

<p>17. CREDIT ACCOUNTS</p> <p>17.1 Customers wishing to open a credit account with the Supplier are required to complete a Credit Application Form, available from the Supplier upon written request for such documentation from the Customer.</p> <p>17.2 Such Credit Application Form requires the specification of two trade references and a bank reference accordingly. The Supplier reserves the right to alter or terminate credit facilities at any time upon written notice of this termination to the Customer.</p> <p>17.3 Where credit account facilities are available, the Supplier's Terms and Conditions herein require payment for all Goods and/or Services on or before the 20th day of each month, following the month in which the Goods and/or Services are invoiced.</p> <p>17.4 In the event that payment for Goods and/or Services is not received in accordance with clause 17.3, the credit account(s) will be suspended until such time as cleared funds have been received by the Supplier from the Customer.</p> <p>18. DELIVERY OF GOODS</p> <p>18.1 The Supplier shall ensure that:</p> <p>(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, 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); and</p> <p>(b) if the Supplier requires the Customer to return any packaging material 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.</p> <p>18.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.</p> <p>18.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.</p> <p>18.4 Marking of the Goods as 'unexamined', 'unchecked' or other connotations of such wording shall have no legal significance and the Goods will be deemed as accepted by the Customer irrespective of such labels.</p> <p>18.5 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.</p> <p>18.6 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 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.</p> <p>18.7 If the Customer fails to accept or take delivery of the Goods within 20 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:</p> <p>(a) 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 notified the Customer that the Goods were ready; and</p> <p>(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).</p> <p>The rights within this clause are without prejudice to any other right, which the Supplier may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the Contract.</p> <p>18.8 If 20 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken 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.</p> <p>18.9 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered.</p> <p>18.10 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.</p> <p>18.11 Upon delivery of the Goods, no immediate returns will be acceptable unless the Supplier is contacted at the time of delivery and notified of the reasoning of the return of the Goods, such communication to be formalised in writing no later than three days thereafter, and in any event, will not be permitted without the requisite returns number and reference, obtainable from the Supplier directly.</p> <p>18.12 If, for any reason, the Customer purports to accept only a proportion of the Goods supplied, irrespective of such partial-acceptance, the Customer shall be deemed to have nonetheless accepted the entirety of the Goods. The Customer will thereafter not be entitled to reject the remainder of the Goods as a direct result.</p> <p>19. QUALITY OF GOODS</p> <p>19.1 Goods advertised and marketed by the Supplier, which are subject to any 'manufacturers' guarantees' are advertised in accordance with said manufacturers' listed terms.</p> <p>19.2 As a result, the Supplier undertakes to use reasonable endeavours to assist the Customer in obtaining from the manufacturer the benefit of any warranty which may be given by the manufacturer to the Supplier directly in respect of the Goods. Such undertaking to assist is given by the Supplier and accepted by the Customer instead of and expressly excluding any other guarantee, conditions or warranty as to quality of fitness for any purpose whether statutory or otherwise, other than those contained within these Conditions.</p> <p>19.3 All Goods manufactured by the Supplier are supplied by the Supplier in good faith as suitable for the purposes indicated on the Supplier's labels and within the Supplier's literature. However, the Customer expressly acknowledges that the Supplier is unable to exercise control outside the course of manufacture over the storage, handling, mixing of other products with or use of the Goods, which may affect the performance of the Goods, with all conditions and warranties as contained within these Conditions and attributable to such circumstances, being excluded by the Supplier to the fullest extent as permitted by law as a direct result.</p> <p>19.4 Upon delivery, the Customer shall have three days in which to examine the Goods and notify the Supplier in writing of any defects or damages therein in accordance with the provisions of this clause 19.</p> <p>19.5 Subject to clause 19.8, if:</p> <p>(a) the Customer gives notice in writing at any point within the three days after the Delivery Date, that some or all of the Goods are defective or damaged as set out in clause 19.1;</p> <p>(b) the Supplier is given a reasonable opportunity of examining such Goods; and</p> <p>(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, at its option, repair or replace the defective Goods. A full refund may be offered at the sole option and discretion of the Supplier.</p> <p>19.6 Thereafter, the Supplier warrants that for a period of six months after Delivery of the Goods (Warranty Period), the Goods shall:</p> <p>(a) conform with their description;</p> <p>(b) be free from material defects in design, material and workmanship; and</p> <p>(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).</p> <p>19.7 Subject to clause 19.8, if:</p> <p>(a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 19.1;</p> <p>(b) the Supplier is given a reasonable opportunity of examining such Goods; and</p> <p>(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, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.