



LOSBERGER DEBOER

DE BOER STRUCTURES (UK) LIMITED

**TERMS AND CONDITIONS FOR THE
SALE OF GOODS AND SERVICES**

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Availability Date means the date set out in the Order on which the Delivery Location is available for the Supplier to commence delivery of the Goods and Services;

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

Commencement Date: has the meaning given in clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

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.

Data Protection Legislation: all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

Delivery Date: the date for delivery of the Goods set out in the Quotation.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 16.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.



Installation: means installation of the Goods at the Delivery Location to the reasonable satisfaction of the Supplier.

Installation Date: the date by which Installation is to be completed as set out in the Quotation.

Obstacle means an object or circumstance at the Delivery Location which might impede the delivery or installation of the Goods or the performance of the Services or might cause danger, difficulty or damage to people or machinery, or which itself may be subject to damage during the installation or removal of the Goods including without limitation (a) an area of the Delivery Location where the ground is not firm, or is flooded or prone to flooding or is not level; and (b) trees or overhead obstructions; and (c) buried drains, pipes, cables or other concealed services and of which account is not taken in the Quotation;

Order: the Customer's order for the sale of Goods and/or the supply of Services, set out in the Quotation.

Price: has the meaning set out in clause 9.

Quotation: a written invitation from the Supplier to the Customer to order Goods and Services on the terms of these Conditions and setting out the Goods Specification, the Services Specification, the Delivery Location, the Delivery Date, the Price, the terms of payment and any special provisions.

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

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: De Boer Structures (UK) Ltd, Castle Park, Boundary Road, Buckingham Road Industrial Estate, Brackley, Northamptonshire NN13 7ES registered in England and Wales with company number 02881680.

Supplier Materials: has the meaning given in clause 8.1(h).

1.2 Interpretation:

- (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 and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email but not fax.

2. Basis of contract

- 2.1 The Quotation is an invitation to the Customer to submit an Order for Goods and/or Services as set out and on the terms including these Conditions set out in the Quotation. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with the Quotation.
- 2.3 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**).
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services 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 have any contractual force.
- 2.5 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.
- 2.6 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 Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal 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 Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery and Installation of Goods

- 4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, relevant Customer and Supplier reference numbers and the type and quantity of the Goods.



- 4.2 The Supplier shall either
- (a) deliver the Goods to the location set out in the Quotation or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready; or
 - (b) if so stipulated in the Quotation the Customer shall collect the Goods from the Supplier's premises at Castle Park, Boundary Road, Buckingham Road Industrial Estate, Brackley, Northamptonshire NN13 7ES or such other location as may be agreed with the Customer before delivery (**Delivery Location**).
- 4.3 Delivery of the Goods shall be completed
- (a) in the event that the Goods are delivered at the Supplier's premises on the completion of the loading of the Goods; and
 - (b) in the event that the Goods are not delivered at the Supplier's premises, on the completion of unloading of the Goods at the Delivery Location.
- 4.4 The Supplier shall use reasonable endeavours to deliver the Goods by the Delivery Date and to install them (where applicable) at the Delivery Location by the Installation Date but any dates quoted for delivery or Installation of the Goods are approximate only, and the time of delivery or Installation is not of the essence.
- 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.
- 4.6 The Supplier shall have no liability for any failure to deliver or install the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply or Installation of the Goods.
- 4.7 If the Customer fails to accept delivery of the Goods within 10 (ten) 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 10th (tenth) 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).
- 4.8 If 20 (twenty) Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them:



- (a) the Supplier may resell or otherwise dispose of part or all of the Goods at reasonable market price (the "Disposal Proceeds");
- (b) the Supplier shall account to the Customer for the Disposal Proceeds.
 - (i) after deducting 25% of the Price which is agreed to be a reasonable pre-estimate of the Supplier's lost profit in respect of the Sale and the Supplier's reasonable storage and selling costs;
 - (ii) giving credit for the Price of the Goods which has been paid by the Customer;

4.9 The Supplier may deliver the Goods by instalments, which may 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 in the case of new Goods and 3 months from the date of delivery in the case of used Goods (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with the Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

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 Supplier'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 Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;



- (e) the defect arises as a result of wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

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.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods or Services that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4(b).

