

## **WORKPLACE INTERIORS COMPANY CHELTENHAM LTD – Standard Terms and Conditions of Supply**

These terms and conditions set out the basis on which **Workplace Interiors Company Cheltenham Ltd** (Company Number: 02820824) of Midway House Herrick Way, Staverton Technology Park, Staverton, Cheltenham, Gloucestershire, England, GL51 6TQ (**We, Our, Us**) will supply goods and services to the customer (**You, Your**). These terms will govern all orders place by You for goods and/or services.

### **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 Us and You for the supply of Goods and/or Services in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control will be construed accordingly.

**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Deliverables:** the deliverables set out in the Order produced by Us for You.

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 16.

**GDPR:** General Data Protection Regulation ((EU) 2016/679).

**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 You and Us.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade

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

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

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

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

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

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) 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.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

## 2. Basis of Contract

- 2.1 The Order constitutes an offer by You to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order will be accepted when We issue written acceptance of the Order at which point and on which date the Contract will come into existence between You and Us (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Us and any descriptions of the Goods or illustrations or descriptions of the Services contained in Our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the

Services and/or Goods described in them. They will not form part of the Contract or have any contractual force.

- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by We will not constitute an offer, and is only valid for a period of thirty days from its date of issue.
- 2.6 All of these Conditions will apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 You may at any time before the date of delivery amend or cancel an Order by written notice to Us but You will be responsible for payment to Us of all costs reasonably incurred by Us in fulfilling the Order up until the date of receipt of the amendment or cancellation.

### **3. Goods**

- 3.1 The Goods are described in Our catalogue or on Our website as modified by any applicable Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by You, You will indemnify Us 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 reasonable professional costs and expenses) suffered or incurred by Us arising out of or in connection with any claim made against Us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Our use of the Goods Specification. This clause 3.2 will survive termination of the Contract.
- 3.3 We reserve the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and We will notify You in any such event.

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

- 4.1 We will ensure that:
  - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) it states clearly on the delivery note any requirement for You to return any packaging material to Us. You will make any such packaging materials available for collection at such times as We will reasonably request. Returns of packaging materials will be at Our expense.
  
- 4.2** We will 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 We notify You that the Goods are ready.
  
- 4.3** Delivery of the Goods will be completed on the completion of unloading of the Goods at the Delivery Location.
  
- 4.4** Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We will not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or Your failure to provide Us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
  
- 4.5** If We fail to deliver the Goods, Our liability will be limited to the costs and expenses incurred by You in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We will have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or Your failure to provide Us with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
  
- 4.6** If You fail to accept delivery of the Goods within three Business Days of Us notifying You that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Our failure to comply with Our obligations under the Contract in respect of the Goods:
  - (a) delivery of the Goods will be deemed to have been completed at 9.00 am on the third Business Day following the day on which We notified You that the Goods were ready; and
  - (b) We will store the Goods until delivery takes place, and charge You for all related costs and expenses (including insurance).
  
- 4.7** If ten Business Days after We notified You that the Goods were ready for delivery You has not accepted delivery of them, We may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to You for any excess over the price of the Goods or charge You for any shortfall below the price of the Goods.
  
- 4.8** If We delivers up to and including 5% more or less than the quantity of Goods ordered You may not reject them, but on receipt of notice from You that the wrong quantity of Goods was delivered, We will make a pro rata adjustment to the invoice for the Goods.

**4.9** We may deliver the Goods by instalments, which will be invoiced and paid for separately. Each instalment will constitute a separate contract. Any delay in delivery or defect in an instalment will not entitle You to cancel any other instalment.

## **5. Quality of Goods**

**5.1** We warrant that on delivery, and for a period of twelve months from the date of delivery (**warranty period**), the Goods will:

- (a) conform in all material respects with their description and any applicable Goods Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by Us.

**5.2** Subject to clause 5.3, We will, at Our option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

- (a) You give 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;
- (b) We are given a reasonable opportunity of examining such Goods; and
- (c) You (if asked to do so by Us) return such Goods to Our place of business at Our cost.

**5.3** We will not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) You make any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because You failed to follow Our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of Us following any drawing, design or Goods Specification supplied by You;
- (d) You alter or repair such Goods without Our written consent;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

**5.4** Except as provided in this clause 5, We will have no liability to You in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

**5.5** The terms of these Conditions will apply to any repaired or replacement Goods supplied by Us.

**6. Title and risk**

**6.1** The risk in the Goods and/or Deliverables will pass to You on completion of delivery.

**6.2** Title to the Goods and/or Deliverables will not pass to You until the earlier of:

- (a) We receive payment in full (in cash or cleared funds) for the Goods and/or Deliverables and any other goods that We have supplied to You in respect of which payment has become due, in which case title to the Goods and/or Deliverables will pass at the time of payment of all such sums; and
- (b) You resell the Goods and/or Deliverables, in which case title to the Goods and/or Deliverables will pass to You at the time specified in clause 6.4.

