

PREMIER HYTEMP

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

Applicable from 1 January 2015.

The Customer's attention is drawn in particular to the provisions of clause 12.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 14.6.

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

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

Customer's Group: the Customer, any subsidiary of the Customer, any holding company of the Customer and any subsidiary of any such holding company.

Customer's Materials: all materials supplied by the Customer to the Supplier in connection with the supply of the Services.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given in clause 13

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

Goods Specification: any specification for the Goods, including any related plans and drawings, which are referred to in the Order;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect confidentiality of confidential information (including know-how), 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 Goods and/or Services, as set out in the Customer's purchase order.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Services Specification: any specification for the Services, including any related plans and drawings, which are referred to in the Order;

Supplier: Premier Hytemp Limited (registered in Scotland with company number SC093051).

Supplier's Group: the Supplier, any subsidiary of the Supplier, any holding company of the Supplier and any subsidiary of any such holding company.

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 personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (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.
- (e) A reference to **writing** or **written** includes faxes and e-mails.

2. **BASIS OF CONTRACT**

2.1 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.

2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Goods Specification and/or Services Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.6 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions of the Goods or descriptions or illustrations of the Services contained in the Supplier's catalogues or brochures or promotional materials are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 A quotation for the Goods and/or Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue.
- 2.8 The Customer may not cancel an Order without the consent in writing of the Supplier, in which event the Customer shall pay the Supplier for all stock, finished or unfinished, that the Supplier holds or which it is committed to purchase in connection with the Order, all costs incurred by the Supplier in connection with sub-contractors and other third parties engaged by the Supplier in relation to the Order and for all Services performed in accordance with the Order.

3. GOODS

- 3.1 The Goods are described in the Goods Specification. The Customer is responsible for ensuring that the Goods Specification is accurate and that Goods conforming to the Specification will be fit for their intended purpose. The Customer warrants that the manufacture of the Goods in accordance with the Goods Specification is technically feasible and 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 the event that the manufacture of the Goods in accordance with the Goods Specification is not technically feasible.
- 3.2 To the extent that the Goods are to be manufactured 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 Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements. The Customer may not amend the Goods Specification unless the Supplier agrees to an amendment in writing in which case the Supplier is entitled to amend the price of the Goods or the time of delivery of the Goods.

4. DELIVERY OF THE 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); and
 - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 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 or where the Delivery Location is the Supplier's premises the Customer shall collect the Goods after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival or availability for collection at the Delivery Location. The Supplier may decline to deliver the Goods if the Supplier believes it would be unsafe, unlawful or unreasonably difficult to do so or the Delivery Location or access to it is unsuitable for the delivery vehicle.
- 4.4 Any dates quoted for delivery are estimates 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. If the Customer accepts delivery of the Goods after the estimated delivery time of delivery it will have no claim against the Supplier in respect of any losses caused by any delay in delivery 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. 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 or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods at the time when the Supplier notifies the Customer that the Goods will be ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at time at which the Supplier has notified to the Customer that the Goods will be ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and may charge the Customer for all related costs and expenses (including insurance) with effect from the date which falls 10 Business Days after the date on which the Supplier has notified to the Customer that the Goods will be ready.
- 4.7 If 60 Business Days after the day on which the Supplier has notified to the Customer that the Goods will be ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.
- 4.8 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.
- 4.9 When delivery takes place at the Supplier's premises, the Supplier shall have no liability for any damage to the Goods which occurs in transit.

5. QUALITY OF THE GOODS AND DELIVERABLES

5.1 The Supplier warrants that on delivery the Goods shall conform in all material respects with the Goods Specification and that on delivery of the Deliverables the Deliverables shall conform in all material respects with the Services Specification

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier within such time as would allow the Customer a reasonable opportunity to inspect the Goods and/or Deliverables following delivery that some or all of the Goods and/or Deliverables 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/or Deliverables; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods and/or Deliverables to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods and/or Deliverables, or refund the price of the defective Goods and/or Deliverables in full. If the Customer does not give notice to the Supplier in accordance with clause 5.2(a) it will be deemed to have accepted the Goods and/or Deliverables.

