

Avoira Limited Terms and Conditions for the Supply of Goods and/or Services

The Customer's attention is particularly drawn to the provisions of Clause 15 (Limitation of Liability)

1. Interpretation

1.1 The following definitions apply to these Conditions:

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 19.8.

Contract: the contract between the Supplier and the Customer 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 shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

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

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 18.

Goods: the goods (or any part of them) as set out in the Order and/or Scope of Works as the case may be.

Initial Period: the agreed initial term of the Contract for the provision of Services as set out in the Order and/or Scope of Works as the case may be.

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.

Netiquette: Generally accepted standards of conduct relating to use of the internet including, without limitation, not sending SPAM (unsolicited mass e-mail), not impersonating another person, and not misrepresenting oneself to have authorisation from another person when one does not.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's Scope of Works or quotation as the case may be.

Services: the services supplied by the Supplier to the Customer as set out in the Order and/or Scope of Works as the case may be.

Scope of Works: the description or specification of the Goods and/or Services provided in writing by the Supplier to the Customer, whether in the Supplier's quotation or otherwise.

Software: the Software provided by the Supplier to the Customer;

Supplier: Avoira Limited registered in England and Wales with company number 01763970.

Supplier Materials: has the meaning given in clause 10.1(h).

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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 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 shall be construed as illustrative and shall 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 the Customer to purchase Goods and/or 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 at which point and on which date (unless otherwise agreed) the Contract shall come into existence (**Commencement Date**). For Services provided by the Supplier's IT Services division, the Commencement Date shall be the date that the Services go live.

- 2.3 No cancellation of an Order by a Customer shall be valid unless it is made in writing and unless it is accepted in writing by the Supplier.
- 2.4 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 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 shall not form part of the Contract or have any contractual force. All representations as to the performance of the Goods are based on information supplied by the manufacturer of the Goods and relate to their performance in normal conditions and when used correctly.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 days from its date of issue. The Supplier may withdraw or amend any quotation at any time prior to acceptance of the Order.
- 2.7 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 Order and/or Scope of Works.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liability, 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 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 specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery and Installation of Goods

- 4.1 The Supplier shall ensure that:
 - a. each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, any

- relevant Customer and Supplier 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 the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 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. If so specified in the Order or otherwise agreed in writing by the parties, The Supplier shall make the Goods available for collection by the Customer at the Supplier's premises.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. If the parties have agreed that the Customer will collect the Goods from the Supplier's premises, delivery of the Goods shall be completed when the Customer is notified by the Supplier that the Goods are ready for collection.
- 4.4 Any dates quoted for delivery and/or installation of the Goods are approximate only and the time of delivery or installation is not of the essence. The Supplier shall not be liable for any delay in delivery or installation of the Goods nor will it entitle the Customer to terminate or rescind the Contract.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept 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:
 - a. 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
 - b. the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

- 4.7 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 accepted 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, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 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.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 The quantity of any consignment of Goods as recorded by the Supplier on shall be conclusive evidence of the quantity received by the Customer on completion of delivery unless the Customer can provide conclusive evidence proving the contrary.
- 4.11 Where installation of the Goods is included, subject to Clause 4.12 and to the Customer complying with its obligations under the Contract and unless otherwise agreed, the Supplier will carry out the installation and commissioning of the Goods at the Delivery Location following delivery of all Goods and necessary installation equipment to the Delivery Location.
- 4.12 Where agreed between the parties, the Supplier shall inspect the Delivery Location before installation of the Goods to confirm that the Delivery Location is suitable for the installation of the Goods. If in the Supplier's opinion the Delivery Location is not suitable, the Supplier will notify the Customer of the issues that need to be rectified before installation can take place. Inspection of the Delivery Location in accordance with this Clause 4.12 will not render the Supplier liable in any respect for the suitability of the Delivery Location.
- 4.13 The Customer will provide the Supplier with a stabilised clean mains power supply and technical earth at the Delivery Location, in accordance with the Supplier's reasonable instructions, and maintain the same until the Goods are installed.
- 4.14 The Customer warrants that it has obtained any necessary consents, including but not limited to landlord consents, listed building consents, conservation area consents, planning permissions and building regulations approvals (together **Relevant Consents**) as may be required for the installation of the Goods at the Delivery Location, and that it will notify the Supplier of any specific requirements of such Relevant Consents which are applicable to the installation of the Goods at the Delivery Location.
- 4.15 If the Customer has not fully complied with its obligations under the Contract at the time the Supplier is due to commence installation of the Goods, the Supplier shall be entitled to remove the Goods from the Delivery Location and give notice in writing to the Customer requiring it to perform its obligations within the time period specified in the notice. The Customer will be liable to the Supplier for all loss, damage, costs and expenses suffered or incurred by the Supplier as a result of the Customer's breach and the Supplier may require payment of such sums prior to installation of the Goods. If the Customer fails to remedy the breach or make the required payment, the Supplier has the option to terminate the Contract by notice in writing to the Customer.
- 4.16 Following installation of the Goods, the Supplier will carry out tests to confirm that the Goods are operating in accordance with the Scope of Works. If the tests are not completed successfully the Supplier will carry out any necessary work on the Goods and repeat the tests within a reasonable time. Following successful completion of such tests (whether the initial tests or the repeat tests), the Customer shall sign such paperwork as the Supplier requires confirming the same. The Customer's acceptance of the Goods shall be deemed to have occurred on whichever is the earliest of:
- a. the signing by the Customer of the paperwork;
 - b. the expiry of five days after the completion of the tests; and
 - c. the use of the Goods by the Customer in the normal course of its business.
5. **Quality of Goods**
- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- a. conform in all material respects with their description and any applicable specification; and
 - b. be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- a. 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;
 - b. the Supplier is given a reasonable opportunity of examining such Goods; and
 - c. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- a. the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - b. 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;
- c. the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- d. the Customer alters or repairs such Goods without the written consent of the Supplier;
- 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 the 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, 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.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery, regardless of whether installation of the Goods has commenced (where applicable).

