

## **TERMS AND CONDITIONS OF SUPPLY**

### **1. INTERPRETATION**

1.1 In these Terms, the following definitions shall apply:

**"Business Day"** means a day (other than a Saturday, Sunday or a public holiday) when banks in London are ordinarily open for business;

**"Company"** means Michael Smith Engineers Limited, whether supplying Products on its own behalf, or acting as an agent in supplying Products on behalf of a third party;

**"Company's Premises"** means the Company's premises at Unit E, Scotswood Park, Forsyth Road, Sheerwater, Woking GU21 5SU or such other premises as may be notified in writing to the Customer from time to time;

**"Confidential Information"** means any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential;

**"Contract"** means the contract for the sale and purchase of Products arising from the acceptance by the Company of the Customer's order for Products;

**"Customer"** means the person, firm or company whose order is accepted by the Company;

**"Customer Data"** means data pertaining to the Customer which is provided to the Company by the Customer or which is otherwise obtained by the Company;

**"Data Protection Legislation"** means the General Data Protection Regulation 2016/679 (GDPR) and any national implementing laws, regulations and secondary legislation in the United Kingdom relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time and any successor legislation to the GDPR or the Data Protection Act 1998;

**"Delivery Location"** means the location for delivery of an order stated on the Customer's order or any other location for delivery accepted by the Company;

**"Force Majeure Event"** means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes Acts of God, storms, floods, drought, tempests, fires, explosions, accident, sabotage, epidemics, pandemics, riots, war or threat of war, insurrection, civil commotion or civil unrest, governmental action, requisition or expropriation, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, interference by civil or military authorities, armed hostilities or other national or international calamity or one or more acts of terrorism, withdrawal or suspension of any relevant regulatory consent, permit, licence or authorisation, demise of any energy source, demise of any supply source, difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery, labour problems or shortages, strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of either the Supplier or the Company or of a third party), transportation issues, shipping blockades, import or export restrictions, regulations or embargoes, trade sanctions or boycotts;

**"Incoterms 2010"** means the most recent version of the set of rules published by the International Chamber of Commerce which defines the responsibilities of sellers and buyers for the delivery of goods under sales contracts for international trade;

**"Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, 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, 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;

**"Products"** means the goods and/or services or any part of them which are the subject of the Customer's order;

**"Terms"** means the Company's standard terms and conditions of supply set out in this document; and

**"VAT"** means Value Added Tax.

## 1.2 In these Terms:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) clause and paragraph headings do not affect the interpretation of these Terms;
- (c) references to clauses and paragraphs are (unless otherwise provided) references to the clauses and paragraphs of these Terms;
- (d) any reference to a "party" means a party to the Contract and "parties" shall be construed accordingly;
- (e) words in the singular include the plural and in the plural include the singular;
- (f) 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; and
- (g) a reference to writing or written includes faxes and e-mails.

## 2. CONTRACT

- 2.1 All offers are accepted and all Products are supplied subject to and upon these Terms. The Customer shall be deemed to have agreed to these Terms in relation to all present and future dealings between the parties.
- 2.2 No conditions of purchase proposed or stipulated by the Customer and no other terms or conditions proposed or stipulated by the Customer shall form part of or be deemed to be incorporated into these Terms and/or the Contract unless agreed in writing by an authorised representative of the Company.
- 2.3 Where a quotation has been submitted, unless otherwise stated in writing by an authorised representative of the Company, the price quoted shall only remain open for acceptance by the Customer for 30 days from the date of such quotation.
- 2.4 Prices quoted are subject to revision for errors and omissions at any time without any liability on the part of the Company.

- 2.5 No salesperson or agent of the Company has the authority to give any guarantee or warranty on behalf of the Company or to transact business other than on the basis of these Terms.
- 2.6 No Contract shall arise until the Customer's order has been accepted by the Company in writing.
- 2.7 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Company as a result of cancellation.

