

## CONDITIONS

### 1. INTERPRETATION

#### 1.1 Definitions:

<b>“Business Day”</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>“Commencement Date”</b>	the date the Contract commences, as set out in the Contract Details.
<b>“Commissioning”</b>	as described in clause 5.1
<b>“Conditions”</b>	these terms and conditions set out in clause 1 to clause 14 (inclusive).
<b>“Contract”</b>	the contract between the Supplier and the Customer for the sale and purchase of the Goods and/ or Services in accordance with the Contract Details, the Quote, and these Conditions.
<b>“Customer Default”</b>	as defined in clause 9.2
<b>“Delivery Date”</b>	the date specified for delivery of an Order in accordance with clause 2.
<b>“Delivery Location”</b>	the address for delivery of the Goods or supply of the Services, as set out in the Contract Details.
<b>“Deposit”</b>	the sum stated in the Contract Particulars and payable in accordance with clause 10.4
<b>“Force Majeure Event”</b>	events, circumstances or causes beyond a party's reasonable control.
<b>“Goods”</b>	the goods (or any part of them), as set out in the Contract Details.
<b>“Goods Specification”</b>	the specification for the Goods, as set out in the Contract Details.
<b>“Intellectual Property Rights”</b>	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.
<b>“Order”</b>	the Customer’s order for the supply of Goods and/or Services in accordance with the Quote as set out in the Customer’s purchase order form.
<b>“Price”</b>	the price for the Goods and/or Services, as set out in the Quote or the Replacement Parts Price as the case may be.
<b>“Replacement Parts Price”</b>	the price for the replacement parts as contained in the Supplier’s price list from time to time.
<b>“Services”</b>	the services supplied by the Supplier to the Customer as set out in the Contract Details.
<b>“Service Specification”</b>	the specification for the Services, as set out in the Contract Details.

**“Supplier Materials”** as defined in clause 9.1(h)

**1.2 Interpretation:**

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) a reference to **writing** or **written** includes fax and emails.

**2. BASIS OF CONTRACT & ORDERS**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with this Contract. The Order shall only be deemed to be accepted when the Supplier signs this Contract, signed by the Customer.
- 2.2 The Customer is responsible for ensuring that Orders and any applicable Goods Specification or Services Specification are complete and accurate. The Customer shall give the Supplier all necessary information relating to the Goods and/or Services that the Supplier reasonably requires in order to fulfil the Order.
- 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 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 unless specifically stated otherwise by the Supplier.
- 2.4 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.
- 2.5 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. THE GOODS**

- 3.1 The Goods are described in the Goods Specification.
- 3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

**4. DELIVERY**

- 4.1 The Supplier shall ensure that:
  - (a) each delivery of Goods is accompanied by a delivery note which shows the contract number and order number; and
  - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. 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 Prior to delivery and in readiness for delivery the Customer is responsible for:
  - (a) ensuring that the Supplier has access to the Delivery Location for delivery of the Goods including but not limited to sufficient room for the delivery vehicle to be able to enter on to, turn and exit from the Delivery Location, use lifting gear to offload the Goods, ensuring suitable clearance above and around the lifting gear and vehicle;

- (b) ensuring that at its own cost there is a suitable electrical connection, water connection, appropriate hydraulic oil and compressed air provision and connections (if applicable); and
  - (c) ensuring that the Goods are then located within the Customer's premises in a suitable position for full function and operation of the Goods.
- 4.3 The Customer shall prepare its premises at the Delivery Location for the delivery of the Goods.
- 4.4 The Supplier shall endeavour to deliver Goods to the Delivery Location on the relevant Delivery Date.
- 4.5 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.6 Delivery Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of any Goods that is caused by:
  - (a) a Force Majeure Event; or
  - (b) 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; or
  - (c) the Customer's failure to comply with clause 4.2
- 4.7 If the Supplier fails to deliver Goods by the relevant Delivery Date, 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 Goods to the extent that such failure is caused by:
  - (a) a Force Majeure Event; or
  - (b) 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; or
  - (c) the Customer's failure to comply with clause 4.2
- 4.8 If 10 Business Days after the day on which the Supplier attempted to make delivery of Goods the Customer has not taken delivery of those Goods, 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.
- 4.9 The Supplier may deliver Orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

## 5. COMMISSIONING OF THE GOODS

- 5.1 After delivering the Goods the Supplier shall carry out reasonable tests to ensure that such Goods are in operable condition and capable of meeting the requirements of the Goods Specification once properly installed (the "**Commissioning**").
- 5.2 The Customer shall be invited to attend the Commissioning. Failure by the Customer to have its representative to attend shall not prevent the Commissioning from taking place and if the criteria of the Commissioning are met even in the Customer's absence the Goods shall be signed off as having passed.
- 5.3 The Supplier shall carry out the Commissioning in accordance with the following provisions:
  - (a) a dry run of the machinery
- 5.4 If the Goods fail to pass the Commissioning, the Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.

## 6. QUALITY AND FITNESS FOR PURPOSE

- 6.1 The Supplier warrants that, for a period of 12 months from the date of delivery (“**warranty period**”), the Goods (but excluding any wear and tear parts) shall:
- (a) conform in all material respects with the Goods Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be fit for any purpose held out by the Supplier.
- 6.2 Subject to clause 6.3, if:
- (a) the Customer gives notice in writing to the Supplier during the warranty period, within 5 Business Days of discovery that some or all of the Goods do not comply with the warranties set out in clause 6.1;
  - (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,
- the Supplier shall repair or replace any Goods that are found to be defective.
- 6.3 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 6.1 if:
- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 6.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, Commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (e) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 6.1 is as set out in this clause 6.
- 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier (but excluding wear and tear parts).

