

## Cap Coder Limited: Terms and Conditions for the supply of goods and services

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 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 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.8.

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

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

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

**Delivery Location:** has the meaning given in clause 4.1.

**Force Majeure Event:** has the meaning given to it in clause 17.

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

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring 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 or unfair competition, rights in designs, 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.

**Order:** the Customer's written acceptance of the Supplier's quotation.

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

**Service Specification:** any specification for the Services, including any relevant plans or drawings that is agreed in writing by the Customer and the Supplier.

**Servicing:** has the meaning given in clause 5.4.

**Supplier:** Cap Coder Limited registered in England and Wales with company number 2101507.

**Supplier Materials:** has the meaning given in clause 9.1.8.

## 1.2 Interpretation:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 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.

1.2.4 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.

1.2.1 A reference to **writing** or **written** includes email but not fax.

## 2 BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and 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 (which, for the avoidance of doubt, may be issued by email) at which point and on which date the Contract shall come into existence (**Commencement Date**).

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 contained in the Supplier's quotations, catalogues and/or brochures and/or the content on the Supplier's website 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 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 90 Business Days from its date of issue.

2.6 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 Goods Specification.

3.2 To the extent that the Goods are to be provided in accordance with a Goods Specification supplied by the Customer:

3.2.1 the Customer shall ensure that the contents of the Goods Specification are complete, accurate, up to date and free from any errors. The parties hereby acknowledge and agree that the Supplier shall not be liable where the Goods do not comply with the warranty in clause 5.1 as a result of any failure by the Customer to comply with this clause 3.2.1; and

3.2.2 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 3.2.2 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, and the Supplier shall notify the Customer in any such event.

3.4 Due to the indeterminate nature of customizing the Goods, production rates or freedom from spillage in respect of the Goods are not guaranteed by the Supplier.

### **4 DELIVERY OF GOODS**

4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions and/or information that are relevant to the supply of the Goods.

4.4 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 provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction and/or information related to the supply of the Goods.

4.5 If the Customer fails to take delivery of the Goods within three 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:

4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

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

4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.7 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.8 The Supplier may, at its sole discretion, 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.

## **5 QUALITY OF GOODS**

5.1 Subject to clause 5.3, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), provided that the Customer's use of the Goods does not exceed an average of 40 hours a week at 90% running efficiency during the warranty period, the Goods shall:

5.1.1 conform in all material respects with their description and any applicable Goods Specification; and

5.1.2 be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.4, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

5.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

- 5.2.3 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 The Supplier shall not be liable to replace or repair any "wear parts" forming part of the Goods as defined, described or stipulated in any applicable Goods Specification and/or any documentation or information provided to the Customer by the Supplier along with the Goods. For the avoidance of doubt, the warranty set out in clause 5.1 shall not apply to any such "wear parts" and the Supplier reserves the right to charge for the replacement of any such "wear parts".
- 5.4 Where the Customer's use of the Goods will exceed an average of 40 hours a week at 90% running efficiency during the warranty period, the Supplier recommends that the Customer procures that the Supplier services such Goods every 6 months (**Servicing**). The Supplier reserves the right to charge the Customer for any such Servicing in accordance with these Conditions.
- 5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.5.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - 5.5.2 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;
  - 5.5.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
  - 5.5.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 5.5.5 the defect arises as a result of fair wear and tear, wilful damage, misuse, negligence, or abnormal working conditions;
  - 5.5.6 the failure arises as a result of the Customer's use of the Goods exceeding an average of 40 hours a week at 90% running efficiency during the warranty period and the Customer failing to procure Servicing from the Supplier in respect of such Goods; or
  - 5.5.7 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 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.
- 5.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.8 All Goods should be immediately unpacked by the Customer on delivery and checked for damage or shortage, which must be immediately notified in writing to either the Supplier, any

applicable carrier or the Customer's insurers. Failure to do so by the Customer, will result in the Supplier being unable to take responsibility for any shortage or damage to the Goods.