**6.3** Until title to the Goods and/or Deliverables has passed to You, You will:

- (a) store the Goods and/or Deliverables separately from all other goods held by You so that they remain readily identifiable as Our property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and/or Deliverables;
- (c) maintain the Goods and/or Deliverables in satisfactory condition, in warm, dry conditions and keep them insured against all risks for their full price on Our behalf from the date of delivery;
- (d) notify Us immediately if You become subject to any of the events listed in clause 14.2(b) to clause 14.2(d); and
- (e) give Us such information relating to the Goods and/or Deliverables as We may require from time to time.

**6.4** Subject to clause 6.5, You may resell or use the Goods and/or Deliverables in the ordinary course of Your business (but not otherwise) before We receive payment for the Goods and/or Deliverables. However, if You resell the Goods and/or Deliverables before that time:

- (a) You do so as principal and not as Our agent; and
- (b) title to the Goods and/or Deliverables will pass from Us to You immediately before the time at which resale by You occurs.

**6.5** If, before title to the Goods and/or Deliverables passes to You, You become subject to any of the events listed in clause 14.2(b) to clause 14.2(d), then, without limiting any other right or remedy We may have:

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

## **7. Supply of Services**

**7.1** Before Ordering Services, please check with Us first that We can provide Services to Your geographic location. We have a right to reject Your Order if We do not provide Services to Your geographic location.

**7.2** We will supply the Services to You in accordance with the Service Specification in all material respects.

**7.3** We will use all reasonable endeavours to meet any performance dates for the Services, but any such dates will be estimates only and time will not be of the essence for the performance of the Services.

**7.4** We reserve 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 We will notify You in any such event.

**7.5** We warrant to You that the Services will be provided using reasonable care and skill.

**7.6** The Services include:

- (a) one visit to Your premises per phase of work;
- (b) access equipment or scaffold to reach 3.5 m above a level floor (unless provided otherwise in the Order, additional scaffold is not provided);
- (c) the removal of all unused materials from Your premises by Our representative; and
- (d) offcuts and waste in the immediate vicinity of the Service provision cleared to Your skips and/or waste bins (from which You will bear the cost and responsibility of waste removal).

- 7.7** The Services do not include any vertical work, upstands or slopes, openings for light fittings or apertures for ventilation grilles, etc. Should You require these additional services, on receipt of the necessary information from You, We will forward You Our supplementary rates and Your acceptance of the same will mean that these additional services become Services.
- 7.8** The Services do not include electrical bonding of ceiling installations.
- 7.9** We accept no liability for any damage, howsoever caused to the Goods and/or Deliverables once they have been incorporated in other building works at Your premises.
- 7.10** In the event of asbestos-based materials being found during the provision of the Services, We reserve the right to immediately suspend work and contact the Health and Safety Executive whose ruling will be final.
- 7.11** Our quotation is based on the premise that We will be able to provide continuity of service. We will be entitled to make an additional reasonable charge where:
- (a) Our provision of Services by is delayed due to delays by You, any main contractor or sub-contractor; or
  - (b) We are required to make additional visits to Your Premises as a result of alterations to the Contract authorised by You, Your architect or quantity surveyor.

## **8. Customer's obligations**

### **8.1** You will:

- (a) comply with all applicable laws, including health and safety laws;
- (b) co-operate with Us in all matters relating to the Services;
- (c) ensure that the terms of the Order and any information You provide in the Service Specification and/or the Goods Specification are complete and accurate;
- (d) provide Us, Our employees, agents, consultants and subcontractors, with access to Your premises, office accommodation and other facilities as reasonably required by Us to provide the Services;
- (e) provide Us with such information and materials as We may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) prepare Your premises for the supply of the Services including ensuring that:
  - (i) the premises has a 110/240 volt power supply and adequate lighting;
  - (ii) the infrastructure (walls, ceilings, etc.) is suitably prepared and clear to enable Us to fix Our materials to it;