5.3 The Supplier shall not be liable for Goods' and/or Deliverables' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use, modification, alteration, installation or processing of such Goods and/or Deliverables after giving 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, commissioning, installation, use and maintenance of the Goods and/or Deliverables or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design, Goods Specification or Services Specification supplied by the Customer;
- (d) the Customer modifies, alters, installs, commissions, processes or repairs such Goods and/or Deliverables without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions or any use,

modification, alteration, installation, commissioning or processing of the Goods and/or Deliverables for which the Supplier is not responsible;

- (f) the Goods differ from the Goods Specification or the Deliverables differ from the Services Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (g) any defects in the Goods and/or Deliverables are caused by or result from any defects in the Customer's Materials.

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

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods and/or Deliverables supplied by the Supplier.

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 earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, 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 from the date of delivery;

- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.3; 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 commits a breach of contract or fails to pay any sums due under the Contract to the Supplier or the Customer becomes subject to any of the events listed in clause 11.3, then, without limiting any other right or remedy the Supplier may have:
 - (a) the Customer's right to resell the 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 (whether lockfast or otherwise) 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 provide the Services to the Customer in accordance with the Services Specification in all material respects. The Customer warrants that the performance of the Services in accordance with the Services Specification is technically feasible and 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 the event that the performance of the Services in accordance with the Services Specification is not technically feasible.

- 7.2 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.
- 7.3 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. The Customer may not amend the Services Specification unless the Supplier agrees to an amendment in writing in which case the Supplier is entitled to amend the price of the Services or the time of completion of the Services.
- 7.4 The Supplier undertakes to the Customer that the Services will be provided using reasonable skill and care.
- 7.5 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.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and any Goods Specification and/or Services 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 sub-contractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and/or the Services and to ensure that such information is accurate in all material respects;
 - (e) ensure that all Customer's Materials provided to the Supplier for the purposes of the supply of the Goods and /or the Services are in good condition, are of satisfactory quality and are fit for the purposes of the supply of the Goods and/or the Services;

- (f) insure the Customer's Materials against loss or damage howsoever caused which may occur during the performance of the Services or the supply of the Goods or otherwise in connection with the Contract; and
- (g) 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.

8.2 If the Supplier's performance of its obligations in respect of the supply of the Goods and/or 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)**:

- (a) the Supplier shall without limiting its other rights and remedies have the right to suspend supply of the Goods and/or 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;
- (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. PRICE AND PAYMENT

9.1 The price of the 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 in force as at the date of delivery.

9.2 The charges for the Services shall be set out in the Order.

9.3 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods and/or the Services to reflect any increase in the cost of the Goods and/or the Services that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification;
 - (c) any request by the Customer to change the completion date(s), or types of Services ordered, or the Services Specification; or
 - (d) any delay or suspension of work caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions or any interruptions, delays, overtime, unusual hours or mistakes caused by the acts or omissions of the Customer.
- 9.4 Unless agreed otherwise in writing, the price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 9.5 The price of the Goods and/or the Services is exclusive of amounts in respect of value added tax (**VAT**) (or other applicable sales tax). The Customer shall, on receipt of a valid VAT (or other applicable sales tax) invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT (or other applicable sales tax) as are chargeable on the supply of the Goods.
- 9.6 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery. The Supplier may invoice the Customer for the Services at such times as are agreed and on completion of the Services.
- 9.7 The Customer shall pay the invoice in full and in cleared funds in the currency specified in the Order:
- (a) on delivery of the Goods or on completion of the Services unless the Customer has an approved credit account with the Supplier; or
 - (b) if the Customer has an approved credit account with the Supplier by the end of the month following the month the invoice was dated unless otherwise set out in the Order or agreed in writing by the Supplier.
- Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 9.8 If the Customer has an approved credit account with the Supplier, the Supplier may withdraw it or reduce the applicable credit limit or bring forward the due date for payment at any time without notice to the Customer.
- 9.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then:

- (a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;
- (b) the Supplier may exercise a lien over any property of the Customer in the Supplier's possession;
- (c) the Supplier may suspend or cancel any future deliveries of goods or performance of services ordered by the Customer;
- (d) the Supplier may cancel any discount offered to the Customer.

9.10 If the Customer is to make payment for the Goods and/or the Services by letter of credit, the letter of credit must be irrevocable and be drawn or confirmed by a reputable UK bank acceptable to the Supplier and to be paid over a UK counter. All associated documentation with be presented to the Supplier by the Customer at the request of the Supplier.

9.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it or any member of the Supplier's Group by the Customer or any member of the Customer's Group against any amount payable by the Supplier to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All Intellectual Property Rights in or arising out of or in connection with the performance of the Services by the Supplier 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 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 licence such rights to the Customer.

