

## **TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES**

### **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Company:** LODDON DOOR SERVICES LIMITED.

**Company's Equipment:** any equipment, systems or facilities provided by the Company or its subcontractors and used directly or indirectly in the Supply of any Goods and/or Services.

**Conditions:** these Terms and Conditions of Supply.

**Confidential Information:** Any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential, or the information could reasonably be supposed to be confidential.

**Contract:** any contract between the Company and the Customer for the Supply of any Goods and/or Services, incorporating these conditions.

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

**Customer's Equipment:** any equipment, systems or facilities provided by the Customer and used directly or indirectly in the Supply of any Goods and/or Services.

**Deliverables:** all Documents, products and materials developed by the Company or its agents, subcontractors, consultants and employees in relation to the Services in any form, including, without limitation, computer programs, data, reports and specifications (including drafts).

**Delivery Point:** the place where delivery of any Goods is to take place under Condition 4.

**Document:** any document in writing, and any map, plan, graph, drawing or photograph and any film, negative tape or other device embodying visual images and any disc, tape or other device embodying any other data.

**Goods:** any goods agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them), including, but not limited to, any goods agreed to be supplied with, or in relation to, any Services.

**Input Material:** any Documents or other materials, and any data or other information provided to the Company by the Customer relating to the Goods and/or Services.

**Intellectual Property Rights:** any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered.

**Output Material:** any Documents or other materials, and any data or other information provided by the Company to the Customer relating to the Goods and/or Services.

**Services:** any services agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them) including, but not limited to, any Services

to be performed in relation to any Goods.

**Supply:** the sale of any Goods and/or the provision of any Services by the Company to the Customer. For the avoidance of doubt, any Goods so sold, and/or Services so provided, (or to be so sold or provided, as applicable), are **Supplied**.

- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these Conditions.

## **2. APPLICATION OF TERMS**

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to the Supply of any and all Goods and Services by the Company and any variation to these Conditions and any representations about any Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to procure Goods and/or Services subject to these Conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until:
  - (a) a written acknowledgement of order is issued and executed by the Company; or
  - (b) (if earlier) the Company starts to Supply the Goods and/or Services.
- 2.6 Without prejudice to the provisions of Condition 2.5, if the Customer wishes to change any order, (which, for the avoidance of doubt shall include, but shall not be limited to, any amendment, addition or substitution with respect to any Input Material and/or any specification), any such change is subject to acceptance by the Company and the Customer must pay any additional charges associated with fulfilling the changed order.
- 2.7 The Customer shall ensure that the terms of its order and any Input Material and/or any applicable specification are complete and accurate and are submitted to the Company within a sufficient time period such as will enable the Company to fulfil the Company's obligations under the Contract.

2.8 Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

### **3. DESCRIPTION**

3.1 The quantity and description of any Goods and/or Services shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures 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 and this is not a sale by sample.

3.3 If any Goods are to be manufactured, designed, built or configured and/or any process is to be applied to any Goods by the Company and/or any Services are to be performed by the Company in accordance with any Input Material and/or any specification submitted by the Customer, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any patent, copyright, design, trade mark or any other intellectual property right of any other person resulting from the Company's use of any Input Material and/or any specification so submitted.

3.4 Subject to the provisions of Condition 9.2 (b), the Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.

### **4. DELIVERY AND PERFORMANCE**

4.1 The Company only delivers Goods and /or performs Services within the United Kingdom.

4.2 Unless otherwise agreed in writing by the Company, and without prejudice to Condition 4.1, delivery of any Goods and/or the performance of any Services shall take place at the Customer's place of business. All carriage charges in relation to the delivery of any Goods, including, without limitation, all costs in relation to transport, insurance and unloading, shall be borne by the Customer.

4.3 The Company shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under condition 4.14(f), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

4.4 Any dates specified by the Company for delivery of the Goods and/or performance of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery and/or performance, as applicable, shall be within a reasonable time. Should expedited delivery of any Goods be agreed, the Company reserves the right to levy an extra delivery charge.

4.5 The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's offer in accordance with condition 2.5, unless otherwise specified by the Company.

4.6 Subject to condition 14, and unless the Company specifies that the Services shall not be provided on a repetitive basis, the Services shall be provided for such fixed period as the

Company shall determine in advance and shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other such period of notice as the Company shall determine in advance.

- 4.7 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or performance of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.8 If for any reason the Customer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
  - (b) the Goods shall be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance);or
  - (d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.
- 4.9 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.10 If delivery involves difficult access to or at the Delivery Point and/or the Delivery Point is located at an unreasonable distance from any feasible vehicular access point, the Company reserves the right to levy an extra delivery charge.
- 4.11 If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.12 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.13 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 4.14 With respect to any Services which the Company is to perform for the Customer, the Customer shall:
- (a) co-operate with the Company in all matters relating to the provision of the Services;
  - (b) provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with such access to the Customer's premises together with anything therein or thereon (and including but not limited to anything used directly or indirectly in the provision of utility services thereto),

office accommodation, data and other facilities as may be required by the Company;

