



TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Additional Charges: the charges payable pursuant to clause 6.3.

are applicable to the provision of the Services.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services as specified in the Order Confirmation and which are payable in accordance with clause 6 which shall for the avoidance of doubt include the Additional Charges.

Commencement Date: has the meaning given in clause 2.7.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.5.

Contract: the contract between the Supplier and the Customer for the supply of 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.

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

Customer Default: has the meaning set out in clause 5.2.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

Deliverables: the materials obtained from third party suppliers as set out in the Order

Documentation: any certificates, warranties, calculations, drawings, insurances and Intellectual Property Rights held by the Supplier in connection with the Services.

Force Majeure: means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including but not limited to an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

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

Goods: the materials fabricated by the Supplier as set out in the Order.

Intellectual Property Rights: means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;

(e) to which the relevant party is or may be entitled, and in whichever part of the world existing;

Order: the Customer's order for Services as set out in the Customer's purchase order form / email correspondence together with the Suppliers written quotation.

Order Confirmation: the order confirmation produced by the Supplier and sent to the Customer detailing the Charges and incorporating these terms and conditions including any revised order confirmation issued.

Privacy Policy: the Supplier's Privacy Policy attached to these terms and conditions.

Services: the Goods and services supplied by the Supplier to the Customer as set out in the Order Confirmation and the Specification.

Specification: the description or specification of the Services provided in writing either by the Customer to the Supplier or by the Supplier to the Customer including but not limited to planning permissions, building regulations approvals and construction calculations.

Supplier: G Jones Construction Limited, Unit 15, Vastre Industrial Estate, Newtown, Powys SY16 1DZ.

Supplier Materials: has the meaning set out in clause 5.1(p).

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

1.2 Interpretation:

- (a) 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.
- (b) 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.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of Contract

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply by the Supplier and shall supersede any previously or subsequently issued terms and conditions by the Customer.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.
- 2.5 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.6 The Order shall only be deemed to be accepted when the Supplier receives from the Customer:
 - (a) A signed copy of the Order Confirmation;
 - (b) A signed copy of these Conditions;
 - (c) 10% of the of the Charges in cleared funds.

- 2.7** The Contract shall come into existence once all of the conditions referred to in clause 2.6 have been satisfied (**Commencement Date**).
- 2.8** Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9** Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.10** Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 days from its date of issue.
- 2.11** Whilst every care is taken in costing and clerical procedures the quotation excludes errors and omissions. The quotation is based on current prices of steel and could be subject to increase depending on prices ruling at the time of construction. The Supplier reserves the right vary the quotation upon giving written notice to the Customer.
- 3. Supply of Services**
- 3.1** The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2** The Supplier shall use all reasonable endeavours to meet any performance dates specified in Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3** The Supplier shall not be liable for any delay in or failure of performance caused by:
- (a) The Customers failure to (i) make the site available (ii) prepare the site in accordance with these Conditions and the Specification or (iii) provide the Supplier with adequate instructions for performance or otherwise relating to the Services (iv) adhere to the payment terms within these Conditions;
 - (b) Force Majeure.
- 3.4** The Supplier reserves the right to amend the Specification if necessary to comply with any Applicable Laws, 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.
- 3.5** Subject to clause 4, the Services shall be deemed performed on completion of the performance of the Services specified in the Specification.
- 3.6** The Supplier may perform the Services in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4. Warranty**
- 4.1** The Supplier warrants that, for a period of 12 months from performance (the **Warranty Period**), the Services shall:
- (a) conform in all material respects to their description and the Specification;
 - (b) be free from material defects;
 - (c) be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13;
 - (d) be fit for purpose and any purpose held out by the Supplier; and