6.2 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 and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- a. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- b. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- c. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- d. notify the Supplier immediately if it becomes subject to any of the events listed in clause 16.2(b) to clause 16.2(d); and
- e. give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- a. it does so as principal and not as the Supplier's agent; and
- b. title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 16.2(b) to clause 16.2(d), then, without limiting any other right or remedy the Supplier may have:

- a. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- b. the Supplier may at any time:
 - i. require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - ii. 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.

7. Supply of Services

7.1 The Supplier shall supply the Services to the Customer in accordance with the Scope of Works in all material respects.

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

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

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

8. IT Services

The following clause relates to Services provided by the Supplier's IT Services division.

8.1 The Supplier shall use reasonable endeavours to provide a prompt and continual service, but will not be liable for any interruptions to Services or for any loss of data or service resulting from delays, non-deliveries, missed deliveries, or service interruptions arising directly or indirectly from:

- a. Interruptions to the flow of data to or from the internet;
- b. Changes, updates or repairs to the network or software which it uses as a platform to provide the Services. The Supplier shall seek to minimise the interruptions/outages that may be caused by such change where possible;
- c. The effects of the failure or interruption of services provided by third parties;
- d. Factors outside of the Supplier's control;
- e. Any errors, actions or omissions of the Customer (including, without limitation, breach of Customer's

