

Terms and Conditions

Certus Card Group Limited

1. INTERPRETATION

The following definitions and rules of interpretation apply.

1.1. Definitions

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 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.8.

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

Contract Year: means a 12-month period commencing with the Commencement Date or any anniversary of it.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

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

Data Protection Legislation the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables the deliverables set out in the Order produced by the Supplier for the Customer.

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 Order.

Goods Specification any specification for the Goods, including any relevant plans or drawings or machine readable codes, that are set out in an Order or otherwise agreed in writing by the Customer and the Supplier.

Intellectual Property Rights patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral 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.

Order the Customer's order for the supply of Goods and/or Services, in the form attached to these Conditions or such other form as agreed in writing between the Customer and the Supplier.

Proof proof samples of Goods produced by the Supplier for the Customer.

Services the services, including the Deliverables, 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 Certus Card Group LIMITED registered in England and Wales with company number **01431189**

Supplier Materials has the meaning given in clause 8.1.8.

Total Charges. means 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.

UK Data Protection Legislation all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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 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 fax and email.

2. BASIS OF CONTRACT

2.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The terms of any specific additional clauses set out in the Order shall prevail over these Conditions in the event of any conflict.

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. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any test samples of Good produced 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.
- 2.4. The Supplier shall be entitled to charge for the production of any test samples, if applicable the details of such charges will be set out in the Order.
- 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. 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.
- 2.7. 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. The Supplier shall provide Proofs if and to the extent specified in the Goods Specification and submit them to the Customer for approval. The Customer shall confirm its approval of the Proofs to the Supplier in writing or shall be deemed to have accepted the Proofs if it does not notify the Supplier of any rejection in the Proofs within 10 Business Days of receipt. In the event of any conflict between the Proofs and the Goods Specification the Proofs once approved shall prevail and the Supplier shall have no liability for any failure to comply with the Goods Specification to the extent it conflicts with any approved or deemed approved Proof.

3.3. Where the Customer requests changes to the Proofs in excess of the number of allowed changes (if any) specified in the Order the Supplier shall be entitled to charge for the production of such Proofs at its then daily rate. When style, type or layout is left to the Supplier's judgment, changes there from made by the Customer shall be charged extra.

3.4. To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer (including any requirements of the Customer in respect of font, artwork, designs or logos or machine readable codes or symbols to be incorporated on the Goods), 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 3.4 shall survive termination of the Contract.

3.5. 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.

3.6. In regard to Machine readable codes:

3.6.1. In the case of machine readable codes or symbols the Supplier shall print the same as specified or approved by the Customer in accordance with generally accepted standards and procedures.

3.6.2. The Customer shall be responsible for satisfying himself in that the code or symbol will read correctly on the equipment likely to be used by those for whom the code or symbol is intended.

3.6.3. The Customer shall indemnify the Supplier against any claims by any party resulting from the code or symbol not reading correctly for any reason, except to the extent that such claim arises from any failure of the

Supplier to comply with paragraph (a) above which is not attributable to error failing within the tolerances generally accepted in the trade in relation to printing of this sort.

3.7. In regard to Standing Material:

3.7.1. Metal, film, glass and other materials owned by the Supplier and used by it in the production of type, plates, moulds, stereotypes, electrotypes, film setting, negatives, positives and the like shall remain the Customer's priority.

3.7.2. Type may be distributed and lithographic, photogravure or other work effaced immediately after the order is executed unless written arrangements are made to the contrary. In the latter event, rent may be charged.

4. DELIVERY OF GOODS

4.1. The Supplier shall ensure that:

4.1.1. each delivery of the Goods is accompanied by a packing note which shows the shipping 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), and special storage instructions (if any); and

4.2. 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. A charge may be made to cover costs involved for delivery to a different Delivery Location.

4.3. Delivery of the Goods shall be accepted and thereby completed on the earlier of (i) completion of unloading of the Goods at the Delivery Location and (ii) notification by the Supplier that the work has been completed, following which, the ownership shall pass and payment shall become due.

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 or 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 take delivery of the Goods within three 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:
- 4.6.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 4.6.2. 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 ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not 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. If the Supplier delivers up to and including two (2)% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods. Further, every endeavour will be made to deliver the correct quantity

ordered, but estimates are conditional upon margins of 5% for work in one colour only and 10% for other work being allowed for overs or shortage (4% and 8% respectively for quantities exceeding 50,000) the same to be charged or deducted.

- 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.
- 4.10. Should expedited delivery be agreed, an extra may be charged to cover any overtime or any other additional costs involved.
- 4.11. Should work be suspended at the request of, or delayed through any default of the Customer for a period of 30 days or more, the Supplier shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.

