

## TERMS AND CONDITIONS OF BUSINESS

The Buyers attention is drawn to Condition 15 of these terms and Conditions of Business

### 1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions

**(Conditions):**

**Buyer:** the person who purchases, hires, takes possession of or otherwise acquires Goods or Services from the Company in accordance with the Contract.

**Company's Manager:** the Company's manager for the Project appointed under condition 0.

**Contract:** the Buyer's purchase order and the Company's acceptance of it in accordance with condition 0, or the Company's Proposal and the Buyer's acceptance of it.

**Buyer's Equipment:** any equipment, systems, cabling or facilities provided by the Buyer and used directly or indirectly in the supply of the Deliverables.

**Buyer's Manager:** the Buyer's manager for the Project, appointed in accordance with condition 10.1.

**Deliverables:** all goods and services to be provided by the Company to the Buyer in accordance with the Contract and specified in the Proposal.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Goods:** goods to be sold by the Company to the Buyer in accordance with the Contract and specified in the Proposal.

**Hire Equipment:** any equipment, systems, cabling or facilities hired by the Company to the Buyer and specified in the Proposal.

**In-put Material:** all Documents, information, materials and any other matter whatsoever required by the Company and supplied to the Company to enable the Company to provide the Deliverables to the Buyer in accordance with the Contract.

**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.

**Pre-existing Materials:** all Documents, information and other materials whatsoever provided by the Company and relating to the Deliverables which existed prior to the commencement of the Contract.

**Project:** the provision of Deliverables by the Company to the Buyer as specified in the Proposal and in accordance with the Contract.

**Project Milestone:** the date on which a part of the Project is to be completed as set out in the Proposal.

**Proposal:** any document provided by the Company to the Buyer containing the complete description of the Goods and Services to be provided by the Company to the Buyer for the Project, containing or referring to these Conditions and intended by the Company to bind the Company on acceptance by the Buyer

**Services:** the services to be provided by the Company in accordance with these Conditions and specified in the Proposal.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) wherever incorporated and that person's legal and personal representatives, successors and permitted assigns.

1.4 Words in the singular shall include the plural and vice versa.

- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to writing or written includes faxes and e-mail.
- 1.7 Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.8 References to conditions are to these terms and conditions.

## 2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:
  - (a) apply to and be incorporated into the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Buyer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Buyer's purchase order constitutes an offer by the Buyer to acquire the goods or services specified in it on these Conditions. No offer placed by the Buyer shall be accepted by the Company other than:
  - (a) by a written acknowledgement issued and executed by the Company; or
  - (b) (if earlier) by the Company delivering the goods or starting to provide the services at which time a Contract on these Conditions will be formed. The Buyer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.
- 2.3 Proposals are made by the Company to the Buyer on the basis that no Contract shall come into existence except in accordance these Conditions. Any Proposal is valid for a period of 30 days from its date unless any other period is specified in the proposal, provided that the Company has not previously withdrawn it.

## 3. COMMENCEMENT AND DURATION

- 3.1 The Deliverables supplied in accordance with the Contract shall be provided by the Company to the Buyer in accordance with the Proposal.

## 4. PROPOSAL

- 4.1 The Proposal shall be agreed in the following manner:
  - (a) the Buyer shall provide the Company with a request for a Proposal, setting out the requirements and specifications of the Deliverables which it is requesting from the Company, including any dates by which the Buyer wishes particular parts of the Project to be completed and such other information as the Company may require to allow the Company to prepare a draft Proposal;
  - (b) the Company shall, as soon as reasonably practicable, provide the Buyer with a draft Proposal; and
  - (c) the Company and the Buyer shall discuss and agree the draft Proposal; and
  - (d) when the Buyer and the Company have agreed the content of the draft Proposal, the Company shall provide to the Buyer a Proposal which the Buyer shall sign and return it to the Company.
- 4.2 The Proposal will be subject to these Conditions and no amendment shall be made to it except in accordance with condition 11 and condition 19.
- 4.3 The Company may, in its absolute discretion, charge the Buyer for the preparation of a Proposal on a time and materials basis in accordance with condition 12.

