

## TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES

THIS AGREEMENT is dated 10<sup>th</sup> November 2010

### AGREED TERMS

#### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

**Contract:** the Customer's purchase order and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for Goods and/or Services by the Supplier under **condition 2.2**.

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

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

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

**Delivery Point:** the place where delivery of the Goods is to take place under **condition 4**.

**Document:** includes, without limitation, 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:** any goods agreed in the Contract to be supplied to the Customer by the Supplier (including any part or parts of them)

**In-put Material:** all Documents, information and materials provided by the Customer relating to the Services including (without limitation), computer programs, data, reports and specifications.

**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 materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

**Services:** the services to be provided by the Supplier under the Contract together with any other services which the Supplier provides, or agrees to provide, to the Customer.

**Supplier:** Y3K (Europe) Limited, Unit 2, Valley Point, Beddington Farm Road, Croydon, CRO 4WP.

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

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

1.2 Headings in these conditions shall not affect their interpretation.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 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.
- 1.5 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.7 References to conditions and schedules are to the conditions and schedules of the Contract.

## **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 Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Goods or Services by the Supplier, constitutes an offer by the Customer to purchase the Goods or Services on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:

- (a) by a written acknowledgement issued and executed by the Supplier; or
- (b) (if earlier) by the Supplier starting to supply the Goods or Services,

when a contract for the supply and purchase of the Goods or Services on these Conditions will be established. The Customer'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 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with **condition 2.2**. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

2.4 Each order or acceptance of a quotation for Goods or Services by the Customer from the Supplier shall be deemed to be an offer by the Customer to buy Goods or Services subject to these conditions.

2.5 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.6 These conditions apply to all the Supplier's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Supplier. 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. Nothing in this condition shall exclude or limit the Supplier's liability for fraudulent misrepresentation.

## **SUPPLY OF GOODS**

### **3. DESCRIPTION OF GOODS**

3.1 The quantity and description of the Goods shall be as set out in the Supplier's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and 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 Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

#### **4. DELIVERY OF GOODS**

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

4.2 The Customer shall take delivery of the Goods within seven days of the Supplier giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Supplier 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.

4.4 Subject to the other provisions of these conditions the Supplier 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 Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

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

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

4.6 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

4.7 If the Supplier delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Supplier, the Customer 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.

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

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

#### **5. NON-DELIVERY OF GOODS**

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

5.2 The Supplier shall not be liable for any non-delivery of Goods unless the Customer gives written notice to the Supplier of the non-delivery within three days of the date when the Goods would in the ordinary course of events have been received, or twenty-eight days if the Customer is a consumer.

5.3 Any liability of the Supplier 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.

## **6. RISK/TITLE OF GOODS**

6.1 The Goods are at the risk of the Customer from the time of delivery, or collection by or on behalf of the Customer.

6.2 Ownership of the Goods shall not pass to the Customer until the Supplier 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 Supplier from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier'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 Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.

6.4 The Customer 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 Customer's business at full market value; and
- (b) any such sale shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer 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 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, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract

between the Supplier and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

(c) the Customer encumbers or in any way charges any of the Goods.

6.6 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.

6.7 The Customer grants the Supplier, 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 Customer's right to possession has terminated, to recover them.

6.8 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.

6.9 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this **condition 6** shall remain in effect.

## **7. PRICE AND PAYMENT OF GOODS**

7.1 Unless otherwise agreed by the Supplier in writing, the price for the Goods shall be the price set out in the Supplier's price list published on the date of delivery or deemed delivery.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.

7.3 Subject to **condition 7.6**, payment of the price for the Goods is due in pounds sterling.

7.4 Time for payment shall be of the essence.

7.5 No payment shall be deemed to have been received until the Supplier has received cleared funds.

7.6 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.

7.7 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.

7.8 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 8% above the Bank of England base rate from time to time, accruing on a daily basis until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **8. QUALITY OF GOODS**

8.1 Where the Supplier is not the manufacturer of the Goods (or any part thereof), the Supplier shall endeavour to transfer to the Customer the benefit of any express warranty or guarantee given to the Supplier, to the extent transferable. The Supplier hereby expressly disclaims all warranties, either express or implied, related to such Goods (or a part thereof) and the Customer is

relying on the manufacturer's specifications only, which the Supplier shall provide to the Customer upon a reasonable request and at the Customer's cost.

8.2 The Supplier warrants that (subject to the other provisions of these conditions) on delivery, and for a minimum period of 12 months from the date of delivery (unless an extended warranty period is confirmed by the Supplier, or has been purchased by the Customer at the original point of sale), the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979. Returned or repaired Goods sold by the Company as second-hand are only so warranted for a period of 3 months.