5. QUALITY OF GOODS

- 5.1. The Supplier warrants that on delivery, the Goods shall:
- 5.1.1. conform in all material respects with their description and any applicable Goods Specification;
- 5.1.2. be free from material defects in design, material and workmanship; and
- 5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 5.1.4. be fit for any purpose held out by the Supplier.
- 5.2. Notice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to the Supplier and the carrier within three clear days of delivery (or, in the case of non-delivery, within 28 days of dispatch of the goods) and any claim in respect thereof must be made in writing to the Supplier and the carrier within seven clear days of delivery (or, in the case of non-delivery, within 42 days dispatch). All other claims must be made in writing to the Supplier within 28 days of delivery. The Supplier shall not be liable in respect of any claim unless the aforementioned requirements have been complied with

except in any particular case where the Customer proves that (a) it was not possible to comply with the requirements and (b) advise (where required) was given and the claim made as soon as reasonably possible.

5.3. Subject to clause 5.4, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

5.3.1. the Customer gives notice in writing in accordance with clause 5.2, that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.3.2. the Supplier is given a reasonable opportunity of examining such Goods; and

5.3.3. 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.

5.4. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

5.4.1. the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;

5.4.2. 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;

5.4.3. the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

5.4.4. the Customer alters or repairs such Goods without the written consent of the Supplier;

5.4.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

5.4.6. the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.5. 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.

5.6. 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 (to the Delivery Location).

6.2. Title and legal and beneficial ownership in and to the Goods shall not pass to the Customer until the earlier of:

6.2.1. the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods 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; and

6.2.2. 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.

6.3. Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.2. 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;

6.3.3. notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.4; and

6.3.4. 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:

6.4.1. it does so as principal and not as the Supplier's agent; and

6.4.2. 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 14.1.2 to clause 14.1.4, then, without limiting any other right or remedy the Supplier may have:

6.5.1. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2. the Supplier may at any time:

- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (b) 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 all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification or Order, 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, CUSTOMER'S PROPERTY AND MATERIALS

8.1. The Customer shall:

8.1.1. ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and

accurate;

8.1.2. co-operate with the Supplier in all matters relating to the Services;

8.1.3. 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;

8.1.4. 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;

8.1.5. 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;

8.1.6. comply with all applicable laws, including health and safety laws;

8.1.7. 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; and

8.1.8. comply with any additional obligations as set out in the Service Specification and/or the Goods Specification.

8.2. 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):

8.2.1. 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;

8.2.2. 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

8.2.3. 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.

8.3. The Supplier shall:

8.3.1. not be required to print any matter which in his opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.

8.3.2. be indemnified by the Customer in respect of any claims, costs and expenses arising out of any libellous matter of any infringement of copyright, patent, design or any other proprietary or personal rights contained in any material printed for the Customer. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.

8.4. In regard to the Customer's Property:

8.4.1. Except in the case of a Customer who is not contracting in the course of a business nor holding himself out as doing so. Customer's property and all property supplied to the Supplier by or on behalf of the Customer shall while it is in the possession of the Supplier or in transit to or from the Customer be deemed to be at Customer's risk unless otherwise agreed and the Customer should insure accordingly.

8.4.2. The Supplier shall be entitled to make a reasonable charge for the storage of any Customer's property left with the Supplier before receipt of the order or after notification to the Customer of completion of the work.

8.5. In regard to materials supplied by the Customer:

8.5.1. The Supplier may reject any paper, plates or other materials supplied or specified by the Customer which

appear to them to be unsuitable. Additional cost incurred if materials are found to be unsuitable, during production and may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by the Supplier in ascertaining the unsuitability of the materials then that amount shall not be charged to the Customer.

8.5.2. Where materials are so supplied or specified the Supplier will take every care to secure the best results, but responsibility will not be accepted to imperfect work caused by defects in our unsuitability of materials so supplied or specified.

8.5.3. Quantities of materials supplied shall be adequate to cover normal spoilage.

9. CHARGES AND PAYMENT

9.1. The price for Goods:

9.1.1. shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and

9.1.2. shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2. Unless otherwise agreed in writing by the Supplier, the charges for Services shall be calculated on a time and materials basis, the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in in the Order

9.3. The Supplier reserves the right to:

9.3.1. 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 and duties, and increases in labour, materials and other manufacturing costs);

(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.

9.4. In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer in accordance with the Order.

9.5. The Customer shall pay each invoice submitted by the Supplier:

9.5.1. within 30 days of the date of the invoice and

9.5.2. 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) (irrespective of whether or not it is included on the estimate or invoice) 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 14 (Termination), the Customer shall pay:

9.7.1. 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 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and

9.7.2. a surcharge of 15% plus vat to cover the collection costs incurred. This

surcharge together with all other charges; and

9.7.3. reasonable legal fees incurred by the Supplier

9.7.4. The charges under this clause 9.7 will be the responsibility of the Customer and will be legally enforceable.

9.8. All work carried out, whether experimentally or otherwise at Customer's request shall be chargeable and 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).

9.9. All estimates are based on the Supplier's current costs of production and, unless otherwise agreed, are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.

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 licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables 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 Services to the Customer.

11. DATA PROTECTION

11.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data

Protection Legislation. In this clause 11, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

11.2. The parties acknowledge that for the purposes of the Data Protection Legislation to the extent that personal data is processed pursuant to this agreement, the Customer is the controller and the Supplier is the processor and the remaining provisions of this clause 11 shall apply.

