

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES BY SHS HANDLING SOLUTIONS LTD

The Customer's attention is particularly drawn to the provisions of clause 12 (Limitation of liability).

### 1. Interpretation

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

#### 1.1 Definitions:

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

**Business Hours:** the period from 7.30 am to 5.00 pm on any Business Day.

**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 23.

**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 interpreted accordingly.

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

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

**Delivery Location:** the address for delivery or collection of Goods as set out in the Order or otherwise agreed in writing.

**Force Majeure Event:** has the meaning given to it in clause 15.

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

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

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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.

**Operations Manual:** any and all operation manuals (including any checklists or other written guidance whether in hard copy or digital form) provided by the Supplier to the Customer in relation to the Goods at any time.

**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 quotation, or overleaf, or submitted on the Supplier's website, or made via telephone or by any other means, as the case may be.

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

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

**Supplier:** SHS Handling Solutions Ltd, a company registered in England and Wales with company number 10142843 whose registered office is at Elevation House, Unit C, Tingewick Road Industrial Park, Buckingham, MK18 1SU.

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

**Warranty Period:** has the meaning given in clause

#### Interpretation:

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **party** includes its personal representatives, successors and permitted assigns.
- 1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 A reference to **writing or written** excludes fax but includes email.

### 2. Basis of Contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, website, brochures or otherwise are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to and form part of the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 calendar days from its date of issue unless withdrawn earlier or otherwise stated.

- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

- 2.8 The Customer warrants that they are entering into the Contract for business purposes and not as a consumer.

### 3. Goods

- 3.1 The Goods are described in the Goods Specification or the Supplier's catalogue or website (as may be modified by any applicable Goods Specification) as the case may be.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by or modified by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional costs and expenses (all calculated on a full indemnity basis)) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification at any time if required by any applicable statutory or regulatory requirement or the requirements of any product manufacturer or good industry practice, and the Supplier shall notify the Customer in any such event.

### 4. Delivery of Goods

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note; 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.
- 4.2 Subject to clause 4.3, the Supplier shall deliver the Goods to the Delivery Location at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 If it is stated in the Order or agreed in writing that the Customer is to arrange collection of the Goods, then the Customer shall arrange collection of the Goods:
- (a) at the Delivery Location;
  - (b) on such date as is specified in the Order or notified in writing by the Supplier to the Customer.
- 4.4 Delivery of the Goods shall be completed on:
- (a) the completion of unloading the Goods at the Delivery Location; or
  - (b) if it is stated in the Order or agreed in writing that the Customer is to arrange collection of the Goods, the completion of loading the Goods by the Customer or their chosen carrier at the Delivery Location.

- 4.5 Any dates quoted for delivery of the Goods by the Supplier are approximate only, and the time of such delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or by the Customer, including (without limitation) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.6 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 by the Customer, including (without limitation) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.7 If the Customer:

- (a) fails to accept delivery of the Goods when attempted by the Supplier; or
- (b) fails to collect the Goods in accordance with 4.3, (as applicable) 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:
- (c) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which the Supplier attempted delivery, or the Customer failed to collect the Goods (as applicable); and
- (d) the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).

- 4.8 In the event the Customer fails to collect the Goods in accordance with clause 4.3, any further dates for the Customer to arrange collection must be agreed in writing by the Supplier.

- 4.9 If ten Business Days after the day on which the Supplier first attempted delivery or the Customer first failed to collect the Goods (as applicable) the Customer has not accepted or taken actual 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.

- 4.10 If the Supplier delivers 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.

- 4.11 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.

### 5. Quality of Goods

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months following the date of the invoice for the Goods (Warranty Period), the Goods shall:
- (a) conform in all material respects with their description and any applicable Goods Specification; and
  - (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) during the Warranty Period, the Customer gives notice in writing to the Supplier 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 to examine such Goods; and
- (b) 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, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after any of the following events:
  - (i) giving a notice in accordance with clause 5.2; and
  - (ii) the Customer becomes aware or has reasonable grounds to be aware, that the Goods do not comply with any of the warranties set out in clause 5.1 or are otherwise defective or unsuitable for safe and proper use;
- (b) the Customer does not adhere to the load capacities of the Goods as advised by the Supplier or manufacturer or as set out in the Operations Manual or as would otherwise be considered reasonable;
- (c) 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 (including, without limitation, written instructions contained in any Operations Manual) and/or a failure to follow good industry practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by, or agreed with, the Customer;
- (e) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (f) the Goods are not kept or operated in a suitable environment or are used outside the purposes for which they are designed;
- (g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal use or use under abnormal conditions; or
- (h) the Goods differ from their description or any Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements or good industry practice.

