

The Customer's attention is particularly drawn to the provisions of clause 13 (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.

Charges: the sums payable for the Goods and/or Services.

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 17.8.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

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

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

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Deliverables: the Goods and/or Services set out in the Order produced by the Supplier for the Customer.

Delivery Location: the Supplier's Premises..

Ex-Work: an Incoterm where the Supplier will make the Goods available at the Delivery Location. The Customer will be responsible for all costs and expenses (including but not limited to) loading the Goods onto a vehicle, for all export procedures, for onward transport and for all costs and expenses arising after collection of the Goods.

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

Free Issue Materials: materials to be supplied to the Supplier by or on behalf of the Customer.

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

Incoterms: the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract was entered into. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if

there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of the Supplier's quotation.

Order Acknowledgement: the Supplier's written acknowledgement of the Customer's Order.

Parties: the Supplier and the Customer.

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

Supplier: Steel Benders (UK) Limited registered in England and Wales with company number 04400578.

Supplier's Premises: Dockside Road Industrial Estate, Cochranes Wharf, Middlesbrough, TS3 6AU.

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

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (c) A reference to a party includes its personal representatives, successors and permitted assigns.
- (d) A reference to **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures** is as defined in the Data Protection Legislation.

- (e) 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.
- (f) 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.
- (g) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date 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, brochures or on the Supplier's company website 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.
- 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 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 14 Business Days from its date of issue and is subject at all times to availability of the Goods and/ or Services.
- 2.6 All of these Conditions shall apply to the supply of both Goods and/or Services except where application to one or the other is specified.

3. Goods

- 3.1 The Goods are described in the Order Acknowledgement.
- 3.2 If the Supplier is to prepare the Goods in accordance with instructions, drawings or templates supplied by the Customer, the Customer must ensure that:
 - (a) the instructions, drawings or templates are accurate;

- (b) the Goods prepared in accordance with the instructions, drawings or templates will be fit for the purpose for which the Customer intends to use them; and
- (c) the instructions, drawings or templates will not result in the infringement of any intellectual property rights of a third party or a breach of any applicable law or regulations.

3.3 To the extent that the Goods are to be manufactured in accordance with instructions, drawings or templates supplied by the Customer or by using Free Issue Materials, 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 (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the instructions, drawings or templates. This clause 3.3 shall survive termination of the Contract.

3.4 The Supplier reserves the right to amend the instructions, drawings or templates if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

3.5 The Supplier reserves the right to make, without notice, minor modifications to the instructions, drawings or templates that the Supplier deems necessary or desirable.

4. Delivery of Goods

4.1 The delivery of Goods is Ex-Work at the Delivery Location.

4.2 The delivery of the Goods shall be completed when the Supplier notifies the Customer that the Goods are ready for collection at the Delivery Location.

4.3 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions (if any).

4.4 The Parties shall agree on the Commencement Date the method of the delivery of the Goods: t

- (a) the Customer shall either collect the Goods from the Supplier's Premises within five Business Days of the Supplier notifying the Customer that the Goods are ready; or
- (b) the Supplier shall (at its discretion) deliver the Goods to the location set out in the Order or such other location as the Parties may agree in writing at any time after the Supplier notifies the Customer that the Goods are ready.

- 4.5 The Supplier may decline to deliver the Goods if:
- (a) the Supplier believes that it would be unsafe, unlawful or unreasonably difficult to do so; or
 - (b) the location set out in the Order or agreed between the Parties (or the access to it) is unsuitable for the vehicle of the Supplier.

4.6 Any dates quoted for delivery of the Goods 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 the Goods that is caused by a Force Majeure Event or 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 accepts delivery of the Goods after the quoted delivery date or time, the Customer shall not have any claim against the Supplier for delay (including indirect or consequential loss or increase in the price of the Goods).

4.8 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

If the Customer fails to take or accept delivery of the Goods within five Business Days of the Supplier notifying the Customer that the Goods are ready (as specified in clause 4.2) the Supplier shall:

- (a) store the Goods until collection; and
- (b) charge the Customer a daily rate of £5.00 per square foot for storage of the Goods and for all related costs and expenses (including insurance).

For the avoidance of doubt, once delivery has taken place or is deemed to have taken place, the Customer shall be responsible for all and any insurance in relation to the Goods.

4.9 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.10 The Supplier shall have a general and particular lien on the Goods including Free Issue Materials in its possession as security for payment of all sums claimed by the Supplier from the Customer. The Charges shall continue to accrue on any Goods or Free Issue Materials detained under lien. If an invoice for the Charges is not paid in full on its due date for payment, the Supplier may,

without prejudice to its other rights and remedies, give notice in writing to the Customer of its intention to sell or otherwise dispose of some or all of the Goods or Free Issue Materials in its possession if the amount outstanding is not paid in full within 14 days, If the amount due is not paid by the expiry of such period, the Supplier may sell or otherwise dispose of some or all of the Goods or Free Issue Materials in its possession, as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal of such Goods or Free Issue Materials to the Customer after deduction of all amounts due to the Supplier and the expenses incurred by the Supplier for the sale or disposal of the Goods or Free Issue Materials. The Supplier shall not be liable for the price obtained for the sale or disposal of the Goods or Free Issue Materials.