## **6 INSTALLATION OF THE GOODS**

- 6.1 Where expressly provided for in an Order, the Supplier will provide an engineer to supervise the installation of the Goods by the Customer. Where the Supplier's engineer enters the Customer's premises, the Customer shall ensure that its premises comply with all applicable health and safety laws and regulations.
- 6.2 Unless otherwise agreed by the Supplier in writing, installation of the Goods will comprise of assembly, including the connection of services to the Goods from adjacent dedicated supply points, commissioning of the Goods and instruction of buyer's staff.
- 6.3 The Customer shall arrange assistance by other trades as required and sign the Supplier's acceptance certificate on completion of the installation.
- 6.4 The Supplier's engineer's time for travel and on-site will be charged at the rate quoted, plus travelling, hotel and subsistence at cost.

## **7 TITLE AND RISK**

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.3 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;
  - 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.4; and
  - 7.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
    - (a) the Goods; and
    - (b) the ongoing financial position of the Customer.
- 7.4 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, enter any

premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8 SUPPLY OF SERVICES**

8.1 The Supplier shall supply the Services to the Customer in accordance with any agreed Service Specification in all material respects.

8.2 To the extent that the Services are to be provided in accordance with a Services Specification supplied by the Customer:

8.2.1 the Customer shall ensure that the contents of the Services Specification are complete, accurate, up to date and free from any errors. The parties hereby acknowledge and agree that the Supplier shall not be liable where the Services do not comply with the requirements of this clause 8 as a result of any failure by the Customer to comply with this clause 8.2.1; and

8.2.2 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 Services Specification. This clause 8.2.2 shall survive termination of the Contract.

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

8.4 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, and the Supplier shall notify the Customer in any such event.

8.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **9 CUSTOMER'S OBLIGATIONS**

9.1 The Customer shall:

9.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;

9.1.2 co-operate with the Supplier in all matters relating to the Services;

9.1.3 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 to provide the Services;

- 9.1.4 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;
  - 9.1.5 prepare the Customer's premises for the supply of the Services;
  - 9.1.6 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;
  - 9.1.7 comply with all applicable laws, including health and safety laws;
  - 9.1.8 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
  - 9.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 9.2 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**):
- 9.2.1 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;
  - 9.2.2 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 9.2; and
  - 9.2.3 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 CHARGES AND PAYMENT**

- 10.1 The price for Goods:
- 10.1.1 shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the order; and
  - 10.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 10.2 The charges for Services shall be calculated on a time and materials basis:

- 10.2.1 the charges shall be calculated in accordance with [the Supplier's daily fee rates], as set out in the Order;
- 10.2.2 the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- 10.2.3 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.
- 10.3 The Supplier reserves the right to:
- 10.3.1 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 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];
- 10.3.2 increase the price of the Goods, by giving notice to the Customer, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification;
  - (c) 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;
  - (d) any improvements or simplifications to the Supplier's equipment and/or the Supplier's machine specification.
- 10.4 In respect of Goods, subject to clause 10.5, 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.
- 10.5 Without prejudice to clauses 4.4, 4.5 and 4.6, if the Supplier has produced the Goods in accordance with the Goods Specification and the Supplier notifies the Customer that the Goods are ready for the Customer to perform any agreed factory acceptance testing and/or delivery, but the Customer refuses, is delayed or is unable to receive the Goods for such testing and/or to take delivery, the Supplier shall have the right to immediately invoice the Customer for the Goods in full.
- 10.6 The Customer shall pay each invoice submitted by the Supplier:
- 10.6.1 within 30 days of the date of the invoice, and

10.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

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

10.7 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**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.8 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 15 (Termination), 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 10.8 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%.

10.9 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 (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

11.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.

11.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier (including, without limitation, the Goods Specification and the Services Specification) for the term of the Contract for the purpose of providing the Services and the Goods to the Customer.