### **3. PRICE**

- 3.1 Prices for the Products, howsoever given, are based on conditions ruling on the date of their giving and are subject to change. The effective price for the Products shall be the price confirmed by the Company in its written notification of acceptance of the Customer's order pursuant to clause 2.6.
- 3.2 The Company reserves the right, by giving notice to the Customer at any time before delivery or performance of the Products, to vary the price of the Products to reflect any variation in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, any variation in the costs of labour, materials or other costs of manufacture), any variation in freight costs, any special requirements of the Customer, the cost of any special packaging required by the Customer, any change in delivery dates, quantities or specifications for the Products which is requested by the Customer, any delay or interruption caused by any act or omission of the Customer, or any failure of the Customer to give the Company adequate, accurate or complete information or instructions.
- 3.3 Unless otherwise stated, the price quoted will be exclusive of VAT and other taxes (if any) which will be charged at the rate which is applicable at the date of dispatch or first performance of the Products.
- 3.4 Without prejudice to the provisions of clauses 4.2 or 4.3, delivery of the Products will be made in accordance with the particular shipping term nominated by the Company under the Incoterms 2010 and the Customer shall be liable for any associated carriage charges which are thereby deemed to be payable by the Customer.
- 3.5 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.

### **4. DELIVERY AND RISK**

- 4.1 Any time or date for the delivery or performance of Products given by the Company shall be taken as an estimate made by the Company in good faith but shall not be binding upon the Company either as a term of the Contract or otherwise. Time for despatch, delivery or performance shall not be of the essence unless previously agreed in writing by an authorised representative of the Company. In no circumstances shall the Company be liable for any loss or damage sustained by the Customer in consequence of failure to despatch, deliver or perform within such time or by such date or in consequence of any other delay in despatch or delivery however caused.
- 4.2 Unless otherwise agreed by the Company in writing, delivery shall be deemed to be made at the Company's Premises and the risk in the Products shall pass to the Customer at the time that the Company notifies the Customer that the Products are available for collection.

- 4.3 If the Company agrees to deliver the Products:
- (a) delivery shall be made to the Delivery Location;
  - (b) the Customer shall provide the Company with safe and adequate access to the Delivery Location for delivery of the Products;
  - (c) the Company shall be entitled to deliver the Products to any person whom the Company reasonably believes has authority to accept delivery on behalf of the Customer;
  - (d) the person accepting delivery must sign for the Products upon delivery and (without prejudice to the provisions of clause 4.5 below) must indicate on the delivery note any short delivery or over delivery, or any damage to the Products which would be reasonably apparent upon delivery; and
  - (e) the risk in the Products shall pass to the Customer upon the Products being unloaded at the Delivery Location.
- 4.4 In the event of short delivery or over delivery the Customer shall not be entitled to reject the Products or to treat the Contract as repudiated and shall notify the Company of the short delivery or over delivery at the time of delivery or as soon as possible thereafter and provide the Company reasonable access to the Products to correct any mistake in delivery.
- 4.5 The Company may deliver the Products in instalments and invoice the Customer as if each instalment comprised a separate contract which is subject to these Terms. Where the Products are delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 4.6 The Company reserves the right to put the Products, or any portion thereof, into storage at the Customer's risk and expense in the following cases, or in any other comparable circumstances:
- (a) where the Products are about to be despatched and the Customer notifies the Company that the Customer is or will be unable to accept delivery of the Products when tendered; or
  - (b) where the Customer fails to collect the Products when ready; or
  - (c) where the Customer refuses to take delivery of the Products or provide the Company with accurate and complete information required in order to deliver the Products.

## **5. SAMPLES AND DESCRIPTIONS**

- 5.1 The tender of samples of the Products to the Customer and their inspection by the Customer shall not render any sale a sale by sample.
- 5.2 The Company's specifications, brochures, website, catalogues, price lists and all descriptions of the Products contained therein are merely indications of the kind of goods supplied by the Company and no particulars contained in any of them (nor in any documentation or certifications furnished by the Company) shall bind the Company unless otherwise expressly agreed in writing by an authorised representative of the Company.

- 5.3 The Company reserves the right to make alterations to the design, appearance and specification and/or the packaging of the Products from time to time. Where such alterations are, in the reasonable opinion of the Company, likely to be material, the Company shall give the Customer prior notice of such alterations.