- obligations set out in the Contract) or any third parties;
- f. Problems with the Customer's equipment and/or third party equipment; and/or
 - g. Interruptions to Services requested by the Customer.
- 8.2 The transmission, storage, viewing and retrieval of data and files through the world wide web is subject to a variety of conditions that make such transmission, storage, viewing and retrieval potentially unreliable. Accordingly, the Customer's use of the Customer's account and the Services is at the Customer's sole risk. The Customer's account and the Services are provided to the Customer on an "as is" and "as available" basis.
- 8.3 The Supplier makes no representation or warranty that:
- a. The Customer's account or the Services will meet the Customer's needs;
 - b. Access to the Customer's account or the Services will be timely, error-free, uninterrupted, virus-free or secure;
 - c. The data and files the Customer stores in the Customer's account will not be lost or damaged;
 - d. The data on the Customer's desktop or server will not be lost or damaged; or
 - e. Defects in the Services will be corrected.
- 8.4 The Customer acknowledges that its retrieval of any material or data through the use of the Services is effected at the Customer's choice and risk and that the Customer will be solely responsible for any damage to the Customer's computer system or loss of data that results from the retrieval of such material or data. Save as expressly stated in these Conditions, all conditions and warranties whether express or implied, statutory or otherwise, which relate to the condition or fitness for any purpose of the software provided by the Supplier or to the care or skill with which the Services are provided or as to the quality or accuracy of information received through the Services are hereby expressly excluded.
- 8.5 The Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with the Contract and that the price for the Services have been calculated on the basis of the limitations and exclusions in these Conditions and that the Customer will effect insurance as is suitable having regard to its particular circumstances.
- 8.6 Subject to clause 8.1, the Supplier shall provide a service level of 99.7% uptime for Services measured on average over a 12-month period. This includes: 24 x 7 network monitoring, 2 hour engineer response and the Supplier shall use reasonable endeavors to provide fix solutions within 4 hours of notification. In the event of the Supplier's failure to provide a minimum of 99.7% uptime as measured above, the End-User can claim compensation on a pro rata basis at the rate of one day's rental refund per hour of downtime, with a maximum of 30 pro-rata days in any calendar year. Claims must be submitted in writing to the Supplier within 5 working days of the event (not including bank holidays or public holidays). All DSL services are excluded from this.
- 8.7 From time to time the whole or part of the network may be closed down for routine repair or maintenance work. The Supplier shall aim to give as much notice as possible in the circumstances and shall endeavour to carry out such works during the scheduled maintenance periods as published from time to time. Loss of service due to down time for maintenance after notice has been given (minimum of 24 hours) will not form part of the uptime calculation referred to at clause 8.6.
- 8.8 In the event of suspension of the Services pursuant to clause 8.2 and the subsequent re-connection of the Services to the Customer, the Customer shall be required to pay to the Supplier a sum equal to 20% of the most recently levied annual fee for the provision of the Services.
- 8.9 The Supplier requires all users not to make unreasonable demands on its network. If the Customer is found, in the Supplier's reasonable discretion, to be making excessive use of the Services, the Supplier may without any liability to the Customer restrict or suspend the Services.
- 8.10 The Customer acknowledges that it may only use the Services for lawful purposes. The Customer warrants that:
- a. it shall not knowingly use the Services to receive or transmit material that is obscene, threatening, menacing, offensive, defamatory, in breach of confidence, in breach of any Intellectual Property Right, or otherwise unlawful or in breach of Netiquette.
 - b. its account is to be used by a single user only (unless otherwise agreed) and that it will not allow simultaneous access using the same login;
 - c. the registered user of the account will keep the username and password secure and not let them become public knowledge and that the password will not be stored anywhere on a computer in plain text;
 - d. if the password becomes known to any other unauthorised user the registered user will inform the Supplier immediately.
- 8.11 The Customer acknowledges that the Supplier is unable to exercise control over the material sent via the Services and the Supplier hereby excludes liability of any kind for the reception by the Customer of viruses, offensive, threatening or obscene material.
- 8.12 The Services may be used by the Customer to link into other networks worldwide, and the Customer agrees to conform to the acceptable use policies of such networks.
- 8.13 The Customer hereby indemnifies and agrees to keep the Supplier fully and effectually indemnified from and against any and all losses, costs, actions, proceedings, claims, damages, expenses, including reasonable legal costs and expenses, or liabilities whatsoever suffered or incurred directly by the Supplier in consequence of the Customer's breach or non-observance of clause 8.
9. **Software**

- 9.1 The Customer may use the Software as per the license agreement of the manufacturer and will confirm acceptance of such terms by clicking the associated box on the website. The Customer may not (a) distribute copies of the Software or associated documentation to others, (b) rent, lease, sub-license or otherwise grant any rights to the Software, (c) except to the extent dictated in the associated documentation or instructions for use or as permitted by law translate, reverse engineer, de-compile or disassemble, or otherwise alter the Software or associated documentation without the prior written consent of the Supplier or the software manufacturer; or (d) ship or transmit (directly or indirectly) any copies of the Software, or any technical data in the Software or its media, or any direct product thereof, to any entity or place.
- 9.2 The Customer's license to use the Software remains in effect until terminated. The Supplier may terminate the Customer's license without notice if the Customer fails to comply with any of the Conditions and/or breaches the Software manufacturer's license. Upon termination, the Customer must remove all copies of the Software in any form from its systems and this is without prejudice to the Customer's obligation to pay for the Software in its entirety.
- 9.3 The Supplier warrants that the media on which the Software is provided will be free from defects in materials and workmanship under normal use for 30 days from the date of purchase. Defective media may be returned, with proof of purchase, for replacement without charge during the 30-day warranty period. Neither the Supplier nor any other provider of the Software warrants that the Software is error-free, will operate without interruption or is compatible with all equipment and software configurations. The security mechanism implemented by the Software has inherent limitations and the Customer must determine that the Software meets the Customer's needs. This warranty does not cover any Software that has been subjected to damage or abuse or which has been altered or changed in any way. The Supplier is not responsible for problems caused by computer hardware, computer operation systems or the use of the Software in conjunction with other third-party software. Except as provided in this Clause 9, the Supplier gives no other warranties, express or implied, with respect to the Software, its merchantability or fitness for a particular purpose.
- 9.4 Repair, replacement or refund at the option of the Supplier is the exclusive remedy if there is an inherent defect.
- 9.5 The Customer shall not use the Software in any case where damage or injury to person, property or business may occur if any error occurs. The Customer expressly assumes all risk for such use.
10. **Customer's obligations**
- 10.1 The Customer shall:
- a. ensure that the terms of the Order and any information it provides is complete and accurate;
 - b. co-operate with the Supplier in all matters relating to the Services;
 - c. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - d. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - e. prepare the Customer's premises for the supply of the Services;
 - f. 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;
 - g. comply with all applicable laws, including health and safety laws;
 - h. 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
 - i. comply with any additional obligations as set out in the Scope of Works and/or the Order.
- 10.2 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**):
- a. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - b. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10.2; and
 - c. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
11. **Charges and payment**
- 11.1 The price for Goods:
- a. 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
 - b. shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 11.2 The charges for Services shall be the price stated in the Order or such other price as may be agreed in writing by the Seller and the Buyer from time to time.

