

TERMS AND CONDITIONS OF BUSINESS

COOPERÖSTLUND LIMITED

(Supply of goods and services)

The Customer's attention is particularly drawn to the provisions of paragraph 12.

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

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

Commencement Date: has the meaning set out in paragraph 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with paragraph 15.9.

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

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

Deliverables: all documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services, in any form, including computer programs, data, reports and specifications (including drafts).

Delivery Location: has the meaning set out in paragraph 4.2.

Force Majeure Event: has the meaning given to it in paragraph 15.1(a).

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

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

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection 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 purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.*

Order Acknowledgement: the Supplier's Order Acknowledgement given in accordance with paragraph 2 of these Conditions.

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

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

Supplier: CooperÖstlund Limited registered in England and Wales with company number 06019364.

Supplier Materials: has the meaning set out in paragraph 8.1(g).

1.2 Construction

In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory 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;
- (d) 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
- (e) a reference to **writing** or **written** includes faxes and e-mails.

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 a written Order Acknowledgement to the Customer or, if earlier, when the Supplier starts to provide the Services or delivers the Goods, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 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 brochures or 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.
- 2.5 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.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 days from its date of issue unless the Supplier notifies the Customer in writing that it has withdrawn the quotation during this period.
- 2.7 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. GOODS

- 3.1 *The Goods are described in the Supplier's brochure as modified by any applicable Goods Specification.*

- 3.2 *To the extent that the Goods are to be supplied in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other [reasonable] professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.*
- 3.3 *The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.*
- 3.4 Where Goods are supplied to Customers outside the United Kingdom, the provisions of this Clause 3.4 shall (subject to any special terms agreed in writing between the Supplier and the Customer) apply notwithstanding any other provisions of these Conditions:
- a) the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any applicable duties;
 - b) the Supplier shall have no liability for any claim in respect of damage caused to the Goods during transit;
 - c) payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Customer in favour of the Supplier and confirmed by a bank in the United Kingdom acceptable to the Supplier unless otherwise agreed in writing between the Supplier and the Customer; and
 - d) the price payable by the Customer to the Supplier under these terms and conditions must be paid in the currency specified in the Supplier's invoice to the Customer.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
- (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), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (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.*
- 4.2 Unless otherwise agreed in writing between the Supplier and the Customer, the Supplier shall arrange for the delivery of the Goods to the location set out in the Acknowledgement of Order (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. Delivery of the Goods may be made directly from the manufacturer.
- 4.4 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.

- 4.5 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, which in any event will not exceed the total price of the Contract. 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.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 5 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:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the sixth Business Day following the day on which the Supplier notified the Customer that the Goods were ready;
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance); and
 - (c) the Supplier shall have no liability to the Customer for late delivery.
- 4.7 If 10 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.
- 4.8 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, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 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 in all material respects with their description;
- (b) be of satisfactory quality;
- (c) be reasonably fit for all the purposes for which Goods of the kind are commonly supplied; and
- (d) be free from material defects in design and workmanship.

The Supplier shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier by the manufacturer of the Goods purchased by the Customer but the Supplier does not separately warrant the Goods themselves.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing within [3 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 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 Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. *If, after inspection, the Supplier decides that the Goods (in its reasonable opinion) are not defective, the Supplier reserves the right to charge an inspection fee of £150 plus VAT which shall be payable by the Customer on demand.*

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 drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer 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 their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

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 under clause 5.2.

6. TITLE AND RISK

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

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (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;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l); and
- (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.

- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), 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.

7. SUPPLY OF SERVICES

- 7.1 The Supplier shall use reasonable endeavours to provide the Services and deliver the Deliverables to the Customer in accordance with the Service Specification in all material respects. Where there is no Service Specification, the Supplier shall provide Services to the Customer which:
- a) conform in all material respects with their description; and
 - b) are carried out with reasonable care and skill.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, 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 shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under clause 5.1(h), provided that it shall not be liable under if, as a result of such observation, it is in breach of any of its obligations under these Conditions.
- 7.4 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.
- 7.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order, the Order Acknowledgement and (if submitted by the Customer) the Goods Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the supply of the Goods and/or 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 and/or supply the Goods;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and/or the Services, and ensure that such information is accurate in all material respects;
 - (e) prepare the Customer's premises for the delivery of the Goods and/or the supply of the Services and *ensure that its premises and any facilities or equipment provided by the Customer do not pose a risk to the health and safety of any person;*

- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or the Services before the date on which the Services are to start or the Goods are to be delivered and inform the Supplier of any conditions attached to any such permissions and consents before the commencement of the provision of the Services and/or the delivery of the Goods;
- (g) 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;
- (h) provide all employees of the Supplier providing the Services with a full induction in relation to all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and

8.2 If the Supplier's performance of any of its obligations in respect of the Services or the supply of Goods 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) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services and/or the delivery of the Goods 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;
- (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 shall be the price set out in the Order Acknowledgement or, if no price is quoted, the price set out in the Supplier's published brochure as at the date of delivery. Unless otherwise agreed in writing by the Supplier, the price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods. The price of the Goods is exclusive of all costs of installation.