5.4 Except as provided in 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 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 in accordance with clause 4.4 or deemed delivery in accordance with clause 4.7 as the case may be.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) 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; and
- (b) the Customer resells the Goods, if permitted to do so in writing by the Supplier, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

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 13.3(b) to clause 13.3(d) (inclusive); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may use the Goods in the ordinary course of its business (but not otherwise) or, if written permission is given by the Supplier, resell the Goods, 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;
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale By the Customer occurs; and
- (c) it is without prejudice to any rights or remedies the Supplier may have in respect of the Customer's breach of the Contract (including, without limitation any breach of this clause 6).

6.5 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing, terminate the Customer's right (if any) under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. Supply of Services

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

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or as otherwise agreed by the parties in writing, 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 Service Specification if necessary to comply with any applicable law or regulatory requirement, any recommendation of the product manufacturer or good industry practice, 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.

7.5 At the request of the Supplier, the Customer shall provide a purchase order (or other evidence to the Supplier's satisfaction that payment arrangements are in place) to the Supplier for the supply of the Services.

## 8. Customer's Obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and any Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the supply of Goods and/or 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 and/or facilitate delivery of the Goods;
- (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 and/or to facilitate delivery of the Goods;
- (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) comply with good industry practice;
- (i) 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, the Operations Manual or authorisation from the Supplier;
- (j) comply with any additional obligations as set out in the Service Specification and any Goods Specification; and
- (k) comply with any Operations Manual provided by the Supplier to the Customer for the use, storage and maintenance of the Goods; and
- (l) promptly notify the Supplier and procure that no person makes any further use of the Goods in the event that the Goods:

(A) do not comply with the warranty set out in clause 5.1; or

(B) fail any service or maintenance check including, but not limited to, any check advised in the Operations Manual; or

(C) are otherwise defective or unsuitable for safe and proper use.

8.2 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 8.2; 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.

## 9. Charges and Payment

9.1 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, unless otherwise agreed in writing by the Supplier, be exclusive of all costs and charges of packaging, insurance, delivery and transport of the Goods, which may be invoiced to the Customer by the Supplier at any time.

9.2 The price for the Services:

(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 provision of the Services or where there is none applicable to the Services in question, the price calculated on a time and material basis at the Supplier's then current rates;

(b) the Supplier shall be entitled to charge increased prices for any provision of Services outside of Business Hours. Such prices shall be set out in the Order or, if none are stated in the Order, the Supplier's published price list as at the date of the provision of the Services (as the case may be);

(c) 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; and

(d) the Supplier shall be entitled to charge the Customer a call-out fee in the event the Supplier (through no fault of the Supplier) is not able to provide the Services at the time and date set out in the Order, or at the time and date requested by or agreed with the Customer, at such rates as are set out in the Supplier's published price list from time to time.

9.3 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; and/or
- (b) increase the price of the Services, by giving notice to the Customer at any time, to reflect any increase in the cost of the provision of the Services by 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 or operational costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Services ordered, or the Service Specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Services.

9.4 Subject to clause 9.6, in respect of Goods, the Supplier shall invoice the Customer on or at any time after of the Goods are dispatched for delivery or made available for collection. In respect of Services, to the extent that they have not been pre-paid, the Supplier shall invoice the Customer on completion of the Services.

9.5 Subject to clause 9.6, and unless otherwise agreed in writing, 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.

9.6 Unless otherwise agreed in writing, the first Order placed by the Customer with the Supplier (however placed) and all Orders made via the Supplier's website shall be payable upfront in full upon the making of the Order.

9.7 The Supplier reserves the right to withdraw any credit terms agreed with the Customer at any time. In the event of such withdrawal, all outstanding sums shall become immediately due and payable to the Supplier.