8.3 The Supplier shall not be liable for a breach of the warranty in **condition 8.2** unless:

8.3.1

- (a) the Customer gives written notice of the defect to the Supplier, within 3 days of the receipt of Goods.
- (b) the Supplier is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost for the examination to take place there.

8.3.2 If you are dealing as a consumer the period under 8.3.1(a) is 30 days.

8.4 The Supplier shall not be liable for a breach of the warranty in **condition 8.2** if:

- (a) the Customer makes any further use of such Goods after giving such notice; or
- (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; or
- (c) the Customer alters or repairs such Goods without the written consent of the Supplier.

8.5 Subject to **condition 8.3** and **condition 8.4**, if any of the Goods do not conform with the warranty in **condition 8.2** the Supplier 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 Supplier so requests, the Customer shall return the Goods or the part of such Goods which is defective to the Supplier. If the Customer has purchased Goods with an extended warranty, or Goods that come with more than the minimum 12 months warranty the following conditions will apply:

- (a) If during the first year any of the Goods are found to be faulty then the Supplier will repair, replace or refund such goods at our option.
- (b) If during the second year any of the Goods are found to be faulty then the Supplier will repair or replace, (if not in stock the Supplier reserves the right to offer replacement Goods with the equivalent specification), or credit such Goods less 33% usage charge at our option.
- (c) If during the third year any of the Goods are found to be faulty then the Supplier will repair or replace, (if not in stock the Supplier reserves the right to offer replacement Goods with the equivalent specification), or credit such Goods less 66% usage charge at our option.

8.6 Further information and terms are included in the Y3K Extended Warranty Terms and Conditions.

8.7 If the Supplier complies with **condition 8.5** it shall have no further liability for a breach of the warranty in **condition 8.2** in respect of such Goods.

8.8 Distance Selling Regulations (cancelling orders)

8.7.1 CONSUMER RIGHTS

- (a) If you are contracting as a consumer, you may cancel a Contract at any time within seven working days, beginning on the day after you received the Goods. In this case, you will receive a full refund of the price paid for the Goods in accordance with our refunds policy (set out in condition 2 below).
- (b) To cancel a Contract, you must inform the Supplier in writing. You must also return the Good(s) to us immediately, in the same condition in which you received them, and at your own cost and risk. You have a legal obligation to take reasonable care of the Goods while they are in your possession. If you fail to comply with this obligation, we may have a right of action against you for compensation.

## 8.9 THE SUPPLIERS REFUNDS POLICY FOR CONSUMERS

### 8.8.1 When you return Goods to the Supplier:

- (a) because you have cancelled the Contract between us within the seven-day cooling-off period (see condition 8.7.1 above), the Supplier will process the refund due to you as soon as possible and, in any case, within 30 days of the day you have given notice of your cancellation. In this case, the Supplier will refund the price of the Good in full, including the cost of sending the item to you. However, you will be responsible for the cost of returning the item to the Supplier.
- (b) for any other reason within 30 days (for instance, because you claim that the Good is defective), the Supplier will examine the returned Goods and will notify you of your refund within a reasonable period of time. The Supplier will usually process the refund due to you as soon as possible and, in any case, within 30 days of the day the Supplier confirms to you that you were entitled to a refund for the defective Good. Goods returned by you because of a defect will be refunded in full, including a refund of the delivery charges for sending the item to you and the cost incurred by you in returning the item to the Supplier

## SUPPLY OF SERVICES

## 9. COMMENCEMENT AND DURATION OF THE SUPPLY OF SERVICES

- 9.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date of acceptance by the Supplier of the Customer's offer in accordance with **condition 2.2**.
- 9.2 Subject to **condition 16**, the Services supplied under the Contract shall continue to be supplied for a period in accordance with **condition 2.2** and, after that, shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other not less than one months' notice.

## 10. SUPPLIER'S OBLIGATIONS IN RELATION TO THE SUPPLY OF SERVICES

- 10.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Contract.
- 10.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Contract but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

## 11. CUSTOMER'S OBLIGATIONS IN RELATION TO THE SUPPLY OF SERVICES

- 11.1 The Customer shall:
  - (a) co-operate with the Supplier in all matters relating to the Services;

- (b) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier;
- (c) provide to the Supplier, in a timely manner, such In-put Material and other information as the Supplier may require and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- (f) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment, in all cases before the date on which the Services are to start; and
- (g) keep, maintain and insure the Supplier's Equipment in good condition, and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation.

11.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

11.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, 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 Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

11.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of twelve months after the termination of the Contract, solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee of the Supplier in the provision of the Services.

11.5 Any consent given by the Supplier in accordance with **condition 11.4** shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee.