</p> <p>19.8 The Supplier shall not be liable for the Goods' failure to comply with the provision of clause 19.1 or the warranty in clause 19.6 if:</p> <p>(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 19.5;</p> <p>(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;</p> <p>(c) the Customer alters or repairs such Goods without the written consent of the Supplier;</p> <p>(d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;</p>	<p>(e) the defect arises as a result of defective materials provided and/or supplied by a third party, in which case, the Customer's right of recourse shall be against the third party supplier directly and the Supplier shall have no further liability whatsoever;</p> <p>(f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.</p> <p>19.9 Except as provided in this clause 19, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the provisions of clause 19.1 and the warranty set out with clause 19.6. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under the terms of this clause 19.5.</p> <p>20. TITLE AND RISK</p> <p>20.1 The risk in the Goods shall pass to the Customer on completion of delivery.</p> <p>20.2 Subject to clause (b), title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:</p> <p>(a) the Goods; and</p> <p>(b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.</p> <p>20.3 For the avoidance of doubt and for the purposes of clause 20.2(b), it is assumed Goods will be sold in strict stock rotation. Even where all previously-delivered or currently delivered Goods have been paid for respectively, or in the event that any open credit account for the Customer has been zeroed as a result (as applicable), the Supplier shall nonetheless, in the event of the Customer having not paid for any delivery of any of the Goods, still have a claim against the Customer in accordance with clause 23.10 for non-payment of any outstanding Goods, even if any Goods in the possession of the Customer are those not yet paid for by the Customer.</p> <p>20.4 Furthermore, all Goods and/or Services ordered by the Customer pursuant to credit facilities or accounts opened in accordance with clause 17 of these Conditions, which remains in arrears for more than 30 days, title in the Goods shall not pass to the Customer until the satisfaction of any outstanding credit accounts is facilitated in full. In such circumstances, title in the Goods vests in the Supplier and it shall be lawfully entitled to any of the recovery provisions as set out within these Conditions.</p> <p>20.5 Until title to the Goods has passed to the Customer, the Customer shall:</p> <p>(a) hold the Goods on a fiduciary basis as the Supplier's bailee;</p> <p>(b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;</p> <p>(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;</p> <p>(d) 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;</p> <p>(e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 27.1(b) to clause 27.1(i); and</p> <p>(f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.</p> <p>20.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 27.1(b) to clause 27.1(i), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods 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.</p> <p>21. SUPPLY OF SERVICES</p> <p>21.1 The Supplier shall provide the Services to the Customer in accordance with the Order in all material respects.</p> <p>21.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.</p> <p>21.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.</p> <p>21.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.</p> <p>22. CUSTOMER'S OBLIGATIONS</p> <p>22.1 The Customer shall:</p> <p>(a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;</p> <p>(b) co-operate with the Supplier in all matters relating to the Services;</p> <p>(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;</p> <p>(d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;</p> <p>(e) 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; and</p> <p>(f) keep and maintain 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.</p> <p>22.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):</p> <p>(a) the Supplier shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;</p> <p>(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 22.2; and</p> <p>(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.</p> <p>23. CHARGES AND PAYMENT</p> <p>23.1 The price for Goods 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 delivery</p> <p>23.2 In particular, Goods to be delivered to UK mainland addresses which are not in excess of £150 in total are subject to a carriage charge, unless otherwise advised by the Supplier in writing accordingly. For the avoidance of doubt, all orders over £150 in total qualify for free delivery to any UK mainland address. Deliveries to overseas addresses will attract a higher carriage charge, confirmation of which shall be provided to the Customer by the Supplier in writing upon receipt of the Order and prior to its acceptance by the Supplier. The Customer acknowledges that such delivery charges and qualifications are subject to change at any time, without further notice by the Supplier.</p> <p>23.3 Any and all (retail) prices listed within the Supplier's catalogues (whether physical or online) are recommended retail prices and are subject to alterations without notice. For the purposes of these Conditions, the provisions of clause 23.1 override any and all retail prices listed within the Supplier's catalogues.</p> <p>23.4 The charges for any Services required by the Customer as part of any Order shall be on a time and materials basis:</p> <p>(a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, details of which shall be provided by the Supplier to the Customer open receipt of the Order and prior to its acceptance by the Supplier;</p> <p>(b) the Supplier's standard 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;</p> <p>(c) the Supplier shall be entitled to charge an overtime rate of 20% (twenty per cent) of the standard 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 23.4(b); and</p> <p>(d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, 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.</p> <p>23.5 The Supplier reserves the right to:</p> <p>(a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving one month's written notice to the Customer;</p> <p>(b) increase the price of the Goods, without notice, to reflect any increase in the cost of the Goods to the Supplier that is due to:</p>
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- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 23.6 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer monthly in arrears.