11.5 The Customer warrants to the Supplier that its use of any of the Customer's materials (including, without limitation, the Goods Specification and the Services Specification) will not infringe and is not likely to infringe the Intellectual Property Rights of any third party and that the Customer has in place all necessary consents and permissions required for the Supplier to use the Customer's materials for the purpose of providing the Services and the Goods to the Customer.

11.6 The Customer agrees to indemnify the Supplier and its agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any

kind (including reasonable legal fees) arising from any breach by the Customer of the warranty set out in clause 11.5.

## **12 DATA PROTECTION**

12.1 For the purposes of this clause 12 "Data Protection Legislation" means data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018. **Personal data** has the meaning given in the Data Protection Legislation.

12.2 The parties acknowledge that they may, during the Term, share with each other certain personal data regarding their respective employees, officers, agents or consultants. Each party will ensure it complies with the Data Protection Legislation in its handling of such personal data.

12.3 The Customer warrants that it has the necessary notices and consents in place to enable lawful transfer of any personal data to the Supplier.

## **13 CONFIDENTIALITY**

13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, 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 13.2.

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

13.2.1 to its employees, officers, representatives or 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 its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and

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

13.3 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.

## **14 LIMITATION OF LIABILITY**

14.1 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

14.2.1 death or personal injury caused by negligence;

14.2.2 fraud or fraudulent misrepresentation; and

- 14.2.3 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).
- 14.3 Subject to clause 14.2, the Supplier's total liability to the Customer shall not exceed an amount equal to the total charges payable by the Customer to the Supplier under the Contract in the 12 months preceding the date on which the liability arises.
- 14.4 Subject to clause 14.2, the following types of losses are wholly excluded by the Supplier under and/or in connection with the Contract:
- 14.4.1 loss of profits;
  - 14.4.2 loss of sales or business;
  - 14.4.3 loss of agreements or contracts;
  - 14.4.4 loss of anticipated savings;
  - 14.4.5 loss of use or corruption of software, data or information;
  - 14.4.6 loss of or damage to goodwill; and
  - 14.4.7 indirect and/or consequential loss.
- 14.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 8. 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.
- 14.6 This clause 14 shall survive termination of the Contract.

## **15 TERMINATION**

- 15.1 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:
- 15.1.1 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;
  - 15.1.2 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;
  - 15.1.3 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

15.1.4 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.

15.2 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 the Customer fails to pay any amount due under the Contract on the due date for payment.

15.3 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 15.1.2 to clause 15.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **16 CONSEQUENCES OF TERMINATION**

16.1 On termination of the Contract:

16.1.1 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;

16.1.2 the Customer shall return all of the Supplier Materials and any Deliverables or 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 this Contract.

16.2 Termination 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.

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

## **17 FORCE MAJEURE**

17.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

17.1.1 acts of God, flood, drought, earthquake or other natural disaster;

17.1.2 epidemic or pandemic;

17.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

17.1.4 nuclear, chemical or biological contamination or sonic boom;

- 17.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - 17.1.6 collapse of buildings, fire, explosion or accident;
  - 17.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
  - 17.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
  - 17.1.9 interruption or failure of utility service.
- 17.2 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 a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 months, either party may terminate the Contract by giving 14 days' written notice to the other party.

## **18 GENERAL**

### **18.1 Assignment and other dealings**

- 18.1.1 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.
- 18.1.2 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.

### **18.2 Notices.**

- 18.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business.
- 18.2.2 Any notice or communication shall be deemed to have been received:
  - (a) if delivered by hand, on signature of a delivery; and
  - (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.

- 18.2.3 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.
- 18.3 **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 18.3 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.
- 18.4 **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.
- 18.5 **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.
- 18.6 **Entire agreement.**
- 18.6.1 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.
- 18.6.2 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 based on any statement in the Contract.
- 18.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 18.7 **Third party 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.
- 18.8 **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).
- 18.9 **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.

18.10 **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.