11. TERMINATION AND SUSPENSION

11.1 Without limiting its other rights and remedies under the Contract, the Customer may terminate the Contract with immediate effect by giving written notice to the Customer in the event that the Customer is in breach of the

Contract or fails to pay any sum due to the Supplier under the Contract on the due date for payment.

11.2 If the Customer becomes subject to any of the events listed in clause 11.3, the Supplier may, without limiting its other rights and remedies under the Contract, terminate the Contract with immediate effect by giving written notice to the Customer.

11.3 For the purposes of clause 11.2, the relevant events are:

- (a) the Customer 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 or limited liability partnership) 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;
- (b) the Customer 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 the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) (being a company) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being a company) 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 Customer;
- (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;

- (h) a creditor or encumbrancer of the Customer 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;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.3(a) to clause 11.3(f) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; and
- (m) (being a company) control of the Customer is acquired by any person who did not control the Customer at the date of the Order, **control** for the purposes of this sub-clause (m) meaning the power to direct or cause the direction of the management and policies of the Customer, whether directly or indirectly and whether through the ownership of voting securities, by contract, or otherwise.

11.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 11.3(a), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer is in breach of the Contract or fails to pay any amount due under this Contract on the due date for payment.

11.5 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
- (b) the Customer shall return all Goods and Deliverables which have not been fully paid for by the Customer, failing which the Supplier may enter the Customer's premises (whether lockfast or otherwise) 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.

- 11.6 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 11.7 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. LIMITATION OF LIABILITY

- 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 (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms of section 2 of the Supply of Goods and Services Act 1982;
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

12.2 Subject to clause 12.1:

- (a) **the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;**
- (b) **the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract for the supply of Goods, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed the price of the Goods;**
- (c) **the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract for the supply of Services, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed the price of the Services; and**
- (d) **in the case of the supply of Services, (i) in recognition of the Supplier's inability to accept the risk of the cost of replacing or repairing any Customer's Materials in relation to which Services**

are being performed, and (ii) taking into account the difference in value between the Customer's Materials and the price payable for the Services and (iii) the risk of defects being identified or arising in the Customer's Materials during the performance of the Services and (iv) the Customer's obligations under condition 8.1(f), provided that the Supplier has complied with its obligations under conditions 7.1 and 7.4, the Supplier shall have no liability, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, in respect of any loss or damage caused by the Supplier, its employees, agents, consultants or sub-contractors to the Customer's Materials during the performance of the Services.

13. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14. GENERAL

14.1 Assignment and other dealings.

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

14.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms and no rights under the Contract are

enforceable by any person who is not a party to the Contract under the Contracts (Rights of Third Parties) Act 1999.

- 14.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 14.7 **Governing law.** The 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 the law of England and Wales.
- 14.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- 14.9 **Personal Data:** The Supplier may transfer personal data provided by the Customer to persons it may appoint to administer the Customer's account or to recover sums from the Customer, including insurers, debt recovery agents and solicitors.

15. EXPORT SALES

- 15.1 Clause 15 applies, unless otherwise agreed, to any supply of Goods and/or Services by the Supplier over an international border or overseas.
- 15.2 The 'Incoterms' of the International Chamber of Commerce which are in force at the time when the Contract is made apply to supplies of Goods as described in clause 15.1, but these Conditions will prevail to the extent that the Incoterms are inconsistent with these Conditions.
- 15.3 Unless otherwise agreed, any Goods to be supplied by the Supplier to a Customer situated over an international border or overseas are supplied EXW of the Supplier's premises.
- 15.4 Where Goods are to be supplied by a route including sea transport the Supplier is under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 15.5 The Customer is responsible for arranging testing and inspection of the Goods and/or any Deliverables provided pursuant to the supply of Services

as described in clause 15.1 at the Supplier's premises before shipment (unless otherwise agreed). The Supplier is not liable for any defect in the Goods and/or Deliverables which would be apparent on inspection unless a claim is made before shipment. The Supplier is not liable for any damage to the Goods and/or Deliverables which arises during transit.

- 15.6 The Supplier is not liable for death or personal injury arising from the use of Goods and/or Deliverables supplied to or delivered in the territory of another State (within the meaning of section 26(3)(b) of the Unfair Contract Terms Act 1977).
- 15.7 The Customer shall be responsible for and shall meet all costs in obtaining all necessary export and import licences relating to the supply of the Goods and/or the Services.
- 15.8 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 breach of any applicable export controls or regulations relating to the supply of the Goods and/or the Services.