- 11.3 The Supplier reserves the right to:
- a. 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;
 - b. increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - i. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - ii. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - iii. any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 11.4 In respect of Goods, 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 or after performance of the relevant Services or as otherwise agreed.
- 11.5 Unless agreed otherwise, the Customer shall pay each invoice submitted by the Supplier:
- a. within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - b. in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 11.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 11.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (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 11.7 will accrue pursuant to the Late Payment of Commercial Debt (Interest) 1998.
- 11.8 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).
12. **Intellectual property rights**
- 12.1 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.
- 12.2 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 for the term of the Contract for the purpose of providing the Services to the Customer.
13. **Data protection**
- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 13, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 13.3 Without prejudice to the generality of clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 13.4 Without prejudice to the generality of clause 13.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- a. process that personal data on the instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - b. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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 its 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 the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- i. the Customer or the Supplier 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. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - iv. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- e. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f. notify the Customer without undue delay on becoming aware of a personal data breach;
- g. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- h. maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 13.5 In the event that the Supplier appoints a third-party processor, the Supplier confirms that it has 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 13 and which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.
- 13.6 Either party may, at any time on not less than 30 days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
14. **Confidentiality**
- 14.1 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, except as permitted by clause 14.2.
- 14.2 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 shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
 - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 14.4 The Customer shall not, and shall ensure that its employees, agents, representatives, consultants and sub-contractors shall not use, authorise or permit any other person to use any name, trademark, logo, emblem or symbol which the Supplier is licenced to use or which is owned by the Supplier for any manner whatsoever unless such use shall have been previously authorised in writing by the Supplier (and where appropriate) its suppliers or licensors.
15. **Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 15.1 The restrictions on liability in this clause 15 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 15.2 Nothing in the Contract limits any liability which cannot legally be limited, including 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).
- 15.3 Subject to clause 15.4, the Supplier's total liability to the Customer shall not exceed the price paid by the Customer to the Supplier for Goods and/or Services under the particular Order which is the subject of the claim.
- 15.4 The following types of loss are wholly excluded:
- a. loss of profits;
 - b. loss of sales or business;
 - c. loss of agreements or contracts;
 - d. loss of anticipated savings;

- e. loss of use or corruption of software, data or information;
 - f. loss of or damage to goodwill; and
 - g. indirect or consequential loss.
- 15.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 15.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 15.7 This clause 15 shall survive termination of the Contract.
16. **Term and Termination**
- 16.1 Where Services are being provided the Contract will continue for the Initial Period and shall continue indefinitely until either party gives 30 days' written notice to the other party, such notice not to expire prior to the end of the Initial Period.
- 16.2 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 14 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.
- 16.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- a. the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - b. there is a change of control of the Customer; or
 - c. in relation to Services provided by the Supplier's IT division, the Customer breaches clause 8.10.
- 16.4 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 16.2(b) to clause 16.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
17. **Consequences of termination**
- 17.1 On termination of the Contract:
- a. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services 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;
 - b. the Customer shall return all of the Supplier Materials and any 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.
- 17.2 In the event that the Supplier terminates the Contract for Services pursuant to Clause 16.2 or 16.3 the Customer shall be liable to the Supplier for all costs and charges owed up to and including the Initial Period.
- 17.3 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, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 17.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
18. **Force majeure**
- 18.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).
19. **General**
- 19.1 Assignment and other dealings

- a. The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- b. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract. Breach of this clause 19.1(b) shall entitle the Supplier to terminate this Contract without notice and without any liability whatsoever on the part of the Supplier.

19.2 Notices

- a. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- b. Any notice or communication shall be deemed to have been received:
 - i. if delivered by hand, on signature of a delivery; 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.
 - iii. This clause 19.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 19.3 shall not affect the validity and enforceability of the rest of the Contract.

19.4 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.

19.5 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.

19.6 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 shall have no remedies in respect of any statement, representation, assurance or warranty (whether

made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

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

19.7 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.

19.8 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).

19.9 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.

19.10 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.