- 4.2** The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs and that all Applicable Laws have been adhered to in order to enable the provision of the Services.
- 4.3** The Supplier shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 4.1, provided that:
- (a) the Customer serves a written notice on the Supplier not later than 14 Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and
 - (b) such notice specifies that some or all of the Services do not comply with clause 4.1 and identifies in sufficient detail the nature and extent of the defects; and
 - (c) the Customer gives the Supplier a reasonable opportunity to examine the claim of the defective Services.
- 4.4** The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.
- 4.5** The Supplier shall not be liable for the Services failure to comply with the warranty set out under clause 4.1 in any of the following circumstances:
- (a) The Customer alters or makes any changes to the works undertaken pursuant to the Services;
 - (b) The Customer overloads any part of the structure of the building following completion;
 - (c) The defect arises as a result of the Customer failing to follow specific instructions provided by the Supplier following completion of the Services;
 - (d) The defect arises as a result of fair wear and tear, wilful damage or negligence;
 - (e) The defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- 4.6** Except as set out in this clause:
- (a) the Supplier gives no warranties and makes no representations in relation to the Services; and
 - (b) shall have no liability for their failure to comply with the warranty in clause 4.1, and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 4.7** The Customer shall be entitled to exercise its rights under clause 4 notwithstanding that the Services were not rejected following any initial inspection.
- 4.8** The Supplier does not offer any warranty in relation to the Deliverables. The deliverables will be covered by the manufacturers own warranty, details of which will be provided upon request.
- 5. Customer's obligations**
- 5.1** The Customer shall:
- (a) ensure that the terms of the Order Confirmation and any information it provides in the Specification are 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;
 - (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 including where appropriate the construction of the foundations and full internal slab laid uniformly and square throughout with all face edges both true and straight, free from all obstructions in and around the immediate area of work, and in strict accordance with our requirements as set out in the Specification.
- (f) lay a 2.5m wide level hard standing provided around the perimeter of the building to permit the safe use of MEWPS, and allow the Suppliers agents and workers to have continuous uninterrupted access for all works to be completed.
- (g) ensure that there is a suitable access point to the site for vehicle of up to 60' in length.
- (h) be responsible for the provision of all labour and/or suitable and adequate lifting gear (if any is required), to unload and distribute the Deliverables around the site as required in addition to providing both safe and adequate storage of the Deliverables.
- (i) be responsible for the removal and safe disposal of all site waste generated by the Supplier.
- (j) ensure that there is suitable and adequate welfare facilities on site for the Supplier's agents and workers.
- (k) ensure that there is a suitable 240/110 Volt ac/dc electric supply, air or water requirement, where deemed applicable, and without charge to the Supplier.
- (l) ensure that all scaffolding, barriers, working platforms, hoist facilities etc. are in place prior to the commencement of the Services as requested by the Supplier within the specification
- (m) remove / divert any overhead or underground service media, or any other obstruction that would prevent safe and uninterrupted continuance of work.
- (n) 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;
- (o) comply with all applicable laws, including health and safety laws;
- (p) keep all materials, equipment, documents and other property of the Supplier, the Suppliers Materials and the Deliverables at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials and Deliverables in good condition until returned to the Supplier or incorporated as part of the Services, and not dispose of or use the Supplier Materials or Deliverables other than in accordance with the Supplier's written instructions or authorisation;
- (q) not to damage any of the Suppliers Materials and Deliverables and to replace any such items which are damaged whilst on the Customers premises;
- (r) ensure that the site is vacant and that none neither the Customer nor any of the Customers workers or agents occupy the site during the provision of the Services;
- (s) comply with any additional obligations as set out in the Specification; and

5.2 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 under these Conditions(**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 5.2; 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.

6. Charges and payment

- 6.1** The Charges for the Services shall as set out in the Order Confirmation and Specification.
- 6.2** The Charges for the Deliverables and Goods which are supplied as part of the Services, and the cost of any required additions or alterations howsoever brought about shall be subject to review and accepted as additional cost by the Customer. If the Supplier adopts any change in construction or design of the Specification, the Customer shall accept the Deliverables and Goods so changed in fulfilment of the order.
- 6.3** Any additional Charges for services undertaken at the request of the Customer which are not included within the Specification shall be calculated on a time and materials basis:
 - (a) the additional Charges shall be calculated in accordance with the Order Confirmation which appears as part of the Specification;
 - (b) the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - (c) the Supplier shall be entitled to charge an overtime rate of 50% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 5.1(b); and
 - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 6.4** The Supplier reserves the right to increase the Charges payable on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Average Earnings 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 Average Earnings Index.
- 6.5** The Supplier reserves the right to increase the Charges at any time during the Contract where such increases relate to increases in
- 6.6** In the event that it is necessary for any or all of our site operatives to attend induction courses or safety procedural meetings (or similar) prior to commencement of the Services unless this has been specifically included within our quotation, then any additional charges arising of such attendances will be added to the contract figure and an amended quotation will be issued.
- 6.7** In the event that the provision of the Services is delayed due to the Customer's failure to adhere to their obligations under the Contract then the Supplier reserves the right to pass on any additional charges onto the Customer and the costs will be added to the contract figure.
- 6.8** The Supplier shall invoice the Customer in the following stages:
 - (a) 10% deposit payable on acceptance of terms and conditions;
 - (b) 20% on delivery/Installation of steel;

- (c) 35% on delivery of cladding;
- (d) 15% on completion of roof and cladding installation;
- (e) 15% on completion of external works;
- (f) 5% together with the balance of any additional Charges payable pursuant to clause 6.3 payable on completion;

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

- (a) Immediately upon receipt (**Due Date**); 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.

6.10 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 at the same time as payment is due for the supply of the Services.

6.11 If the Customer fails to make a payment due to the Supplier under the Contract within 5 days of the Due Date, then, without limiting the Supplier's remedies under clause 11, 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 6.11 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

6.12 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).

7. Title and risk

7.1 Risk in the Goods and Deliverables will pass to the Customer on delivery.

7.2 Title to the Goods, Deliverables and Documentation will pass to the Customer once the Supplier has received payment in full for all debts owed by the Customer to the Supplier (including payment for the Goods and Deliverables) at any given time in relation to the Contract.