## **12. CHARGES AND PAYMENT IN RELATION TO THE SUPPLY OF SERVICES**

12.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Contract, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. **condition 12.2** shall apply if the Supplier provides Services on a time and materials basis. **condition 12.3** shall apply if the Supplier provides Services for a fixed price. The remainder of this **condition 12** shall apply in either case.

12.2 Where Services are provided on a time and materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Contract and as amended from time to time in accordance with **condition 12.5**;
- (b) the Supplier'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 6.00 pm on weekdays (excluding public holidays);



- (c) the Supplier shall be entitled to charge an overtime rate of 100% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in **condition12.2(b)**;
- (d) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;
- (e) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in **condition12.2(f)**; and
- (f) the Supplier shall invoice the Customer 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 **condition12.2**.

12.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Contract.

12.4 Any fixed price contained in the Contract excludes:

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

12.5 The parties agree that the Supplier may review and increase its standard daily fee rates , provided that such charges cannot be increased more than once in any 3 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 may, within one month of such notice being received or deemed to have been received in accordance with **condition 25**, terminate the Contract with immediate effect by giving written notice to the Supplier.

12.6 Unless account terms have been agreed the Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, immediately on receipt to a bank account nominated in writing by the Supplier.

12.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 8% above the Bank of England base rate from time to time, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend all Services until payment has been made in full.

12.8 Time for payment shall be of the essence of the Contract.

12.9 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This **condition 12.9** is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

12.10 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

### **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to **condition 13**, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract terminates, this licence shall automatically terminate.
- 13.2 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

### **14. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

- 14.1 The Customer 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 Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.
- 14.2 The Customer may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
  - (b) as may be required by law, court order or any governmental or regulatory authority.
- 14.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this **condition 14**.
- 14.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 14.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

### **15. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

- 15.1 Subject to **conditions 3, 4 and 8** this **condition 15** sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- (a) any breach of the Contract or these conditions;
  - (b) any use made by the Customer of the Services, the Deliverables or any part of them;
  - (c) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - (d) 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 (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

- 15.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
- (a) for death or personal injury resulting from negligence; or
  - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
  - (c) under section 2(3), Consumer Protection Act 1987; or
  - (d) for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability.
- 15.4 Under no circumstances whatsoever shall the Supplier be liable to the Customer for any indirect or consequential loss or for any loss of profits, loss of business, depletion of goodwill, loss of data, loss of opportunity, loss of contract and any similar loss arising under or in connection with the Contract or the relevant Services or Goods (as the case may be).
- 15.5 Subject to **condition 15.2, condition 15.3 and condition 15.4**, the Supplier'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 the lesser of (in the sole opinion of the Supplier):
- (a) the price paid for the relevant Services or Goods (as the case may be) under the Contract; or
  - (b) the Supplier's cost of repair or replacement of the relevant Goods (or a part thereof),  
on the basis that the Supplier has obtained insurance cover for such amount in respect of its own legal liability and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

## 16. TERMINATION

- 16.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than one months written notice or immediately on giving notice to the other if:
- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
  - (b) 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
  - (c) 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 Supplier) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) 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; or
  - (d) 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; or
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party;
  - (f) 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; or
  - (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
  - (h) 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; or

- (i) 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; or
- (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 **condition 16.1(c)** to **condition 16.1(i)** (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

16.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. 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 or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

16.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) **condition 13;**
- (b) **condition 14;**
- (c) **condition 15;**
- (d) **condition 16;** and
- (e) **condition 26.**

**17. FORCE MAJEURE**

The Supplier shall have no liability to the Customer 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 (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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.

**18. VARIATION**

18.1 The Supplier may, from time to time and without notice, change the Services 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 Services.

18.2 Subject to **condition 18.1**, 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.

**19. WAIVER**

- 19.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 19.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**20. SEVERANCE**

- 20.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 20.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, [the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable **OR** the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

**21. ENTIRE AGREEMENT**

- 21.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 21.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).
- 21.3 Nothing in this condition shall limit or exclude any liability for fraud.
- 21.4 Purchasing Terms and Conditions are available upon request.

**22. ASSIGNMENT**

- 22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontractor deal in any other manner with all or any of its rights or obligations under the Contract.
- 22.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract[, declare a trust of] or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 22.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

**23. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**24. RIGHTS OF THIRD PARTIES**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

**25. NOTICES**

- 25.1 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 Operations Manager, or as otherwise specified by the relevant party by notice in writing to the other party.
- 25.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the Operations Manager, or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the fourth 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.
- 25.3 This **condition 25** shall not apply to the service of any in any proceedings or other documents in any legal action.
- 25.4 A notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.

**26. GOVERNING LAW AND JURISDICTION**

- 26.1 The Contract, 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.
- 26.2 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, the Contract or its subject matter.