9.2 The charges for Services shall be set out in the Order Acknowledgement (or, if no charges are quoted, the charges set out in the Supplier's published brochure at the date of commencement of the Services) and shall either be a fixed charge or charges on a time and materials basis. Where the charges are on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates;
- (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;*

- (c) *the Supplier shall be entitled to charge an overtime rate of a multiple 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 9.2(b); and*
- (d) *the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, 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.*

9.3 The Supplier reserves the right to:

- (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 two months 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; and*
- (b) 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:
 - (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 the Goods Specification; 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.

9.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within [30] days of receipt to a bank account nominated in writing by the Supplier. Time for payment in respect of Goods shall be of the essence of the Contract.

9.5 In respect of Services, the Supplier shall invoice the Customer *monthly in arrears or on completion of the Services, whichever is sooner*] unless alternative invoicing arrangements have been agreed in writing between the Supplier and the Customer.

9.6 The Supplier shall submit to the Customer an invoice for the Services in accordance with clause 9.5, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Supplier considers will become due on the payment due date in respect of the charges for Services, and the basis on which that sum is calculated. Payment for Services shall be due on the date the Customer receives each invoice (the "**Due Date**").

9.7 No later than five days after the Due Date, the Customer may notify the Supplier of the sum that it considers to have been due at the Due Date in respect of the charges for Services and the basis on which that sum is calculated.

- 9.8 Unless otherwise agreed in writing between the Customer and the Supplier, the final date for payment for Services shall be 30 days after the Due Date ("**Final Payment Date**").
- 9.9 Subject to clause 9.10 and unless the Customer has served a notice under clause 9.9, the Customer shall pay the Supplier the sum referred to in the Customer's notice under clause 9.6 (or, if the Customer has not served notice under clause 9.6, the sum referred to in the invoice referred to in clause 9.5) (in this clause 9 the "**notified sum**") on or before the Final Payment Date.
- 9.10 Not less than seven days before the Final Payment Date (in this clause 9, the "**prescribed period**"), the Customer may give the Supplier notice that it intends to pay less than the notified sum (in this clause 9, a "**pay less notice**"). Any pay less notice shall specify:
- (a) the sum that the Customer considers to be due on the date the notice is served; and
 - (b) the basis on which that sum is calculated.
- 9.11 All amounts payable by the Customer under the Contract shall be payable by cheque or in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 9.12 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.13 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 (and, in respect of payment for Services, fails to give a pay less notice under clause 9.9), the Supplier shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current [*Lloyds Bank Plc*]'s base rate accruing on a daily basis from the due date for payment until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.14 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.
- 9.15 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the provision of the Services and/or the supply of Goods.
- 9.16 If (in respect of payment for Services):
- (a) the Customer fails to pay in full the notified sum to the Supplier under the Contract by the Final Payment Date under this clause 9; and
 - (b) the Company has not given a pay less notice complying with this clause 9,
- the Supplier may suspend the performance of any or all of the Services or all further deliveries of Goods and other obligations under the Contract by giving not less than seven days' notice to the Customer of its intention to do so and stating the ground or grounds on which it intends to suspend performance.

9.17 In the event of a suspension in accordance with this Agreement, the Customer shall pay the Supplier a reasonable amount in respect of costs and expenses reasonably incurred by the Supplier as a result of any exercise of its right referred to in clause 9.15.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

10.2 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.

10.3 All Supplier Materials are the exclusive property of the Supplier.

11. 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 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other matter that would be illegal for the Supplier to exclude.

12.2 Subject to clause 12.1:

- (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 £10,000,000.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 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 14 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 rescheduling 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 13.1(b) to clause 13.1(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.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:

- (a) by giving the Customer one month's 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.

13.3 The Customer may terminate the Contract by giving the Supplier not less than [one] month's written notice.

13.4 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 13.1(b) to clause 13.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14. 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.

15. GENERAL

15.1 Force majeure:

- (a) 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.
- (b) 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.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 3 months, 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.

15.2 **Assignment and subcontracting:**

- (a) 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.
- (b) 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.

15.3 **Notices:**

- (a) 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.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, 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.
- (c) This clause 15.3 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.

15.4 **Waiver and cumulative remedies:**

- (a) 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.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

15.5 **Severance:**

- (a) 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.
- (b) 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.

15.6 **No partnership:** 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.

- 15.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 15.8 **Disputes:**
- (a) Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation and, within 14 days of a written request from one party to the other, shall meet in a good faith effort to resolve the dispute or difference
 - (b) Subject to either party's right to adjudicate at any time, if the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.
 - (c) Each party shall be entitled to notify the other party in writing of any changes to the above representatives from time to time.
 - (d) Notwithstanding any other provision of this Agreement, either party may refer a dispute arising under this Agreement in relation to the provision of the Services to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause.
 - (e) The adjudicator shall be appointed by The Institution of Mechanical Engineers.
 - (f) Nothing in this clause 15.8 shall prejudice the right of either party to apply to Court for interim relief to prevent the violation by the other party of any proprietary interest, or any breach of the other party's obligations which could cause irreparable harm to the first party.
- 15.9 **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.
- 15.10 **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.