

Proact IT UK Limited

**Terms and Conditions for the Supply of Goods
and Services - v.1.5**

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These Conditions, together with any additional terms specifically agreed and set out in a Customer Agreement or the Supplier's written acceptance of an Order set out the basis on which the Supplier shall supply Goods and Services to the Customer.

1. INTERPRETATION

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

- 1.1.1 Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
- 1.1.2 Commencement Date: has the meaning set out in clause 2.2.
- 1.1.3 Conditions: these terms and conditions.
- 1.1.4 Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers to the other party concerning the existence and terms of this agreement or any information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers, plans, intentions, operations, processes, product information, know-how, designs, trade secrets or software or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs).
- 1.1.5 Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
- 1.1.6 Customer: the person or firm who purchases the Goods and/or Services from the Supplier.
- 1.1.7 Customer Agreement: a signed agreement incorporating these Conditions together with other terms and conditions.
- 1.1.8 Customer Default: has the meaning set out in clause 9.2.
- 1.1.9 Delivery Location: has the meaning set out in clause 4.1.
- 1.1.10 Excluded Causes: means any defect existing prior to the Commencement Date; a defect in the manufacturer's design of the Maintained Equipment; faulty materials or workmanship in the manufacture of the Maintained Equipment; use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by the Supplier; any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its subcontractors, employees or agents; the Customer or a third party moving the Maintained Equipment; the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied or contrary to the manufacturer's recommendations; a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment; a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or the neglect or misuse of the Maintained Equipment.
- 1.1.11 Excluded Maintenance: any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.
- 1.1.12 Force Majeure Event: has the meaning given to it in clause 16.2.
- 1.1.13 Good Working Order: the Maintained Equipment operates in accordance with all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment.
- 1.1.14 Goods: the goods (or any part of them) set out in the Order.
- 1.1.15 Goods Specification: any specification for the Goods, including any relevant plans or drawings, which is provided in writing by the Supplier to the Customer in a proposal or quotation.
- 1.1.16 Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all

- applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.1.17 Locations: the location(s) of the Maintained Equipment at the Customer's premises as specified in a Support Service Guide, or any other locations as may be agreed by the parties in writing from time to time.
 - 1.1.18 Maintained Equipment: the equipment specified in a Support Service Guide in respect of which the Supplier is to provide Support Services.
 - 1.1.19 Normal Business Hours: 9:00 am to 5.00 pm GMT on a Business Day.
 - 1.1.20 Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's proposal or quotation as the case may be.
 - 1.1.21 Preventative Maintenance: means testing that the Maintained Equipment is functional; and making any adjustments as may be required to ensure the Maintained Equipment remains in Good Working Order.
 - 1.1.22 Professional Services: the professional services to be supplied by the Supplier to the Customer as set out in a Statement of Work.
 - 1.1.23 Remedial Maintenance: means making any adjustments to the Maintained Equipment and repairing or replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order.
 - 1.1.24 Services: Professional Services and/or Support Services.
 - 1.1.25 Standard Day Rate: the Supplier's standard rate for Professional Services as set out in an Order, Statement of Work or Support Service Guide.
 - 1.1.26 Statement of Work: a written description of Professional Services provided in writing by the Supplier to the Customer.
 - 1.1.27 Supplier: Proact IT UK Limited, a company registered in England and Wales with company number 03968273 and with its registered office at Grayson House Venture Way, Chesterfield, Derbyshire S41 8NE.
 - 1.1.28 Supplier Materials: has the meaning set out in clause 9.1.7.
 - 1.1.29 Support Services: the hardware and software maintenance and support services to be supplied by the Supplier to the Customer including (but not necessarily limited to) Remedial Maintenance of Maintained Equipment as set out in a Support Service Guide.
 - 1.1.30 Support Service Guide: a written description of Support Services provided in writing by the Supplier to the Customer.
- 1.2 Construction. In these Conditions, the following rules apply:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - 1.2.2 a reference to a party includes its successors or permitted assigns;
 - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - 1.2.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - 1.2.5 a reference to writing or written includes faxes and e-mails.
 - 1.2.6 in the event of any contradiction between:
 - 1.2.6.1 terms and conditions set out or agreed to in the Supplier's written acknowledgement of an Order, Support Service guide or Statement of Work;
 - 1.2.6.2 terms and conditions set out in a Customer Agreement; or
 - 1.2.6.3 these Conditionsthe order of precedence of the documents shall be in accordance with the order in which they are listed in this clause.

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 and the terms of the Supplier's proposal or quotation.

- 2.2 The Order shall be deemed to be accepted when the Supplier either issues written acceptance of the Order, or processes it internally, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 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. The Customer specifically acknowledges that any terms which they purport to impose in their purchase order shall not apply unless the Supplier specifically agrees in writing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer and may be withdrawn at any time by the Supplier.
- 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 quantity and specification of the Goods provided shall be as described in the Goods Specification save that any obvious typographical error or omission in the Goods Specification shall be subject to correction without any liability on the part of the Supplier.
- 3.2 To the extent that Goods are to be provided in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier 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 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements or for any other reasonable cause, where this does not materially affect the quality or performance of the Goods.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall only be obliged to deliver Goods to the location set out in the Order (Delivery Location). If the Customer requests and the Supplier agrees to change the Delivery Location after placing the Order then the Supplier shall be entitled to levy a reasonable additional charge.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 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.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to accept or take delivery of the Goods, 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 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance) and the costs of redelivery.
- 4.6 If 20 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or

otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 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.