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 14.2(b) to clause 14.2(d); 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 14.1(b) to clause 14.1(d), 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. Supply of Services

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Quotation, 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 reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will 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.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that any information it provides to the Supplier is complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the 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 Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the 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) comply with all applicable laws, including health and safety laws;
- (h) keep 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;

8.2 In the event that the Delivery Location is not at the Supplier's premises, the Customer shall, at its own cost and expense:-

- (a) conduct any applicable construction and preliminary work, including any required levelling of the Delivery Location, to make available an area of sufficient size at the Delivery Location from the Delivery Date to allow the delivery and (where applicable) installation of the Goods;
- (b) ensure that the Supplier has access to the Delivery Location at all times required by the Supplier with or without vehicles for all purposes in connection with the Goods;
- (c) ensure that the Delivery Location is suitable for the delivery, installation (where applicable), and intended use of the Goods and the access to the Delivery Location is usable by heavy vehicles and plant machinery;
- (d) provide at the Supplier's request such equipment and facilities (including but not limited to steel trackway, cranes, tractors) as the Supplier considers necessary for the delivery and (where applicable) installation of the Goods should access to the Delivery Location or the Delivery Location itself become (through bad weather or otherwise) inaccessible or impossible to work on. If the Customer fails to provide such equipment and facilities the Supplier shall be entitled (without prejudice to any other right it may have) to obtain such equipment and facilities itself and charge the Customer such costs incurred by the Supplier;
- (e) be responsible for and provide or obtain as required all necessary licences, certificates, consents, permits, notices and permissions (including without limitation any necessary planning permissions and import/export licences) ("Permissions") from all relevant persons, including but not limited to all owners, occupiers and local and central government bodies and authorities for the delivery installation and removal of the Goods and the use of the Delivery Location and any access thereto and shall provide evidence of all Permissions to the Supplier upon request and in any event prior to the Availability Date;
- (f) clearly demarcate the Delivery Location and any access to the Delivery Location (for both day and night time use) if the Delivery Location is situated within an area open to the public and provide adequate barriers and security for the safekeeping of the Goods any other tools, plant and other equipment;
- (g) ensure that the Delivery Location is well lit if any of the Services are to be provided after dark; and



- (h) provide all mains power and water supply at the Delivery Location for use by the Supplier, unless otherwise agreed in writing by the Supplier.
- 8.3 The Customer acknowledges that there is risk of injury to third parties whilst the Supplier is erecting the Goods and shall ensure that persons are not allowed onto the Delivery Location during the initial installation of the Goods until such time as the Supplier notifies the Customer that the Delivery Location is safe.
- 8.4 The Customer acknowledges that the Goods may require substantial ground anchoring and/or foundations.
- 8.5 The Customer shall procure that the Delivery Location is served by a firm access road of a minimum width of 4 (four) metres measured at any point and with adequate hard standing.
- 8.6 If the Delivery Location is not free from Obstacles, the Customer shall:
 - (a) as soon as practicable and in any event by no later than 3 (three) Business Days before the Delivery Date procure that the Delivery Location is free from Obstacles; or
 - (b) as soon as practicable and in any event by no later than 3 (three) Business Days before the Delivery Date, provide the Supplier at the Customer's cost with a written survey and Delivery Location plan identifying the position and nature of all Obstacles of whatever nature and including details of the person(s) undertaking the survey and the date upon which it was undertaken; or
 - (c) as soon as practicable and in any event by no later than 20 (twenty) Business Days before the Delivery Date, request that the Supplier commission as the Customer's agent and at the Customer's cost a full independent survey of the Obstacles at the Delivery Location, the cost of such survey to be reimbursed by the Customer immediately at the Supplier's request.
- 8.7 In the event that the Customer fails to comply with its obligations under clause 8.6 above except to the extent that such delay, costs, expenses, damages, losses or liabilities arise solely as a result of the Supplier's failure to pay suitable regard to the conclusions of a survey conducted in accordance with the provisions of sub-clauses 8.6(b) or 8.6(c):
 - (a) the Supplier shall not be liable for any delay reasonably incurred in identifying or dealing with Obstacles or for any loss arising out of damage caused to or by any Obstacle;
 - (b) the Supplier shall be entitled to make further charges to cover any additional costs which it incurs in identifying or dealing with Obstacles; and
 - (c) the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier, and including any claim made against the Supplier by a third party, arising out of or in connection with the failure by the Customer to comply with its obligations.
- 8.8 The Customer shall provide to the Supplier such assurances as the Supplier shall require in relation to the state and safety of the Delivery Location in relation to the installation and removal of the Goods.