## 6. PAYMENT

- 6.1 Subject only to any special terms agreed in writing between the Company and the Customer, the Company shall be entitled to invoice the Customer for the price of the Products on or before the agreed date for delivery or performance of the Products stated in the Company's written acceptance of the Customer's order.
- 6.2 Provided that the Customer has produced references which in the Company's opinion are satisfactory, then unless otherwise agreed in writing, settlement terms will be net 30 days from the invoice date. In all other cases, payment shall be made in advance upon submission by the Company of a pro-forma invoice. The time of payment of the price shall be of the essence of the Contract.
- 6.3 All payments shall be made without any deduction, withholding or set-off.
- 6.4 Failure by the Customer to pay any invoice by its due date shall entitle the Company:
- (a) at its option, to charge interest at the rate of five percent (5%) per annum above Lloyds Bank plc's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
  - (b) to charge the Customer with any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer, including the cost of taking legal action against the Customer in order to obtain payment;
  - (c) to suspend any warranty for the Products or any other goods or services supplied by the Company to the Customer, whether or not they have been paid for;
  - (d) to appropriate any payment made by the Customer to such of the Products as the Company may think fit;
  - (e) to set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever;
  - (f) to terminate the Contract, or suspend or cancel any future delivery or performance of the Products;
  - (g) to cancel any discount (if any) offered to the Customer; and
  - (h) if the Customer has an approved credit account, to withdraw or reduce its credit limit or bring forward its due date for payment without notice.
- 6.5 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

## 7. TITLE

7.1 Title to the Products shall not pass to the Customer until the Company has received payment in full (including any interest or other sums payable) in cash or cleared funds:

- (a) for the Products; and
- (b) for any other goods that the Company has supplied to the Customer in respect of which payment has become due.

7.2 Until title to the Products has passed to the Customer, the Customer shall:

- (a) hold the Products on a fiduciary basis as the Company's bailee;
- (b) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery (and shall on request, produce the policy of insurance to the Company) and indemnify the Company against all loss or damage of whatsoever nature affecting the Products;
- (e) notify the Company immediately if it becomes subject to any of the events listed in clause 7.3;
- (f) not assign to any other person any rights arising from a sale of the Products without the Company's written consent (and then only subject to a set of terms and conditions containing a Title clause which is at least as onerous as this clause 7); and
- (g) give the Company such information relating to the Products as the Company may require from time to time, but the Customer may use or resell the Products in the ordinary course of its business.

7.3 The Customer's right to possession of the Products shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

- (b) the Customer suffers or allows any execution distress or diligence, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or a secured lender to the Customer takes any steps to obtain possession of the secured property or otherwise enforce its security, or the Customer ceases or threatens to cease to trade.

7.4 If:

- (a) the Customer is late in paying for the Products; or
- (b) the Customer is late in paying for any other goods supplied by the Company; or if
- (c) before title to the Products passes to the Customer, the Customer becomes subject to any of the events listed in clause 7.3 or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, the Company may enter any premises of the Customer or of any third party where the Products are stored or kept in order to recover them. The Customer shall not keep the Products at any premises at which the Customer does not have the right to grant access to the Company. All costs associated with any action taken by the Company pursuant to this clause 7.4 shall be for the sole account of the Customer.

7.5 Without limiting the generality of clause 7.4, if the Products have been used in the production of another product and the Customer has not used or resold said product in the ordinary course of its business, the Company shall have a lien over the value of such part of said product as is comprised of the Products.

7.6 The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.

7.7 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 7 shall remain in effect.

## 8. TERMINATION

8.1 The Company may terminate the Contract forthwith by written notice to the Customer if:

- (a) the Customer commits a continuing or material breach of the provisions of the Contract and if the breach is capable of remedy, fails to remedy it within 14 days of receiving written notice of the breach; or
- (b) the Customer becomes subject to any of the events listed in clause 7.3.

8.2 The right to terminate the Contract given by this clause 8 shall not prejudice any other right or remedy of the Company against the Customer in respect of the breach concerned, or any other breach.

