) the defect has arisen because of any failure to follow the Supplier's oral or written instructions relating to the storage, commissioning, installation, use or maintenance of such Goods, and, subject to that, good trade practice regarding the same; or
- (d) where applicable, such Goods have not been powered by the correct electrical supply or have been overloaded; or
- (e) any alterations or repairs have been to such Goods without the written consent of the Supplier, or there have been any attempts to do so; or
- (f) the defect has arisen as a result of the Supplier following any Goods Specification or drawing, design or other specification supplied by or on behalf of the Customer; or
- (g) the defect has arisen as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (h) such Goods differ from their description or any Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except to the extent provided for in this clause 5, the Supplier shall have no liability to the Customer in respect of any failure of the Goods to comply with the warranty in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.6 At all times the Goods must only be used strictly in accordance with the relevant operating instructions manuals. Where applicable, operating instructions manuals will be supplied with the Goods, with further copies being available upon request or viewable or downloadable from the Supplier's website.

## **6 Title and risk**

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

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full, in cash and in cleared funds, for the Goods.

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 or on behalf of 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 paragraphs (b) to (d) of clause 13.3; and
- (e) give such information and documentation relating to the Goods and the ongoing financial position of the Customer as the Supplier may reasonably require.

6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product, and if the Customer fails to do so promptly the Supplier or its representatives may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7 Provision of Services**

7.1 The Supplier shall use reasonable endeavours to provide the Services to the Customer in accordance with any Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the provision of the Services set out or referred to in the Order Acknowledgement or such other dates as the parties may have agreed in writing, but any such dates shall be estimates only and time shall not be of the essence for the provision of the Services.

7.3 The Supplier reserves the right to amend or vary any Service Specification where necessary to comply with any applicable law or regulatory requirement or if the amendment or variation 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 warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8 Customer's obligations

8.1 The Customer shall:

- (a) comply with all the Customer's obligations set out or referred to in the Order Acceptance;
- (b) ensure that the terms of the Order, and all information and documentation relating to the Order, including in particular information and documentation relating to any Service Specification or Goods Specification supplied by or on behalf of the Customer, is complete and accurate;
- (c) co-operate with the Supplier in all matters relating to the Services and their provision;
- (d) give the Supplier such information, documentation and materials as is necessary or which the Supplier may reasonably require to enable and facilitate the provision of the Services, and ensure that such information is complete and accurate in all material respects;
- (e) where applicable, give or procure that these is given to the Supplier and its employees, workers, agents and contractors such access to any premises, office accommodation and other facilities as is necessary or which the Supplier may reasonably require to enable and facilitate the provision of the Services;
- (f) where applicable, prepare the relevant premises for the provision of the Services;
- (g) where applicable, before the date on which the Services are to start obtain and maintain all licences, permissions and consents as are necessary or which the Supplier may reasonably require to enable and facilitate the provision of the Services;
- (h) comply with all applicable laws, including health and safety laws;
- (i) keep all materials, equipment, documents and other property belonging to the Supplier ('**Supplier Materials**') at the relevant 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 set out or referred to in any Service Specification or any Goods Specification.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission on the part of the Customer or failure on the part of 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 the provision 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 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.

## **9 Charges and payment**

### **9.1 The price for the Goods:**

- (a) shall be the price set out or referred to in the Order Acknowledgement or such other price as the parties may have agreed in writing, or if no price is set out or referred to in the Order Acknowledgement or agreed then the price specified in the Supplier's published prices list or standard price for the time being; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, and transport of the Goods, which shall be invoiced to the Customer (in addition to the price),

or such other price as the parties may have agreed in writing.

### **9.2 The charges for the Services shall be the charges set out or referred to in the Order Acknowledgement or such other charges as the parties may have agreed in writing, or if no charges are set out or referred to in the Order Acknowledgement or agreed then the charges shall be calculated on a time and materials basis as follows:**

- (a) the charges shall be calculated in accordance with the Supplier's published charges list or standard daily fee rate for the time being;
- (b) the Supplier's daily fee rate for each individual person is calculated on the basis of an 8 hour day from 9:00 am to 5:00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in paragraph (b) above; 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 provision of the Services, and for the cost of any materials,

or such other charges as the parties may have agreed in writing.

### **9.3 The Supplier reserves the right to:**

- (a) increase the price of any Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of such 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 costs; or
  - (ii) any request by or on behalf of the Customer to change any delivery date, quantity or type of Goods ordered, or any 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
- (b) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period, with the first such increase taking effect on the first anniversary of the Commencement Date, and any increases being based on the latest available figure for the percentage increase in the Consumer Prices Index.

9.4 In respect of the Goods, the Supplier shall invoice the Customer in accordance with any invoicing arrangements set out or referred to in the Order Acknowledgement or such other arrangements as the parties may have agreed in writing, or if no invoicing arrangements are set out or referred to in the Order Acknowledgement or agreed then at any time after completion of delivery. In respect of the Services, the Supplier shall invoice the Customer in accordance with any invoicing arrangements set out or referred to in the Order Acknowledgement or such other arrangements as the parties may have agreed in writing, or if no invoicing arrangements are set out or referred to in the Order Acknowledgement or agreed then either on completion of the Services or monthly in arrears as the Supplier decides.