- (iii) the premises is weathertight, warm and dry;
  - (iv) where concealed fix systems are used, all other trades working on the ceiling have completed their work; and
  - (v) You provide a sufficient clear floor area to allow Us to carry out the Services safely;
- (g) after completion of the Services ensure that:
  - (i) Your cleaners to carry out a final dust and polish of the Goods and/or Deliverables; and
  - (ii) the premises in which the Goods reside remains weathertight, warm and dry;
- (h) where the Order provides for the installation of cavity barriers, You will be responsible for obtaining the necessary approvals for the relevant type of construction and installation position;
- (i) obtain and maintain all necessary building and fire regulations, local authority approval, planning permission, licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (j) keep all materials, equipment, documents and other property of Us (**Supplier Materials**) at Your premises in safe custody at Your own risk and subject to adequate insurance cover with a reputable insurer, maintain the Supplier Materials in good condition until returned to Us, and not dispose of or use the Supplier Materials other than in accordance with Our written instructions or authorisation; and
- (k) comply with any additional obligations as set out in the Service Specification and/or the Goods Specification.

**8.2** If Our performance of any of Our obligations under the Contract are prevented or delayed by any act or omission by You or failure by You to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to Us, We will have the right to suspend performance of the Services until You remedy the Customer Default, and to rely on the Customer Default to relieve Us from the performance of any of Our obligations in each case to the extent the Customer Default prevents or delays Our performance of any of Our obligations;
- (b) We will not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from Our failure or delay to perform any of Our obligations as set out in this clause 8.2; and
- (c) You will reimburse Us on written demand for any costs or losses sustained or incurred by Us arising directly or indirectly from the Customer Default.

**8.3** You will inspect the Goods and/or Deliverables within 24 hours of completion of the Services and notify Us immediately of any defect or damage to the same. We will have no liability for any damage to the Goods and /or Deliverables that is not notified to Us within 24 hours of Us Our leaving Your premises on completion of the Services. If We are asked to replace any damaged Goods and/or Deliverables more than 24 hours after leaving Your premises, We reserve the right to charge in full for any repairs or replacement Goods and/or Deliverables.

## **9. Charges and payment**

**9.1** The price for Goods will:

- (a) be the price set out in Our quotation or otherwise confirmed to You in writing by Us or, if no price is quoted, the price set out in Our published price list as at the date of the order; and
- (b) be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which will be invoiced to You.

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

- (a) the charges will be calculated in accordance with Our daily fee rates, as set out in Our quotation or order confirmation;
- (b) Our daily fee rates for each individual person are calculated on the basis of an eight-hour day worked between the hours of 8.00 am to 6.00 pm on Business Days;
- (c) We may agree to provide the Services outside of the hours referred to in clause 9.2(b) where You give Us reasonable notice and the working hours and any fee adjustment by Us is agreed in writing by the parties; and
- (d) We will be entitled to charge You for any expenses reasonably incurred by the individuals whom We engage 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 Us for the performance of the Services, and for the cost of any materials.

**9.3** We reserve the right to increase the price of the Goods, by giving notice to You at any time before delivery, to reflect any increase in the cost of the Goods to Us that is due to:

- (a) any factor beyond Our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by You to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (c) any delay caused by Your instructions in respect of the Goods or failure by You to give Us adequate or accurate information or instructions in respect of the Goods.

**9.4** In respect of Goods, We will invoice You at the time of Your Order or on or at any time after completion of delivery. In respect of Services, We will invoice You in advance of the Services or as otherwise agreed by Us and confirmed to You in writing. We accept all major credit cards.

**9.5** You will pay each invoice submitted by Us:

(a) or in accordance with any payment terms agreed by Us and confirmed to You in writing, or where no such terms are agreed, within 30 days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by Us, and

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

**9.6** All amounts payable by You 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 Us to You, You will, on receipt of a valid VAT invoice from Us, pay to Us 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.

**9.7** If You fail to make a payment due to Us under the Contract by the due date, then, without limiting Our remedies under clause 14 (Termination), You will 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 9.7 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.

**9.8** All amounts due under the Contract will be paid 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** 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 You) will be owned by Us.

**10.2** We grant to You, or will procure the direct grant to You of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by You) for the purpose of receiving and using the Services and the Deliverables in Your business.

**10.3** You will not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

**10.4** You grant Us a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by You to Us for the term of the Contract for the purpose of providing the Services to You.