9.8 The Customer acknowledges and agrees that any credit arrangement entered into by the Customer and a third-party financial provider for the purchase of Goods and/or Services from the Supplier (**Credit Arrangement**) is exclusively between the Customer and the third-party financial provider. Any such Credit Arrangement shall not prejudice any rights of the Supplier or obligations of the Customer under these Conditions.

9.9 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.

9.10 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 12.1, 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 9.10 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.11 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).

## 10. Intellectual Property Rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier (or the Supplier's own third-party licensors or suppliers).

10.2 The Customer shall (at its own expense) promptly execute all such documents and perform all such acts as may reasonably be required for the purpose of giving full effect to this clause 10.

10.3 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.

## 11. Confidentiality

11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.

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

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

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

11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.



**12. Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by the Supplier's negligence, or the negligence of the Supplier's employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - (e) defective products under the Consumer Protection Act 1987; or
  - (f) any other liability which cannot legally be limited or excluded (as the case may be) by the Supplier.
- 12.2 Subject to clause 12.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, for any loss (of any kind) that arises as a result of or in connection with:
- (a) any of the circumstances listed in clause 5.3; or
  - (b) the Supplier failing to comply with any of its obligations under the Contract including, but not limited to, those set out in clause 8.1.
- 12.3 Subject to clause 12.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, for any of the following types of loss that may arise under or in connection with the Contract:
- (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) any indirect or consequential loss.
- 12.4 Subject to clause 12.1, the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the Contract (that are not excluded by clause 12.3), whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall in no circumstances exceed (i) the sum of £10,000, or (ii) an amount equal to 150% of the aggregate price of the Goods and Services supplied by the Supplier and paid for by the Customer under the Contract, whichever is the higher.
- 12.5 In the event that the limitation on liability set out in clause 12.4 is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, void, voidable, unenforceable or unreasonable then subject to clause 12.1, the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the Contract (that are not excluded by clause 12.3), whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall be limited to the amount that the Supplier is able to recover from its insurers in respect of the losses claimed by the Customer. Copies of the insurance policies held by the Supplier from time to time shall be provided to the Customer on written request.

- 12.6 The Supplier shall not be liable for any advice or recommendation it gives to the Customer (and the Customer shall place no reliance on any such advice or recommendation), unless the advice or recommendation is provided in writing by a director of the Supplier. Any advice or recommendation provided in writing by a director of the Supplier shall always be subject to the limitations of liability in this clause 12.
- 12.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7 of these Conditions. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.8 This clause 12 shall survive termination of the Contract.
- 13. Termination**
- 13.1 Without affecting any other right or remedy available to it, and unless otherwise agreed in writing between the Supplier and the Customer, the Supplier may terminate the Contract by giving the Customer not less than one week's written notice.
- 13.2 Save as set out in clause 13.3, the Customer may not terminate the Contract without the prior written agreement of the Supplier.
- 13.3 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 fourteen 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), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business 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 so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:
- (a) fails to pay any amount due under the Contract on the due date for payment;
  - (b) there is a change of Control of the Customer; or
  - (c) the Customer commits any breach of clause 8.
- 13.5 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 13.3(b) to clause 13.3(d) (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

**14. Consequences of Termination****14.1** On termination of the Contract (however occurring):

- (a) the Customer shall immediately pay to the Supplier:
- (i) all of the Supplier's outstanding unpaid invoices and interest;
  - (ii) any and all costs incurred or committed to by the Supplier in preparation of fulfilling the Order or performing the Supplier's obligations under the Contract; and
  - (iii) 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; and
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

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

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

**15. Force Majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for six months, the party not affected may terminate the Contract by giving fourteen days written notice to the affected party.

**GENERAL****16. Assignment and Other Dealings**

- 16.1** The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 16.2** The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier (such consent to be provided at the Supplier's absolute discretion).

**17. Notices**

- 17.1** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

- (b) sent by email to the relevant address of the party to be served (or an address substituted in writing by that party).

**17.2** Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (d) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**18. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 18 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

**19. Waiver**

- 19.1** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 19.2** A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**20. 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.

**21. Entire Agreement**

- 21.1** The Contract constitutes the entire agreement between the parties.
- 21.2** Each party acknowledges that in entering into the Contract it does not rely on 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.

**22. Third Party Rights**

- 22.1** 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.
- 22.2** The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**23. 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).

**24. 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.

**25. 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.