- 8.9 Where applicable the Customer shall instruct the Supplier exactly where the Goods are to be installed and the Supplier shall notify the Customer where the anchoring will need to be located at the Delivery Location. In the event that anchoring and/or foundations are required which are different from that set out in the Quotation, the Customer will be responsible for any additional costs incurred by the Supplier.
- 8.10 The Customer shall give the Supplier all such information as the Supplier may reasonably request in writing from time to time with regard to the location, condition, use or operation of the Goods.
- 8.11 If the Supplier's performance of any of its obligations under the Contract 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) without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case 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 8.11; 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 and Services unless otherwise agreed in writing:
- (a) shall be the price set out in the Quotation; and
 - (b) unless otherwise agreed in writing shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced in addition to the Customer.
- 9.2 The Supplier reserves the right to 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:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes, duties, or tariffs and changes in law or regulation);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (c) 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.



- 9.3 In respect of Goods and Services, the Supplier shall invoice the Customer on the date or dates set out in the Order.
- 9.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) as set out in the Quotation, or in the absence of such provisions, forthwith on receipt of the invoice, and
 - (b) 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.
- 9.5 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.
- 9.6 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 14 (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 9.6 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%.
- 9.7 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 Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use the Intellectual Property Rights comprised in the Goods and Services in respect of their use in its business.
- 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 Goods and Services to the Customer.
- 11. Data protection and data processing**
- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.

12. Confidentiality

12.1 Each party undertakes that it shall not at any time 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 12.2.

12.2 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 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

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

13.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.2 Subject to clause 13.1, the Supplier's total liability to the Customer shall not exceed all sums paid by the Customer and all sums payable under the Contract in respect of Goods and Services actually supplied by the Supplier, whether or not invoiced to the Customer. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

13.3 Subject to clause 13.1, the following types of loss are wholly excluded by the Supplier:

- (a) Loss of profits.
- (b) Loss of sales or business.
- (c) Loss of agreements or contracts.
- (d) Loss of anticipated savings.
- (e) Loss of use or corruption of software, data or information.
- (f) Loss of or damage to goodwill.

(g) Indirect or consequential loss.

13.4 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

13.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the Warranty Period, the Supplier shall have no liability for that event. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.6 This clause 13 shall survive termination of the Contract.

14. Termination

14.1 Without affecting any other right or remedy available to it, either 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 the Contract and (if such breach is remediable) fails to remedy that breach within 15 (fifteen) Business Days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.2 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 the Customer fails to pay any amount due under the Contract on the due date for payment

14.3 Without affecting any other right or remedy available to it, the Supplier may 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 the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15. Consequences of termination

15.1 On termination of the Contract: howsoever arising:

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 and for costs incurred in manufacturing and/or selecting the Goods and making them available for delivery to the Customer and for costs incurred for personnel, sub-contractors and equipment which, with the consent of the Customer, are held in readiness to perform the Services. but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (a) 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 Delivery Location and 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.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination [or expiry] shall continue in full force and effect.

16. Force majeure

16.1 **Force Majeure Event** means any circumstances not within a party's reasonable control including, without limitation:

- (a) Acts of God, flood, drought, earthquake or other natural disaster;
- (b) Epidemic or pandemic;
- (c) Terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) Nuclear, chemical or biological contamination or sonic boom;
- (e) Any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) Collapse of buildings, fire explosion or accident; and
- (g) Utility failure where such failure would impact a competent provide of services.

16.2 Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.



- 16.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 16.4 The Affected Party shall:
- (a) As soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify the other party in writing of the Force Majeure Event, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
 - (b) Use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 16.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 20 Business Days, the party not affected by the Fore Majeure Event may terminate this Agreement by giving 10 Business Days.

17. General

17.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (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.

17.2 Notices.

- (a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
 - (i) 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); or
 - (ii) sent by email to the address specified in the Order.
- (b) Any notice 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 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(b)(iii), business



hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- (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.

17.3 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.

17.4 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.

17.5 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.

17.6 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 based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

17.7 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.

17.8 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).



- 17.9 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.
- 17.10 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.