4.4 The quantity and description of Deliverables shall be as set out in the Proposal. All samples, drawings, descriptive matter, specifications, descriptions, illustrations and advertising referring to Deliverables and contained in the Proposal are issued or published for the sole purpose of giving an approximate idea of the Deliverables described in the Proposal. They shall not form part of the Contract and the Contract shall not be a sale by sample or description.

## 5. COMPANY'S OBLIGATION

5.1 The Company shall use reasonable endeavours to provide the Deliverables to the Buyer, in accordance in all material respects with the Proposal.

5.2 The Company shall use reasonable endeavours to meet Project Milestones, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

5.3 The Company shall appoint the Company's Manager who shall have authority contractually to bind the Company on all matters relating to the Project. The Company shall use reasonable endeavours to ensure that the same person acts as the Company's Manager throughout the term of the Contract, but may replace him from time to time where reasonably necessary in the interests of the Company's business.

5.4 The Company shall use all reasonable endeavours to observe all applicable regulations, rules and any other reasonable requirements that apply in connection with the Project and that have been communicated to it under condition 10.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

## 6. QUALITY

6.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

6.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

6.3 The Company shall not be liable for a breach of the warranty in condition 6.2 unless:

- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

6.4 The Company shall not be liable for a breach of the warranty in condition 6.2 if:

- 6.5 the Buyer makes any further use of such Goods after giving such notice; or
- 6.6 the defect arises because the Buyer failed to follow the Company'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; or
- 6.7 the Buyer alters or repairs such Goods without the written consent of the Company.

6.8 Subject to condition 6.3 and condition 6.4, if any of the Goods do not conform with the warranty in condition 6.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

6.9 If the Company complies with condition 6.8 it shall have no further liability for a breach of the warranty in condition 6.2 in respect of such Goods.

## 7. DELIVERY OF GOODS

7.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

7.2 The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

7.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

7.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

7.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

7.6 The Buyer shall provide at the place of delivery and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

7.7 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.

7.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

7.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 8. NON-DELIVERY

8.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

8.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

8.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

**9. RISK/TITLE**

- 9.1 The Goods are at the risk of the Buyer from the time of delivery.
- 9.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
  - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 9.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company and evidence of the payment of the current premium.
- 9.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
  - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 9.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his 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 of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer 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 Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - (b) the Buyer suffers or allows any execution, 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 Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
  - (c) the Buyer encumbers or in any way charges any of the Goods.
- 9.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 9.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 9.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 9.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 9 shall remain in effect.

## 10. BUYER'S OBLIGATION

10.1 The Buyer shall:

- (a) co-operate with the Company in all matters relating to the Deliverables and appoint the Buyer's Manager in relation to the Project, who shall have the authority contractually to bind the Buyer on matters relating to the Project;
- (b) provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Buyer's premises, office accommodation, data and other facilities as requested by the Company;
- (c) provide, in a timely manner, such In-put Material and other information as the Company may request and ensure that it is accurate in all material respects;
- (d) except as expressly provided for in the Proposal, be responsible (at its own cost) for preparing and maintaining the relevant premises for the provision of the Deliverables, including identifying, monitoring, removing and disposing of any hazardous materials from any premises in accordance with all applicable laws, before and during the provision of the Deliverables at those premises, and for informing the Company of all of its obligations and actions under this condition 10.1(d);
- (e) inform the Company of all rules and regulations and any other reasonable requirements that apply at any of the premises where the Deliverables will be provided to the Buyer;
- (f) ensure that all Buyer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Deliverables or otherwise and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the provision of the Deliverables by the Company and the use of the Deliverables by the Buyer in all cases before the date on which the Deliverables are to be provided;
- (h) keep, maintain, insure and return to the Company the Hire Equipment in good condition and in accordance with the Company's instructions as notified by the Company's Manager from time to time and shall not dispose of or use the Hire Equipment other than in accordance with the Company's written instructions or authorisation.

10.2 If the Company's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.

10.3 The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer'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 Buyer in writing.

10.4 The Buyer shall not, without the prior written consent of the Company, at any time from the date on which these Conditions were executed to the expiry of six months after the last date of the provision of the Deliverables or the termination of this agreement, whichever is the later, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Deliverables.