8.3 Upon termination of the Contract all obligations of the Company thereunder shall cease.

## **9. CUSTOMER'S UNDERTAKING**

- 9.1 The Customer shall at all times comply with any and all instructions and legislation relating to the Products (including without limitation the storage, packaging, labelling and supply of the Products to its own customers).
- 9.2 The Customer undertakes to indemnify and keep the Company indemnified against any liability, claim, damage, loss, cost or expense that the Company may incur arising out of the Customer's breach of this clause 9.

## **10. CONFIDENTIAL INFORMATION**

The Customer and the Company agree that in the course of the Company supplying Products to the Customer, the parties may disclose to each other certain Confidential Information. The Confidential Information shall not be used for any purpose other than the discharge of the respective parties' obligations under the Contract. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 The Customer shall not use, sell or distribute the Products in any manner which may infringe any Intellectual Property Rights of the Company or any third party and in particular shall not alter, obscure, conceal, remove or otherwise interfere with any labelling or markings or packaging on the Products.
- 11.2 The Customer acknowledges that, as and between the Company and the Customer, all Intellectual Property Rights in the Products (including their packaging) shall be and shall remain vested in the Company.
- 11.3 The Customer undertakes to indemnify and keep the Company indemnified against any liability, claim, damage, loss, cost, or expense that the Company may incur arising out of any breach of this clause 11.

## **12. FORCE MAJEURE**

If the performance of the Contract or any part thereof by the Company shall be delayed or prevented by a Force Majeure Event, then the Company shall, without liability to the Customer, have the right at its sole discretion either to suspend further performance of the Contract until such time as the cause of the delay or prevention shall no longer be present, or to be discharged from further performance under the Contract. If the Company elects to discharge itself from further performance under the Contract, the Customer shall thereupon pay the Contract price, subject to such reasonable allowance (if any) as the Company may in its sole but reasonable discretion grant to the Customer for that part of the Contract which has not been performed by the Company.

## **13. EXPORT TERMS**

- 13.1 Where the Products are supplied for export from the United Kingdom the provisions of this clause 13 shall (subject to any special terms agreed in writing between the Customer and an authorised representative of the Company) apply notwithstanding any other provision of these Terms.
- 13.2 The Customer shall be responsible for complying with any legislation or regulations governing the packaging and labelling of the Products and their importation into the country of destination and for the payment of any duties thereon.



- 13.3 Except where the Company agrees to deliver the Products to the Customer, the Customer shall be responsible for arranging for inspection of the Products before shipment. In such circumstances, the Company shall have no liability for any claim in respect of any defect in the Products which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 13.4 Payment of all amounts due to the Company shall be made against shipping documents for transportation of the Products by (i) sea; and/or (ii) land; and time of payment of the price shall be of the essence of the Contract.

#### 14. WARRANTIES, LIABILITY AND INDEMNITY

- 14.1 The Company warrants (subject to the other provisions of these Terms) that:
- (a) on delivery, the Products shall conform to their specification and shall also be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - (b) if the Customer has made it expressly known to the Company in the Customer's order that the Products shall be suitable for a particular purpose and the Company has expressly stated in its written acceptance of the Customer's order that it will supply Products suitable for that purpose, then the Products shall be reasonably fit for the purpose so stated.
- 14.2 Any claim by the Customer which is based on any defect in the quality or condition of the Products or their failure to correspond with specification or to be suitable for a particular purpose shall be notified to the Company within 72 hours from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.
- 14.3 In the case of any claim that the Products are defective or otherwise fail to correspond with specification or be suitable for a particular purpose the Customer shall return the Products to the Company's Premises and provide the Company with details of the consignment in which the Products were contained. In all such cases the Customer shall immediately cease to use all similar Products received under the same consignment and the Customer shall immediately provide the Company with all co-operation which it reasonably requires to check any tests or assessments of the Products made or to be made by the Customer.
- 14.4 Where any valid claim in respect of any of the Products which is based on any defect in the quality or condition of the Products or their failure to meet specification or be suitable for a particular purpose is notified to the Company in accordance with these Terms, the Company shall be entitled to repair or replace such Products free of charge or, at the Company's sole discretion, credit the Customer with the price of such Products, but the Company shall have no further liability to the Customer. Where any claim or any part thereof is in respect of services rather than goods, then provided that the alleged deficiency in said services has been notified to the Company within 72 hours from the date of completion of performance of said services, the Company's only obligation shall be to re-perform such services as are determined by the Company (in its sole discretion but acting reasonably) not to have been performed with reasonable skill and care and the Company shall have no further liability to the Customer.
- 14.5 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these Terms;