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 the Goods shall:

- (a) conform with the Customer's instructions, drawings or templates;
- (b) be free from material defects in material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

- (a) the Customer gives notice in writing within five Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier (and any carrier) is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

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

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any instructions, drawing, design or template supplied by the Customer;

- (d) the Customer or any third party alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from the Customer's instructions as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
- (g) if the defect arises as a result of or in connection with the supply by the Customer (including on the Customer's behalf) of the Free Issue Materials; or
- (h) on the instruction of the Customer, the Goods are subject to, and passed by, a third party inspection.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

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

5.6 All Goods will be supplied to commercial tolerances associated with the steel forming and cutting industry in accordance with generally accepted principles within the steel forming and cutting industry and any statutory or regulatory requirements. More onerous tolerances (including those widely used on machined components) are not generally achievable during bending and pressing operations and shall not form part of the Order. The Customer must state, on or prior to any Order, the required tolerances and in any event before commencement of work by the Supplier. If no request is made at enquiry stage or prior to the commencement of work by the Supplier, the standard industry tolerances applied by the Supplier from time to time in accordance with applicable statutory or regulatory standards being +/- 3mm shall apply.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 The 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 in which case title to the Goods shall pass at the time of payment ; or
- (b) the Customer resells the Goods, 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 14.2(b) to clause 14.2(d); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

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

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

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d), then, without limiting any other right or remedy the Supplier may have:

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

7. Supply of Services

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

7.2 The Supplier shall use all reasonable endeavours to meet any delivery dates for the Services specified in the Order Acknowledgement, 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 Order Acknowledgement if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

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

7.5 If the Supplier supplies the Services using Free Issue Materials the Supplier shall not be responsible for:

- (a) the behaviour of the Free Issue Materials;
- (b) the collapsing, distortion, fractures or breaks of the Free Issue Materials

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any instructions, drawings, templates or any other information it provides to the Supplier are complete and accurate;
- (b) provide the Supplier with the required tolerance of Goods;
- (c) co-operate with the Supplier in all matters relating to the Services;
- (d) 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;
- (e) 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;
- (f) comply with any additional obligations as set out in the Order Acknowledgement;
- (g) ensure all Free Issue Materials are capable of manipulation without any risks to the health and safety of the Supplier or its employees, officers, representatives, subcontractors and notify the Supplier of any special precautions which need to be taken when manipulating the Free Issue Materials; and
- (h) ensure that prior to and upon collection of the Goods, the Customer and/or any third party responsible for collection of the Goods complies with all applicable health and safety requirements of the Supplier and any applicable statutory or regulatory health and safety standards (including but not limited to wearing appropriate personal protective equipment which is the responsibility of and to be supplied by the Customer).

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 and/or Services:

- (a) shall be the price set out in the Supplier's quotation.; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods.

9.2 The Supplier reserves the right to:

- (a) increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods and/or Services to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or a change of instructions by the Customer of the bending, pressing or rolling of the Goods ; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- (b) increase the cost for storage of the Goods until delivery takes place as set out in clause 4.8(b).

9.3 The Supplier shall invoice the Customer on or at any time after completion of delivery. With the exception of pro-forma invoices, the Customer shall pay each invoice submitted by the Supplier:

- (a) with the exception of pro-forma invoices, no later than the end of the month following the month of delivery; 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.

- 9.4 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 and/or Goods at the same time as payment is due for the supply of the Services and/or Goods.
- 9.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.5 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%.
- 9.6 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 Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 10.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

11. Data protection

Both Parties will comply with all applicable requirements of the Data Protection Legislation.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time during the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

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

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

13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

13.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. 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.

13.2 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

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

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

13.5 Subject to clause 13.4, the Supplier's total liability to the Customer shall not exceed the value of the Contract.

13.6 This clause 13.6 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 13.4, the Supplier shall not under any circumstances be liable for:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill;

- (vii) any failure by the Customer (including any third party acting on its behalf) to comply with clause 8.1(h);
- (viii) any liabilities, costs, expenses, damages and losses arising from or in connection with any breach by the Customer of any its obligations contained in clause 8;
- (ix) indirect or consequential loss; and
- (x) damage to, loss of or waste of any Free Issue Materials.

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

13.8 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.9 This clause 13 shall survive termination of the Contract.

14. Termination

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

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

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

- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.3 Without affecting any other right or remedy available to it, 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.
- 14.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services, (including the withdrawal or suspension of any credit arrangements with the Customer 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.
- 15. Consequences of termination**
- 15.1 On termination of the Contract:
 - (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and/or Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) any credit account operated by the Supplier in favour of the Customer shall cease and shall be withdrawn with immediate effect; and
 - (c) the Customer shall return all of the 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.
- 15.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

16. Force majeure

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

17. General

17.1 Assignment and other dealings

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

17.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by fax to its main fax number or sent by email to the address specified in the Order .
- (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 **17.2(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 **17.2** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 17.3 shall not affect the validity and enforceability of the rest of the Contract.
- 17.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 17.7 **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.
- 17.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the Parties (or their authorised representatives).

- 17.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.