10.5 Any consent given by the Company in accordance with condition 10.4 shall be subject to the Buyer paying to the Company a sum equivalent to 20% of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Buyer to that employee or sub-contractor.

## 11. CHANGE CONTROL

11.1 The Buyer's Manager and the Company's Manager shall meet in accordance with the provisions of the Proposal to discuss matters relating to the Project. If either party wishes to change the scope or execution of the Deliverables, it shall submit details of the requested change to the other in writing.

11.2 If either party requests a change to the scope or execution of the Deliverables, the Company shall, within a reasonable time, provide a written estimate to the Buyer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Company's charges arising from the change;
- (c) the likely effect of the change on the Proposal; and

(d) any other impact of the change on the terms of the Contract.

11.3 The Company may, from time to time and without notice, change the Deliverables in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Deliverables. If the Company requests a change to the scope of the Deliverables for any other reason, the Buyer shall not unreasonably withhold or delay consent to it.

11.4 If the Buyer wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Proposal and any other relevant terms of the Contract to take account of the change.

11.5 The Company may charge the Buyer for its time spent in assessing a request for change from the Buyer on a time and materials basis in accordance with condition 12

## 12. CHARGES AND PAYMENT

12.1 Condition 12.2 shall apply if the Company provides the Deliverables on a time and materials basis. Condition 12.3 shall apply if the Company provides the Deliverables for a fixed price. The remainder of this condition 12 shall apply in either case.

12.2 Where the Deliverables are provided on a time and materials basis:

- (a) the charges payable for the Deliverables shall be calculated in accordance with the Company's standard daily fee rates, as amended from time to time by the Company giving not less than 1 months written notice to the Buyer;
- (b) the Company's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 9.00 am and 5.30 pm on weekdays (excluding public holidays);
- (c) the Company shall be entitled to charge an overtime rate of 20% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Project outside the hours referred to in condition 12.2(b);
- (d) all charges quoted to the Buyer shall be exclusive of VAT which the Company shall add to its invoices at the appropriate rate;
- (e) the Company shall ensure that every individual whom it engages on the Deliverables on a time spent basis completes time sheets recording time spent, and the Company shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 12.2(f); and
- (f) the Company shall invoice the Buyer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 12.2. Each invoice shall set out the time spent by each individual whom it engages on the Deliverables and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

12.3 Where the Deliverables are provided for a fixed price, the total price for the Deliverables shall be the amount set out in the Proposal. The total price shall be paid to the Company (without deduction or set-off) as set out in the Proposal. The company will invoice the Buyer for the charges payable, together with expenses, the costs of materials and VAT, where appropriate, in accordance with the Proposal and calculated as provided in condition 12.4 The company's default payment terms unless specified otherwise in the proposal are:

Payment of the total price shall be 50% on the signing of the Proposal, 25% not less than 5 working days prior to the event date described in the Proposal and the balance including all variations orders within 30 days of the event described in the Proposal.

12.4 Any fixed price and daily rate contained in a Proposal excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the provision of the Deliverables, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the deliverables. Such expenses, materials and third party services shall be invoiced by the Company; and
- (b) VAT, which the Company shall add to its invoices at the appropriate rate.

12.5 The Buyer shall pay each invoice submitted to it by the Company, in full and in cleared funds, within 30 days of receipt.



- 12.6 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Company on the due date, the Company may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Lloyds TSB Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (b) suspend all provision of the Deliverables until payment has been made in full.
- 12.7 Time for payment shall be of the essence of the Contract.
- 12.8 All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition 12.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 12.9 The Company may, without prejudice to any other rights it may have, set off any liability of the Buyer to the Company against any liability of the Company to the Buyer.