7.3 Until title to the Goods and Deliverables has passed to the Customer, the Customer will:

- (a) hold the Goods and Deliverables as bailee for the Supplier;
- (b) store the Goods and Deliverables separately from all other material in the Customers possession;
- (c) take all reasonable care of the Goods and Deliverables and keep them in reasonable condition;
- (d) insure the Goods and Deliverables: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the Charges (in so far as the same apply to the Goods and Deliverables) (v) noting the Suppliers interest on the policy;
- (e) ensure that the Goods and Deliverables are clearly identifiable as belonging to the Supplier;
- (f) not remove or alter any mark on or packaging of the Goods and Deliverables;
- (g) inform the Supplier as soon as possible if it becomes subject to any of the events set out in clause 11.2;
- (h) provide the Supplier such information concerning the Goods and Deliverables as the Supplier may request from time to time.

7.4 If, at any time before title to the Goods and Deliverables have passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clause 11.2 and the Goods and Deliverables remain in the possession or control of the Customer, the Supplier may (without limiting any of the Supplier's other rights and remedies):

- (a) require the Customer at the Customer's to redeliver the Goods and Deliverables to the Supplier; and
- (b) if the Customer fails to do so promptly, enter any premises where the Goods and Deliverables are stored and repossess them.

8. Intellectual property rights

8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Goods provided by the Customer) shall be owned by the Supplier.

8.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Specification (in so far as the Intellectual Property Rights in the same belong to the Supplier).

8.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 8.2.

8.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

9. Data protection and data processing

9.1 The Customers attention is drawn to the Suppliers Privacy Policy. All data held by the Supplier will be processed in accordance with the Privacy Policy.

9.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 9, **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.

9.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

9.4 Without prejudice to the generality of clause 9.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the Contract.

9.5 Without prejudice to the generality of clause 9.1, 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 only on the written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law 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) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.

9.6 Either party may, at any time on not less than 30 days' notice, revise this clause 9 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).

10. Limitation of liability:

10.1 The Supplier has obtained insurance cover in respect of its own legal liability. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

10.2 Subject to clause 10.9, the Supplier's total liability to the Customer shall not exceed the Charges payable pursuant to the Contract. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

- 10.3** The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 10.
- 10.4** Subject to clauses 10.7 and 10.8, the Supplier's total liability shall not exceed the Charges payable pursuant to the Contract.
- 10.5** Subject to clauses 10.7 and 10.8, the Supplier shall not be liable for consequential, indirect or special losses.
- 10.6** Subject to clauses 10.7 and 10.8, the Supplier shall not be liable for any of the following (whether direct or indirect):
- (a) loss of profit;
 - (b) loss of sales or business;
 - (c) loss or corruption of data;
 - (d) loss of use;
 - (e) loss of production;
 - (f) loss of contract;
 - (g) loss of opportunity;
 - (h) loss of savings, discount or rebate (whether actual or anticipated);
 - (i) harm to reputation or loss of goodwill.
- 10.7** The limitations of liability set out in clauses 10.4 to 10.6 shall not apply in respect of any indemnities given by either party under the Contract.
- 10.8** Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other losses which cannot be excluded or limited by applicable law;
 - (d) any losses caused by wilful misconduct.
- 10.9** 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 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.10** The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. 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.
- 10.11** 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 14 Business Days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 10.12** This clause 10 shall survive termination of the Contract.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 months' written notice.

11.2 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 any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified 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.

11.3 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.

11.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services 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 9.2(b) to clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12. Consequences of termination

12.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier the greater of either:
 - (i) all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; or
 - (ii) 10% of the Charges;
- (b) If so demanded by the Supplier the Customer shall return all of the Supplier Materials, Goods and any Deliverables 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 the Contract.

12.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or 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.

- 12.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13. Indemnity and Insurance

- 13.1** The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

- 13.2** The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to the Supplier the benefit of such insurance.

14. General

- 14.1 Force majeure.** A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

- (a) promptly notifies the other of the Force Majeure event and its expected duration; and
- (b) uses best endeavours to minimise the effects of that event.

If, due to Force Majeure, a party:

- (a) is or shall be unable to perform a material obligation; or
- (b) is delayed in or prevented from performing its obligations for a continuous period exceeding 14 Business Days or a total of more than 40 Business Days in any consecutive period of 60 Business Days;

the parties shall, within 30 Business Days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

14.2 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 without the prior written consent of the Supplier.

14.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two 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 13.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) 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 14.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14.4 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 misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

14.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6 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.

14.7 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 shall not affect the validity and enforceability of the rest of the Contract.

14.8 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); or sent by fax to its main fax number or sent by email to the address specified in the Order or Specification.
- (b) Any notice or communication shall 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 fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

14.9 Third party 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.

14.10 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.

14.11 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.