## 7. TITLE AND RISK

- 7.1 Risk in Goods shall pass to the Customer on completion of unloading the Goods at the Delivery Location.
- 7.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cleared funds) for them.
- 7.3 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 from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4 The Customer may not annex the Goods to the Customer's premises without the express consent of the Supplier.

7.5 Without limiting any of the Supplier's other rights and remedies, where title to the Goods has not yet passed to the Buyer the Supplier may, at the expense of the Customer:

- (a) require the Customer to redeliver the Goods to the Supplier: or
- (b) recover Goods in which title has not passed to the Customer.

The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.3, and to recover any Goods in which property has not passed to the Customer.

7.6 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to the Seller.

## **8. SUPPLY OF SERVICES**

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

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

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

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

## **9. CUSTOMER'S OBLIGATIONS**

9.1 The Customer shall:

- (a) ensure that the terms of the Order 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 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 Service Specification and the Goods Specification.

9.2 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 9.2; 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.

## 10. PRICE AND PAYMENT

10.1 The Customer shall pay for Goods and Services in accordance with this clause 8.

10.2 The price for the Goods:

- (a) shall be the price set out in the Quote or where it is in relation to replacement parts as may be necessary as part of supplying the Services, the Supplier's published price list in force from time to time;
- (b) shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer; and
- (c) shall be exclusive of any amounts of value added tax ("**VAT**"), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.

10.3 The charges for the Services shall be:

- (a) in relation to the Commissioning, as set out in the Quote;
- (b) in relation to any other Services:
  - (i) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in its current price list at the date of the Contract;
  - (ii) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
  - (iii) the Supplier shall be entitled to charge an overtime rate of 200% 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 10.3(b); and

- (iv) 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.
- 10.4 The Supplier reserves the right to 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:
  - (a) 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);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (c) 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.
- 10.5 The Supplier may invoice the Customer for the Deposit plus VAT at the prevailing rate (if applicable) on or at any time after the Commencement Date. The Deposit is payable in accordance with clause 10.7 and must be received by the Supplier prior to the Delivery Date. The Supplier is under no obligation to deliver the Goods unless the Deposit has been paid.
- 10.6 The Supplier may invoice the Customer for the price of Goods and/or Services plus VAT (less any Deposit paid) at the prevailing rate (if applicable) on or at any time after the Supplier has informed the Customer it is ready and willing to deliver the Goods or perform the Services. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Contract Number, the Customer's order number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.
- 10.7 The Customer shall pay invoices in full in cleared funds in accordance with the terms set out in the Quote or if no terms are set out in the Quote within 20 Business Days of the invoice date. Payment shall be made to the bank account nominated in writing by the Supplier.
- 10.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 13:
  - (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
  - (b) the Supplier may suspend all further deliveries of Goods or performance of Services until payment has been made in full.
- 10.9 The Customer shall pay all amounts due under the contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

## **11. SOFTWARE AND INFORMATION**

- 11.1 Where the Goods include Software:
  - (a) the price of the Goods includes the licence fee for the Customer's right to use the Software
  - (b) If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to the Supplier within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
  - (c) If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:

- (i) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement) or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
- (ii) the Customer shall not use the Software on any equipment other than the Goods, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
- (iii) such licence shall be terminable by either party on 28 days' written notice, provided that the Supplier terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or the Supplier is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
- (iv) on or before the expiry of this licence, the Customer shall return to the Supplier all copies of the Software in its possession.

11.2 The Customer acknowledges and understands that:

- (a) the Software allows for remote access to the Goods by the Supplier for diagnostic purposes;
- (b) the Supplier may but is not obliged to remotely access the Goods to monitor performance but is not obliged to do so; and
- (c) the data accessible using the Software will be transmitted outside to China

and by signing this Contract the Customer agrees to this.

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

## 12. LIMITATION OF LIABILITY

12.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession) or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

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, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;



- (f) loss of or damage to goodwill; or
- (g) any indirect or consequential loss.

12.3 Subject to clause 12.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 95% of the total charges paid under the Contract.

### 13. TERMINATION

13.1 Without affecting any other right or remedy available to it, where the Service Specification provides that Services are to be provided on an ongoing basis, either party may terminate the Contract in so far as it relates to Services by giving the other party not less than 3 months' written notice

13.2 Without limiting its other rights or remedies, either party may terminate this 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 30 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.

13.3 Without limiting its other rights or remedies, the Supplier may at its option:

- (a) terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) 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 14.2(b) to clause 14.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them

13.4 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

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

### 14. GENERAL

14.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 6 months, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

14.2 **Assignment and other dealings.**

- (a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- (b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

14.3 **Confidentiality.**

- (a) 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 or of any member of the group to which the other party belongs, except as permitted by clause 14.3(b). For the purposes of this clause, “**group**” means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives 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 this agreement. 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 14.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) 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 this Contract.

14.4 **Entire agreement.**

- (a) This 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 agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

14.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy 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, addressed to that party at its address given in the Contract Details or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.8(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.9 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

14.10 **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.

14.11 **Governing law.** This 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.

14.12 **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 this Contract or its subject matter or formation .