### 13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 As between the Buyer and the Company, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Company. Subject to conditions 13.2 and 13.3 the Company licenses all such rights to the Buyer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Buyer to make reasonable use of the Deliverables. If the Company terminates the Contract under condition 17.2 or the Contract is otherwise lawfully terminated, this licence will automatically terminate.
- 13.2 The Buyer acknowledges that, where the Company does not own any Pre-existing Materials, the Buyer's use of rights in Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Buyer.
- 13.3 The Company warrants to the Buyer that
- (a) the Company has full and complete right and entitlement to grant to the Buyer a licence of the Intellectual Property Rights in accordance with Condition 13.1;
  - (b) to the best of the knowledge and belief of the Company, neither the discharge by the Buyer of its obligations under this Agreement nor the exercise by the Buyer of any of the rights licensed to it will infringe the intellectual property rights of any third party; and
  - (c) the Company has not received notice of any claim alleging that discharge by the Buyer of its obligations under the Contract or that the exercise by the Buyer of any of the rights licensed to the Buyer constitutes an infringement of the intellectual property rights of any third party.
- 13.4 Other than as expressly set out in this condition 13, the Company makes no representation or warranty that now or in the future the rights licensed by it to the Buyer in accordance with the Contract are valid and enforceable or that the exercise by the Buyer of the rights granted to it in accordance with the Contract will not infringe the rights of any third party.
- 13.5 The Buyer warrants to the Company that the use by the Company of In-put Materials will not infringe the Intellectual Property Rights of any third party and the Buyer shall indemnify and hold the Company harmless against all claims, damages, costs, losses and expenses incurred by the Company arising from the Company's use of the In-put Materials to provide the Deliverables to the Buyer.

### 14. CONFIDENTIALLY AND THE COMPANY'S PROPERTY

- 14.1 The Buyer 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 Buyer by the Company, its employees, agents



or sub-contractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain. The Buyer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Buyer's obligations to the Company, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Buyer.

14.2 Subject to condition 9, all materials, equipment including Hire Equipment and tools, drawings, specifications and data supplied by the Company to the Buyer (including Pre-existing Materials) shall, at all times, be and remain as between the Company and the Buyer the exclusive property of the Company, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

14.3 This condition 14 shall survive termination of this agreement, however arising.

## 15. LIMITATION OF LIABILITY

15.1 This condition 15 sets 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 Buyer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Buyer of the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

15.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

15.3 Nothing in these Conditions limits or excludes the liability of the Company:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Buyer as a result of fraud or fraudulent misrepresentation by the Company; or
- (c) for any liability incurred by the Buyer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

15.4 Subject to condition 15.2 and condition 15.3

- (a) the Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss of corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) 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 this agreement shall be limited to the price paid for the Deliverables.

## 16. DATA PROTECTION

The Buyer acknowledges and agrees that details of the Buyer'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 Company in connection with the Deliverables.

**17. TERMINATION**

17.1 Subject to condition 17.3, the Contract will terminate automatically on completion of the Project in accordance with the Contract.

17.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

17.3 On termination of this agreement for any reason:

- (a) the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Deliverables provided to the Buyer but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- (b) the Buyer shall, within a reasonable time, return all of the Company's equipment, Pre-existing Materials and Deliverables capable of being returned to the Company. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of such Deliverables. Until they have been returned or repossessed, the Buyer shall be solely responsible for their safe keeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- (d) The client shall not be entitled to cancel any Proposal save on terms that the Client shall pay to the Seller in the case of cancellation more than three weeks prior to the dates referred to in the Delivery Schedule one half of the Price as the liquidated damages plus all costs contracted by the Seller in the performance to date of the Proposal and in the case of cancellation less than three weeks prior to the date referred to in the Delivery Schedule the Price as the liquidated damages.

**18. FORCE MAJEURE**

The Company shall have no liability to the Buyer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company 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 the Company or sub-contractors.

**19. VARIATION**

Subject to condition 11, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**20. WAIVER**

20.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

20.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**21. SEVERANCE**

21.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

21.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

21.3 The parties agree, in the circumstances referred to in condition 21.1 and if condition 21.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

**22. STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of this agreement, other than as expressly set out in the Contract.

**23. ASSIGNMENT**

23.1 The Buyer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23.2 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**24. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**25. RIGHTS OF THIRD PARTIES**

This agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

**26. NOTICES**

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address, fax number or email address as the relevant party may notify to the other party and shall be delivered personally, sent by fax, email or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax or email, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 26 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax or email, to the fax number or email address of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

**27. GOVERNING LAW AND JURISDICTION**

27.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

27.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.