- 23.7 The Customer shall pay each invoice submitted by the Supplier:
- (a) on the 20th day of each month in which the invoice is rendered by the Supplier 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.
- 23.8 In the event that any invoice remains due past the 20th day of each month in which the invoice was rendered as set out within clause 23.7, all invoices rendered and outstanding, past this 20th day of the month date for payment or otherwise, will be deemed as automatically and immediately due to the Supplier, with the Supplier subsequently entitled to seek any of the remedies contained within clauses 27 and/or 28 of these Conditions without limitation.
- 23.9 In the event of the circumstances as contained with clause 23.8 of these Conditions, the Supplier shall be lawfully entitled to withhold the Delivery and fulfilment of any outstanding Orders until payment of all invoices rendered is paid in full, or the Supplier indicates otherwise in its sole discretion.
- 23.10 Furthermore, in the event of non-payment of any invoice rendered by the Supplier as set out within clause 23.8, the Supplier shall be lawfully entitled to enter on to the Customer's premises and uplift any of the Goods held by the Customer as delivered by the Supplier, regardless of whether such items are attributable to previously-satisfied invoices or otherwise.
- 23.11 All amounts payable by the Customer under the Contract are inclusive 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.
- 23.12 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4% (four per cent) per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 23.13 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 24. INTELLECTUAL PROPERTY RIGHTS**
- 24.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 24.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 24.3 All Supplier Materials are the exclusive property of the Supplier.
- 25. CONFIDENTIALITY**
- A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 25 shall survive termination of the Contract.
- 26. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 26.1 Nothing in these Conditions 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;
- (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.
- 26.2 Subject to clause 26.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £2,500 or the price of the Order(s) whichever is the least.
- 26.3 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.
- 26.4 This clause 26 shall survive termination of the Contract.
- 27. TERMINATION**
- 27.1 Without limiting its other rights or remedies, each 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 this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescinding any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 27.1(b) to clause 27.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 27.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- (a) by giving the Customer two months' written notice;
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 27.3 Without limiting its other rights or remedies, the Supplier shall have the right to 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:
- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 27.1(b) to clause 27.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 28. CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 29. HEALTH AND SAFETY**
- 29.1 The Customer shall comply with any and all information or any revised information in relation to health and safety attributable to the Goods, Services and other ancillary services, as and whenever supplied by the Supplier and/or the manufacturer. Such health and safety advice will be in respect of, but not limited to, the use for which the Goods and/or Services are designed and have been tested, or concerning conditions necessary to ensure that said Goods and/or Services will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person or representative of the Customer, either at work or when they are being dismantled or disposed of.
- 29.2 The Customer undertakes to take such steps and measures as may be specified and required by the information contained provided by the Customer in accordance with clause 29.1, to ensure that as far as reasonably practicable the Goods and/or Services will be safe and without risk to health at all times. For these purposes the Customer is deemed to have given a reasonable opportunity to test and examine the Goods before delivery.
- 30. FORCE MAJEURE**
- 30.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 30.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 30.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 31. GENERAL**
- 31.1 **Assignment and subcontracting.** The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 31.2 **Notices.** Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission.
- This clause 31.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 31.3 **Waiver.** A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 31.4 **Severance.** If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 31.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 31.6 **Third parties.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 31.7 **Variation.** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 31.8 **Governing law and jurisdiction.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.