- (b) any use made or resale by the Customer of any of the Products, or of any product incorporating any of the Products; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 14.6 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.7 Nothing in these Terms excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
  - (b) under section 2(3), Consumer Protection Act 1987; or
  - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (d) for fraud or fraudulent misrepresentation.
- 14.8 Subject to clause 14.6 and clause 14.7:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 14.9 The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

## 15. DATA PROTECTION

- 15.1 For the purposes of the Contract, the Company (and/or any subcontractor appointed by the Company as a sub-processor of Customer Data under the Contract) will be acting as a data processor on the Customer's behalf with respect to the Customer Data, whilst the Customer shall remain at all times the data controller with respect to the Customer Data. The parties acknowledge that some Customer Data will contain personal data.

- 15.2 For the purposes of the Contract, the Company will process the Customer Data only in accordance with the Customer's instructions and in compliance with the Data Protection Legislation and otherwise as necessary to perform the Company's obligations under the Contract.
- 15.3 The Customer represents and warrants that it has obtained the necessary consents, permits and authorisations to enable the Company to process Customer Data on the Customer's behalf and that the Customer shall comply with the Data Protection Legislation in its use of the Goods and Services and the processing of the Customer Data by the Company on its behalf.
- 15.4 The Company will implement technical and organisational measures to ensure the security of the Customer Data and such measures will conform to the requirements of the Data Protection Legislation; details of said measures will be provided to the Customer upon request and the Customer is responsible for satisfying itself that these measures are appropriate.
- 15.5 The Company shall assist the Customer in complying with its obligations under the Data Protection Legislation, including assisting in responding to requests by data subjects and supervisory authorities to the extent reasonably necessary. The Company shall notify the Customer of any data breaches concerning personal data. The Company shall be entitled to charge for any reasonable costs and expenses incurred as a result of such assistance where any data breach is or may be attributable to the Customer.
- 15.6 The Company shall make available to the Customer information reasonably necessary to demonstrate compliance with the Data Protection Legislation and will contribute to audits conducted by the Customer or its representative in relation to the processing of personal data by the Company. The Company shall be entitled to charge for any reasonable costs and expenses incurred by the Company.
- 15.7 The Company shall not be responsible for any loss, destruction, corruption, alteration or disclosure of Customer Data caused by any third party not appointed by the Company as a sub-processor of Customer Data under the Contract.
- 15.8 On the termination or expiry of the Contract, the Company shall, at the Customer's election, arrange for the Customer Data to be destroyed or transferred to the Customer. The Company shall be entitled to charge for any reasonable costs and expenses incurred by the Company.
- 15.9 The liability of the Company for any breach of any of the provisions of this clause 15 shall be subject to the exclusions and limitations set out in clause 14.

## **16. MISCELLANEOUS**

- 16.1 The Customer may not assign, delegate, mortgage, charge, sub-contract or otherwise transfer any or all of its rights and obligations under the Contract without the prior written consent of the Company.
- 16.2 The Company may assign the Contract or any part of it to any person, firm or company and may sub-contract or otherwise transfer any or all of its rights and obligations under the Contract to any person, firm or company.
- 16.3 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

- 16.4 No failure or delay by either party in exercising any right, power or privilege under the Contract will impair or operate as a waiver of the same, nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- 16.5 The Contract will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract. Neither party will have, nor represent that it has, any authority to make any commitments on the other party's behalf.
- 16.6 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified by the relevant party by notice in writing to the other party. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to above or, if sent by pre-paid 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.
- 16.7 No third party shall be entitled to enforce any of the terms of the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 16.8 These Terms and the Contract contain the whole agreement between the parties and supersede and replace any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into these Terms or the Contract.
- 16.9 Any dispute arising under or in connection with the Contract shall be solely and finally settled by arbitration in accordance with the London Court of International Arbitration ("LCIA") Rules.
- 16.10 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English Courts.