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

- 11.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2** The parties acknowledge that for the purposes of the Data Protection Legislation, You are the data controller and We are the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). In relation to Personal Data, We may process names, contact details and payment information of Your employees. The processing will take place for the duration of the Contract and for the purpose of Us fulfilling Our obligations under it.
- 11.3** Without prejudice to the generality of clause 11.1, You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to Us for the duration and purposes of the Contract.
- 11.4** Without prejudice to the generality of clause 11.1, We will, in relation to any Personal Data processed in connection with the performance by Us of Our obligations under the Contract:
- (a) process that Personal Data only on Your written instructions unless We are required by any applicable laws to process Personal Data (**Applicable Data Processing Laws**);
  - (b) ensure that We have in place appropriate technical and organisational measures, reviewed and approved by You, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of Our systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (d) not transfer any Personal Data outside of the European Economic Area unless Your prior written consent has been obtained and the following conditions are fulfilled:
    - (i) You or Us has provided appropriate safeguards in relation to the transfer;

- (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (iii) We comply with Our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) We comply with reasonable instructions notified to Us in advance by You with respect to the processing of the Personal Data;
- (e) assist You, at Your cost, in responding to any request from a Data Subject and in ensuring compliance with Our obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;]
- (f) notify You without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of You, delete or return Personal Data and copies thereof to You on termination of the Contract unless required by Applicable Data Processing Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate Our compliance with this clause 11.

**11.5** You consent to Us appointing third-party processors as a processor of Personal Data under the Contract. We confirm that We have entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this *clause 11*. As between You and Us, We will remain fully liable for all acts or omissions of any third-party processor appointed by Us pursuant to this clause 11.

**11.6** Either party may, at any time on not less than 30 days' notice, revise this clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which will apply when replaced by attachment to the Contract).

## **12. Confidentiality**

**12.1** Each party undertakes that it will not during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

**12.2** Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under

the Contract. Each party will ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

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

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

**13. Limitation of liability: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

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

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

**13.2** We will not be liable for the following types of loss:

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

**13.3** Subject to clause 13.2, Our total liability to You in respect of all other losses arising under or in connection with the Contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will not exceed 125% of the value of the order.

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

**13.5** Unless You notify Us that You intend to make a claim in respect of an event within the notice period, We will have no liability for that event. The notice period for an event will start on the

day on which You became, or ought reasonably to have become, aware of the event having occurred and will expire twelve months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

**13.6** This clause 13 will survive termination of the Contract.

## **14. Termination**

**14.1** Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than three months' written notice.

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

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

**14.3** Without affecting any other right or remedy available to it, We may terminate the Contract with immediate effect by giving written notice to You if:

- (a) You fail to pay any amount due under the Contract on the due date for payment; or
- (b) You undergo a change of control.

**14.4** Without affecting any other right or remedy available to Us, We may suspend the supply of Services and/or all further deliveries of Goods under the Contract or any other contract between You and Us if You fail to pay any amount due under the Contract on the due date for payment, You become subject to any of the events listed in clause 14.2(b) to clause 14.2(d), or We reasonably believe that You are about to become subject to any of them.

## **15. Consequences of termination**

### **15.1** On termination of the Contract:

- (a) You will immediately pay to Us all of Our outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, We will submit an invoice, which will be payable by You immediately on receipt;
- (b) You will return all of Our Materials and any Deliverables or Goods which have not been fully paid for. If You fail to do so, then We may enter Your premises and take possession of them. Until they have been returned, You will be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

**15.2** Termination or expiry of the Contract will not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

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

## **16. Force majeure**

Neither party will be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

## **17. Dispute Resolution**

**17.1** If any dispute arises out of the Contract the parties will attempt in good faith to negotiate a settlement. If the matter is not resolved by negotiation, the parties will refer it to mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure (see [www.cedr.co.uk](http://www.cedr.co.uk)).

**17.2** Unless the parties agree on the choice of a mediator within 7 days of one party nominating a proposed mediator in writing to the other, the mediator will be appointed by CEDR at the request of each party. If the parties fail to agree terms of settlement within 42 days of the start of the first meeting held under such procedure, the dispute may be referred to litigation by either party.

**17.3** Nothing in this clause will prevent or delay either party from seeking injunctive relief in respect of any infringement of intellectual property or from issuing proceedings to recover any undisputed debt.



## **18. General**

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

- (a) We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of Our rights and obligations under the Contract.
- (b) You will not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of Your rights and obligations under the Contract without Our prior written consent.

### **18.2 Notices.**

- (a) Any notice given to a party under or in connection with these Conditions will be in writing and will be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the address provided by one party to the other from time to time.
- (b) Any notice will be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours, at 9.00 am on the next Business Day.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action.

**18.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause will not affect the validity and enforceability of the rest of the Contract.

**18.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will 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 will not constitute a waiver of that or any other right or remedy, nor will 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 will 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 will 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.**

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and will 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 will have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

**18.7 Third parties rights.**

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

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

**18.8 Variation.** Except as set out in these Conditions, no variation of the Contract will 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 will 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 will 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.