

Standard Terms & Conditions of Sale

THESE GOVERN ALL PODMORES (ENGINEERS) LTD
SALES TO CUSTOMERS (INCLUDING SPARES AND
SERVICES)



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

1 Interpretation

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

Commencement Date: has the meaning set out in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

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

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

Deliverables: the deliverables set out in the Order or Specification.

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

Force Majeure Event: has the meaning given to it in clause 15.1.

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

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

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

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

Specification: in relation to Goods, any specification for the Goods (including any relevant plans or drawings) that is provided by the Supplier to the Customer, and in relation to Services, the description or specification for Services provided by the Supplier to the Customer.

Supplier: Podmores (Engineers) Limited registered in England and Wales with company number 4415376.

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

- 1.2 **Construction.** In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) a reference to **writing** or **written** includes faxes and e-mails.

2 **Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the supply of the Goods and/or Services.
- 2.4 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.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 60 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 **Goods**

- 3.1 The Goods are described in the Specification which is typically within the Supplier's quotation.

- 3.2 To the extent that the Goods are to be manufactured in accordance with a 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This Clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.4 The following are not included as standard and shall only be included if expressly identified in the Specification:
- (a) project management;
 - (b) lifting equipment & operators;
 - (c) unloading of equipment from delivery vehicle;
 - (d) clearance of installation site;
 - (e) hygienic cleaning of the equipment;
 - (f) pneumatic supply to system;
 - (g) electrical supply to our control equipment/panel;
 - (h) storage of equipment and consequential movement to installation site;
 - (i) any civil work; and
 - (j) synchronisation if different from standard available "handshake modes" (run on demand for stand alone equipment, master and slave, slave and master for systems).

4 Delivery of Goods

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 Where the Supplier has expressly stipulated that delivery is included within the Order 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. Where the Supplier has not expressly stipulated that delivery is included within the Order the Customer shall collect the Goods from the Supplier's premises at Unit H Great Fenton Business Park, Grove Road, Fenton, Staffordshire, ST4 4LZ, UK or such other location as may be advised by the Supplier before delivery (Delivery Location) within three Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 10 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the eleventh Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.7 If twenty Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 Quality of Goods

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:
- (a) conform in all material respects with their description and any applicable Specification;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be fit for any purpose held out by the Supplier
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

- (d) the Customer alters or repairs such Goods without the written consent of the Supplier; or
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.
- 5.6 The machine quoted is only suitable for the specified products run at the specified speeds. Should you wish to handle different products please contact the Supplier to check suitability.

6 Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.
- 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 on the Supplier's behalf from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(l); 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 becomes subject to any of the events listed in Clause 13.2(b) to Clause 13.2(l) then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell 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 of the Customer or of any third party where the Goods are stored in order to recover them.

7 Services

- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 The following are not included as standard and shall only be included if expressly identified in the Specification:
- (a) project management;
 - (b) lifting equipment & operators;
 - (c) unloading of equipment from delivery vehicle;
 - (d) clearance of installation site;
 - (e) hygienic cleaning of the equipment;
 - (f) pneumatic supply to system;
 - (g) electrical supply to our control equipment/panel;
 - (h) storage of equipment and consequential movement to installation site;
 - (i) any civil work; and
 - (j) synchronisation if different from standard available "handshake modes" (run on demand for stand alone equipment, master and slave, slave and master for systems).

8 Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order, and the information it provides in the Specification if applicable, are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods and/or Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and/or Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Goods and/or Services;
- (f) 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;
- (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9 Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's Specification or published price list as at the date of delivery.
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer, unless the Supplier has expressly stipulated that delivery is included within the Order.

9.2 The charges for Services shall be on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in Podmores Service Rates;
- (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b) on Business Days. Such charges shall be in accordance with the Supplier's standard fee rates, as set out in the Podmores Service Rates;
- (d) the Supplier shall be entitled to charge an overtime rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clauses 9.2(b) and 9.2(c) on non-Business Days. Such charges shall be in accordance with the Supplier's standard fee rates, as set out in the Podmores Service Rates; and
- (e) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

- (a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase two months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within four weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving two weeks' written notice to the Customer; and
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification in respect of the Goods; or
- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 Except where the Supplier has expressly stipulated alternative payment terms within the Order, the Supplier shall invoice the Customer:

- (a) in respect of Goods, for Orders over £3,000:
 - (i) at the time of Order (50%); and
 - (ii) on or around the completion of manufacturing, but prior to delivery (50%).
- (b) in respect of Goods, for Orders under £3,000 on or at any time after completion of delivery; or
- (c) in respect of Services, monthly in arrears.

9.5 Except where the Supplier has expressly stipulated alternative payment terms within the Order, the Customer shall pay each invoice submitted by the Supplier:

- (a) in respect of Goods, for Orders over £3,000, immediately;
- (b) in respect of Goods, for Orders under £3,000 within 30 days of the date of the invoice;
- (c) in respect of Services, the Supplier shall invoice the Customer monthly in arrears; and
- (d) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

- 9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 13 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10 Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by Clause 10.2.
- 10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

11 Confidentiality

- 11.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.

12 Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1:
- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from the Supplier's deliberate personal repudiatory breach of the Contract); and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by the Supplier's deliberate personal repudiatory breach shall not exceed £100,000.
- 12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.4 This clause 12 shall survive termination of the Contract.

13 Termination

- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than two months' written notice.
- 13.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing of the breach;

- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(b) to clause 13.2(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 13.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) there is a change of control of the Customer.
- 13.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
 - (b) the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14 Consequences of termination

- 14.1 On termination of the Contract:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - (c) the Customer shall, on termination of the Contract by the Customer other than where it terminates the Contract on the basis of any of the events mentioned in clause 13.2(b) to clause 13.2(l), pay the Supplier the greater of:
 - (i) Twenty percent of the order value; or
 - (ii) The total costs incurred by the Supplier up to the date of termination, inclusive of labour and material costs.
 - (d) Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
 - (e) Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

15 Force majeure

- 15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

16 General

16.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over, novate, transfer, novate or deal in any other manner with any or all of its rights and obligations under the Contract. Where such action would require the Customer to execute a document to facilitate it the Supplier shall notify the Customer in writing and the Customer shall promptly execute any required documentation within 7 days.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

16.2 Notices

- (a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 09.00 am on the second Business Day after posting or at the time recorded by the delivery service;
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under this agreement is not valid if sent by email.

- 16.3 **Severance.** 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.
- 16.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 16.7 **Third parties rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

- 16.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.