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

- (a) in accordance with any payment terms set out or referred to in the Order Acknowledgement or such other terms as the parties may have agreed in writing, or if no payment terms are set out or referred to in the Order Acknowledgement or agreed then within 30 days of the date of invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier,

or such other payment terms as the parties may have agreed in writing. Time for payment shall be of the essence of the Contract.

9.6 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 Goods or the provision of the Services or both at the same time as payment for such supply or provision is due.

- 9.7 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 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Such interest will accrue each day at 3% a year above the NatWest's base rate from time to time or 8% a year, whichever is the higher.
- 9.8 All amounts due under the Contract shall be paid in the currency set out or referred to in the Order Acknowledgement or such other currency as the parties may have agreed in writing, or if no currency is set out or referred to in the Order Acknowledgement or agreed then in British pound sterling (£). All such payments shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10 Intellectual property rights**

- 10.1 Where applicable, all Intellectual Property Rights in or arising out of or in connection with any Services (other than Intellectual Property Rights in any materials provided by or on behalf of the Customer) shall be owned by the Supplier.
- 10.2 Where applicable, the Supplier shall use reasonable endeavours to procure that there is granted to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by or on behalf of the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by or on behalf of the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **11 Data protection**

To the extent applicable, the requirements of the Data Protection Legislation shall apply to the Contract.

## **12 Limitation of liability**

- 12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract, including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Neither party may benefit from the limitations and exclusions in this clause 12 in respect of any liability arising from its deliberate default.
- 12.3 Nothing in the Contract limits any liability to the extent it cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;

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

12.4 Subject to clause 12.2 and clause 12.3, the following types of loss are wholly excluded:

- (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; and
- (g) indirect or consequential loss.

12.5 Subject to clause 12.2, clause 12.3 and clause 12.4, the Supplier's total liability to the Customer shall not exceed the contract price, being the total price of the Goods and the Services supplied and provided under the Contract.

12.6 The Supplier has given commitments as to compliance of the Goods and the 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 and 5 of the Supply of Goods & Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.7 This clause 12 shall survive termination of the Contract.

### **13 Termination**

13.1 If the Order Acknowledgement sets out or refers to the Contract ending on a specified date or expiring after a specified period the Contract shall automatically terminate on such date or upon the expiry of such period, or on such other date or upon the expiry of such other period as the parties may have agreed in writing.

13.2 Where the Contract has an unexpired term of more than 90 days, without affecting any other right or remedy available to it, either party may terminate the Contract early by giving to the other party not less than 90 days' written notice. For the avoidance of doubt, if the Contract has an unexpired term of 90 days or less then neither party has a right to terminate the Contract early by the giving of notice.

13.3 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 any term of the Contract, and if such breach is remediable fails to remedy that breach within 7 days after being notified in writing to do so; or
  - (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), obtaining a moratorium, 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; or
  - (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 so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.4 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 the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.5 Without affecting any other right or remedy available to it, the Supplier may suspend any further supply of Goods or provision of Services under the Contract, or any supply of goods or provision of services under 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 paragraphs (b) to (d) of clause 13.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

#### **14 Consequences of termination**

- 14.1 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 any Goods and 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; and
  - (b) the Customer shall return all the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so the Supplier or its representatives may enter the relevant 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.
- 14.2 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.

14.3 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.

## **15 Confidentiality**

15.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.2.

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

(a) to its employees, workers, agents and contractors and advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that such employees, workers, agents and contractors and advisers to whom it discloses the other party's confidential information comply with this clause 15; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **16 Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control ('**Force Majeure Event**'). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

## **17 Assignment and other dealings**

17.1 The Supplier may at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

17.2 The Customer shall not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## **18 Notices**

18.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

(a) delivered by hand to its address stated in the Order Acknowledgement or principal place of business for the time being; or

(b) delivered by pre-paid first-class post or other next working day delivery service at its address stated in the Order Acknowledgement or principal place of business for the time being; or

- (c) sent by email to its address stated in the Order Acknowledgement or principal email address for the time being,

or to such other address within the UK mainland or email address as may be substituted in writing by the party to be served.

18.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) 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
- (c) if sent by email, at the time of transmission, or if this time falls outside Business Hours in the place of receipt then when Business Hours resume.

18.3 This clause 18 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.

## **19 Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 19 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

## **20 Waiver**

Except as provided for by clause 2.7, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## **21 No partnership or agency**

Nothing in the Contract is intended to, nor 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.

## **22 Entire agreement**

The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not provided for 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.

## **23 Third party rights**

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.

#### **24 Variation**

Except as provided for in these Conditions, no amendment or variation of the Contract shall be effective unless it is expressly and specifically agreed in writing by the parties.

#### **25 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.

#### **26 Jurisdiction**

Each party irrevocably agrees that the courts of England 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.

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