- (c) provide to the Company, in a timely manner, such Input Material and other information as the Company may require, in such a format or formats as the Company may require, and ensure that it is accurate and fully comprehensible in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining any relevant premises for the supply of the Services and for reinstating any such premises once performance of the Services has been completed, unless otherwise agreed in the Contract;
- (e) ensure that any relevant parts of the Customer's premises (including but not limited to walls, ceilings and existing doorframes), are of adequate load-bearing capacity and are otherwise in such a condition as to permit the Services to be provided and any Goods to be installed without the Company having to undertake any additional work;
- (f) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
- (g) ensure that all of the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the provision of the Services and conforms to all relevant United Kingdom standards or requirements;
- (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the provision of the Services, the installation of the Company's Equipment, the use of any Input Material and the use of the Customer's Equipment in relation to the Company's Equipment, in all cases before the date on which the provision of the Services is to commence;
- (i) keep and maintain the Company's Equipment in good condition, and shall not dispose of or use the Company's Equipment other than in accordance with the Company's written instructions or authorisation;
- (j) in all cases where the Customer's use of any rights in Output Materials is subject to the provisions of Condition 12.4, strictly adhere to the terms of any licence or sub-licence granted to the Customer by the Company; and
- (k) effect and maintain appropriate insurance in an adequate amount with respect to all possible risks which may arise in connection with the deployment of any person engaged by the Company to perform the Services at the Customer's place of business and shall, at the Company's request, provide such evidence of such insurance as the Company may reasonably require.

4.15 Without prejudice to Condition 4.14, prior to performance of the Services, the Customer shall remove from the Customer's place of business any item that could pose an obstacle to the performance of the Services. The Customer shall incur additional charges if the Company has to remove, dismantle and/or dispose of any item at the Customer's place of business. Without limitation, the Customer acknowledges that no cleanup work will be carried out by the Company and that any waste material arising from the performance of the Services shall be removed by the Customer at the Customer's cost. If the Company discovers, before or during the performance of the Services, problems at the Customer's place of business which materially affect the Company's ability to perform the Services in accordance with the Company's standards at the price quoted, it shall be free to vary the price. Without limitation, any additional costs caused by any delay in the performance of the Services, or any suspension of performance, at the Customer's place of business (for reasons beyond the control of the Company) e.g industrial action, shall be treated as a variation to the Customer's original order and the Customer shall be liable for any such additional costs.

- 4.16 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 4.17 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf) , at any time from the date of the Contract to the expiry of 6 months after the last date of Supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 4.18 Any consent given by the Company in accordance with Condition 4.17 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.

## **5. NON-DELIVERY**

- 5.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## **6. RISK/TITLE**

- 6.1 The Goods are at the risk of the Customer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
  - (b) all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.

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

- (a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
- (b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and
- (c) the proceeds of any such sale shall be held by the Customer as the Company's bailee and in a fiduciary capacity, and the Customer shall pay the proceeds into a separate bank account opened for that purpose and approved by the Company and shall ensure that in no circumstances are the proceeds mingled with other money or paid into an overdrawn bank account but are at all times identifiable as the Company's money; and
- (d) if the Customer has not received the proceeds of any such sale as referred to in and pursuant to Condition 6.4 (c) it will, if called upon to do so by the Company, assign to the Company within seven days after being required in writing so to do by the Company, all rights against the person or persons by whom the proceeds are owed.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored or otherwise

located, but in any event, and without limitation, hereby undertakes to secure access at any time to any such premises for the Company, its agents and employees in order to inspect the Goods, or, where the Customer's right to possession has terminated, to recover them.

- 6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 6.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Condition 6 shall remain in effect.

## **7. PRICE**

- 7.1 Unless otherwise agreed by the Company in writing, the price for any Goods and/or Services shall be the price set out in the Company's quotation or otherwise notified to the Customer prior to the Supply of any Goods and/or Services, subject always to the provisions of condition 2.5.
- 7.2 The price for the Goods and/or Services shall be exclusive of any value added tax. The price of any Goods shall additionally be exclusive of all costs and charges in relation to packaging, loading, unloading, carriage and insurance. The price of any Services shall include any and all travel, accommodation and meal costs, charges and expenses for those individuals engaged by the Company to perform the Services, unless such costs, charges and invoices are invoiced separately.
- 7.3 Without prejudice to the provisions of Condition 7.1, the price of the Services shall be based on the time spent providing the Services together with the cost of any materials used therein.
- 7.4 The Customer shall pay to the Company any additional sums which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer directly or indirectly, including, without limitation, any failure by the Customer to fulfil any obligation set forth in Condition 4.14. The Company reserves the right to increase the price of any Goods or Services due to any change in delivery dates, quantities or specifications for the Goods or the Services requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 7.5 Without prejudice to Condition 7.4, the Company may review and increase the price of any Goods and/or Services, provided that the Company gives the Customer prior written notice of any such increase.

## **8. PAYMENT**

- 8.1 The price for any Goods and/or Services shall be paid by the Customer to the Company within 30 days of the delivery of any Goods and/or the completion of provision of any Services.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said

cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.

- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 8.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8 % above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this Condition 8.
- 8.7 Without prejudice to Condition 8.6, any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 6.5 shall entitle the Company, at any time and without notice to the Customer and without limitation to any other remedy available to the Company under these Conditions, the Contract, or otherwise :
- 8.7.1 To suspend or cancel the further delivery of any Goods and/or the performance of any Services, including, without limitation, stopping the delivery of any Goods in transit; and
- 8.7.2 To treat the Contract as having been repudiated by the Customer.
- 8.8 The Customer may not cancel any order for Goods and/or Services which the Company has accepted pursuant to Condition 2.5 and if the Customer cancels, or purports to cancel any such order (or the Contract or any part thereof), then the Company may, by notice in writing to the Customer, elect to treat the Contract as repudiated.
- 8.9 For the avoidance of doubt, and notwithstanding the exercise of any remedy by the Company in accordance with Condition 8.7 or 8.8, or under any other of these Conditions, the Contract, or otherwise, the Customer shall remain liable to pay and shall pay the Company at the Contract rate, any and all payments subsisting at the relevant time.

## **9. WARRANTIES**

- 9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company warrants that (subject to the other provisions of these Conditions):
- (a) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and

the Company has expressly stated in the acknowledgment of order that it will supply Goods suitable for that purpose, then the Goods shall, on delivery, be reasonably fit for the purpose so stated; and

- (c) any Services will be performed with reasonable skill and care.

9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:

- (a) the Customer gives written notice of the defect to the Company (and also to the carrier if the defect is a result of damage to any Goods in transit), within 3 days of the time when the Customer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining any Goods which the Customer has alleged to be defective and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 if:

- (a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; or
- (b) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the defect arises from any Input Material and/or specification supplied by the Customer (or, without limitation, from any change made by the Customer to any Input Material and/or specification supplied by the Customer) or from the breach of any of the Customer's obligations under Condition 4.11, or from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any misuse of the Goods; or
- (d) the full price for the Goods and/or Services has not been paid by the time for payment stipulated in Condition 8.1; or
- (e) the defect is of a type specifically excluded by the Company by notice in writing.

9.5 Subject to Condition 9.3 and Condition 9.4, if any of the Goods and/or Services do not conform with any of the warranties in Condition 9.2:

- (a) the Company shall at its option repair or replace any such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company. The Company shall, if it opts to replace the defective Goods, then deliver replacement Goods to the Customer at the Delivery Point (at the Company's expense), and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company; and
- (b) the Company shall re-perform any Services which are proved to the reasonable satisfaction of the Company not to have been performed with reasonable skill and care, or at the Company's option, shall refund any monies already paid by the Customer for any such Services.

9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods.

## **10. LIMITATION OF LIABILITY**

- 10.1 Subject to Condition 4, Condition 5 and Condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these Conditions;
  - (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982 ) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
  - (b) under section 2(3), Consumer Protection Act 1987; or
  - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to Condition 10.2 and Condition 10.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **11. INDEMNITY**

- 11.1 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 11.2 The Customer shall hold the Company harmless and keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by any third party to the extent that such

liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

## **12. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Customer and the Company agree that in the course of the Company providing Goods and/or Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.
- 12.2 The Customer shall not use any Confidential Information for any purpose other than to perform its obligations under the Contract and without limitation shall not, without the Company's prior written consent, disclose that any Goods and/or Services are to be, are being, or have been Supplied by the Company, nor shall the Customer disclose the fact of the Company's involvement in any aspect of the Contract. The Company shall, however, subject to the provisions of this Condition 12, be free to disclose the Company's role and involvement in the Contract and in the Supply of any Goods and/or Services.
- 12.3 The Customer acknowledges the Company's ownership of any Intellectual Property Rights in any Deliverables and any Output Material and in any Goods and/or Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. Without limitation, the Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that, without limitation, any and all Intellectual Property Rights developed by the Company in performing any Services or providing any Goods shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this Condition 12.3.
- 12.4 The Customer acknowledges that, where the Company does not own any Output Materials, the Customer's use of rights in Output Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Customer.

## **13. DATA PROTECTION**

The Customer acknowledges and agrees that any personal data contained in any of the Input Material may be processed by and on behalf of the Company in connection with the Supply of any Goods and/or Services.

## **14. TERMINATION**

- 14.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 14.1(d) to condition 14.1(j) condition 14.1(h) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

14.2 On termination of the Contract for any reason:

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

- (b) the Customer shall, within a reasonable time, return all of the Company's Equipment, Output Materials and Deliverables. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

14.3 On termination of the Contract (however arising), conditions 9-14 and 18 shall survive and continue in full force and effect.

#### **15. ASSIGNMENT/SUBCONTRACTING**

- 15.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 15.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 15.3 The Company, but not the Customer, shall be entitled to subcontract any or all of its obligations under all or any part of the Contract.

#### **16. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery and/or performance, or to cancel the Contract or reduce the volume of the Goods and/or Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

#### **17. GENERAL**

- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## **18. COMMUNICATIONS**

18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent electronically via email.

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or

(b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.

18.2 Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery; or

(c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or

(d) if sent by email, within one hour of sending.

18.3 Communications addressed to the Company shall be marked for the attention of the Managing Director