11.3. Without prejudice to the generality of clause 11.1, the Customer will ensure the following which are given to the Supplier as warranties that:

- (a) it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract;
- (b) it will process personal data in compliance with Data Protection Legislation and all applicable laws, enactments, regulations, orders, standards and other similar instruments that apply to its personal data processing operations;
- (c) it will make available on request to any data subjects who are third party beneficiaries a copy of these terms, unless the terms contain confidential information in which case an extract can be provided;
- (d) it will respond within a reasonable time and as far as reasonably possible to enquiries from the Information Commissioner or relevant supervisory authority in relation to the personal data;
- (e) it will respond to any subject access rights requests in accordance with the Data Protection Legislation, including where necessary (i) advising the other party of any step(s) it should reasonably take in this regard; and (ii) where the legitimate ground relied upon is a data subject's consent, the timely operation of an effective procedure if such consent

is withdrawn.

- (f) it will, where applicable, maintain registration with the Information Commissioner and all relevant supervisory authorities to process all personal data;
- (g) it will maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Supplier or the Supplier's designated auditor and immediately inform the Supplier if, in the opinion of the Customer, an instruction infringes the Data Protection Legislation; and
- (h) it will take all appropriate steps to ensure compliance with any reasonable security measures.

11.4. Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

11.4.1. process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

11.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and

encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

11.4.3. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

11.4.4. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

(c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

(d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

11.4.5. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

11.4.6. notify the Customer without undue delay on becoming aware of a personal data breach;

11.4.7. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on

termination of the Contract unless required by Applicable Law to store the personal data;

11.4.8. retain the personal data for 30 Business Days from final processing in accordance with the Supplier's data retention policy unless otherwise agreed in writing with the Customer; and

11.4.9. maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

11.5. The Customer consents to the Supplier appointing any third-party processor of personal data under the Contract, provided however, that prior to such appointment, the Supplier will implement appropriate technical and organisational measures to safeguard the personal data and will ensure that such third-party receiving personal data is subject to similar obligations as the Supplier. For the avoidance of any doubt, the Supplier may share personal data with any member of its group of companies. The Supplier will ensure that any such sharing complies with all applicable Data Protection Legislation.

12. CONFIDENTIALITY

12.1. 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 12.2.

12.2. Each party may disclose the other party's confidential information:

12.2.1. 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

12.2.2. 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

13.1. The restrictions on liability in this clause 13 apply to every liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.2. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

13.3. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

13.3.1. death or personal injury caused by negligence;

13.3.2. fraud or fraudulent misrepresentation; and

13.3.3. 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).

13.4. Subject to clause 13.3, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any Contract Year shall not exceed the Total Charges in the Contract Year in which the breaches occurred. Further and for the avoidance of any doubt, the liability of the Supplier arising out of any breach or non-performance of the Contract to the extent that the law allows shall be limited to the charges by the Supplier in respect of any work carried out to the Customer's own material and shall not include the cost of replacement material nor extend to any costs or damages suffered by the customer, howsoever arising, or in respect of any consequential loss. The Supplier shall not be liable for any loss to the Customer arising from delay in transit however caused.

13.5. This clause 13.5 sets out specific heads of

excluded loss which are as follows:-

(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; and

(g) indirect or consequential loss.

13.6. The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. 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.

13.7. Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.8. 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:

14.1.1. 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 20 days after receipt of notice in writing to do so;

14.1.2. 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;

14.1.3. 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

14.1.4. 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:

14.2.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or

14.2.2. there is a change of control of the Customer.

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 14.2.2 to clause 14.2.4, 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:

15.1.1. 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;

15.1.2. 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.

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

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 (a Force Majeure Event).

17. INSOLVENCY

If the Customer ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a Supplier is deemed to be unable to pay its debts or has a wind-up petition issued against it or being a person commits an act of bankruptcy or has bankruptcy petition issued against him, the Supplier without prejudice to other remedies shall:

17.1. Have the right not to proceed further with the contract or any other work for the Customer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Customer, such charge to be an immediate debt due to him, and

17.2. In respect of all unpaid debts due from the Customer have a general lien on all goods and property in his possession (whether worked on or not) and shall be entitled on

the expiration of 14 days' notice to dispose of such goods or property in such a manner and at such price as he thinks fit and to apply the proceeds towards such debts

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.

18. GENERAL

18.1. Assignment and other dealings

18.1.1. 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.

18.1.2. 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.

18.2. Notices.

18.2.1. Any notice or other communication 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); or

18.2.2. Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

(b) 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.

18.2.3. 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.

18.2.4. A notice given under this agreement is not valid if sent by email.

18.3. Severance. If any provision or part-provision of the Contract is or becomes invalid,

18.4. 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.

18.5. 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.

18.6. Entire agreement.

18.6.1. 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.

18.6.2. 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.

18.6.3. Nothing in this clause shall limit or exclude any liability for fraud.

18.7. Third parties rights.

18.7.1. 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.

18.7.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

18.8. 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).

18.9. 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.

18.10. 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.

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