4.8 Where Goods are supplied for export from the United Kingdom the Customer shall be responsible for complying with any legislation governing the importation of the Goods into the country of destination and shall be responsible for the payment of any duties which fall due as a result.

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;

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 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing within 5 Working Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

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

5.2.3 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,

5.2.4 then the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

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

5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2.1;

5.3.2 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;

5.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

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

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

5.3.6 the Goods differ from their description or 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 under clause 5.2.

6. TITLE AND RISK

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

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods.

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

6.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

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

6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.4 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;

- 6.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12; and
 - 6.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time,
 - 6.3.7 but the Customer may use the Goods in the ordinary course of its business.
- 6.4 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 14.1.12, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SERVICES GENERALLY

- 7.1 The Supplier shall provide Professional Services in accordance with the relevant Statement of Work and Support Services in accordance with the relevant Support Service Guide in all material respects.
- 7.2 The Supplier shall use reasonable commercial endeavours to meet any performance dates for Services specified in a Statement of Work or Support Service Guide, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. SUPPORT SERVICES

- 8.1 The Supplier shall be entitled upon reasonable notice to attend the Customer's Locations during Normal Business Hours if required in order to perform Preventative Maintenance of the Maintained Equipment.
- 8.2 On the Customer informing the Supplier that any Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order the Supplier shall use reasonable commercial endeavours to attend at the Location within the response time set out in the Support Service Guide in order to perform Remedial Maintenance of the Maintained Equipment.
- 8.3 When performing Remedial Maintenance, the Supplier shall use reasonable commercial endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order while in attendance at the Location.
- 8.4 All spare parts and/or replacements provided by the Supplier to the Customer shall become part of the Maintained Equipment and the property of the Customer. All parts and components removed from the Maintained Equipment by the Supplier in the course of performing Preventative Maintenance or Remedial Maintenance shall no longer constitute part of the Maintained Equipment and will be the property of the Supplier.
- 8.5 The Supplier shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.
- 8.6 The Supplier is not obliged to perform any Preventative Maintenance or Remedial Maintenance in respect of any item of equipment which is not specifically within scope of the Support Services as set out in the Support Service Guide.
- 8.7 Unless expressly provided otherwise in the Support Service Guide, the following items forming part of the Maintained Equipment shall be excluded from the scope of the Supplier's obligation to provide Preventative Maintenance or Remedial Maintenance:
 - 8.7.1 consumable items (including but not limited to removable storage media and batteries)
 - 8.7.2 any operating system or other software installed on the Maintained Equipment.
- 8.8 The Supplier is not obliged to perform any Excluded Maintenance and where the Supplier is performing or has performed Support Services in circumstances where it is established that

- 8.9 the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier shall be entitled to charge for such services at its Standard Day Rate. The Supplier may, upon a minimum of 60 days' notice in writing to the Customer, discontinue maintenance of any item of Maintained Equipment if, in the reasonable opinion of the Supplier, it becomes uneconomical to maintain the equipment due to the equipment's condition (where this is due to causes beyond the Supplier's control) or non-availability at a reasonable price of parts or manufacturer's support in respect of the equipment. If the Supplier discontinues maintenance in accordance with this clause then the charges payable by the Customer in respect of the Support Services shall be reduced accordingly from the date on which the Supplier discontinues the maintenance.

9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- 9.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
 - 9.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 9.1.3 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;
 - 9.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 9.1.5 prepare the Customer's premises for the supply of the Goods and Services;
 - 9.1.6 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;
 - 9.1.7 keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - 9.1.8 sign and return to the Supplier any physical (as opposed to 'click-wrap' or 'shrink-wrap') software licence agreement which is supplied by the Supplier under the terms of the Contract within 7 days of installing the relevant software;
 - 9.1.9 provide support feedback upon request and the Supplier is hereby authorised to submit the same to third parties on the Customer's behalf without further notice to the Customer;
- 9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 9.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 9.2.2 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 9.2; and
 - 9.2.3 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.

10. CHARGES AND PAYMENT

- 10.1 The price for Goods shall be the price set out in the Order. Unless otherwise specifically stated the price of the Goods is exclusive of delivery.
- 10.2 The charges for Services shall be as set out in the Order and shall either be based on a time and materials basis, or shall be fixed, as set out in the Order. Where on a time and materials basis:
- 10.2.1 the Charges shall be calculated in accordance with the Supplier's Standard Day Rate.

- 10.2.2 the Supplier's Standard Day Rate is calculated on the basis of a seven-hour day during Normal Business Hours worked by a single individual;
- 10.2.3 the Supplier shall be entitled to charge a higher daily fee rate (double the Standard Day Rate) for each day worked by individuals whom it engages on the Services outside Normal Business Hours;
- 10.2.4 the Supplier shall be entitled to charge the Standard Day Rate or double the Standard Day Rate as the case may be for each individual for each day on which they work, whether they work for the whole day or not.
- 10.3 The Supplier reserves the right to increase its Standard Day Rate, provided that it cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 1 month before the date of the increase.
- 10.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 10.5 The billing profile shall be as set out in the Order. If no profile is specified then where the Supplier is charging a fixed price the Supplier shall be entitled to invoice the Customer on completion of the Services and where the Supplier is charging on a time and materials basis the Supplier shall deliver invoices monthly in arrears.
- 10.6 The Customer shall pay each invoice submitted by the Supplier:
 - 10.6.1 within 30 days of the date of the invoice;
 - 10.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier; and
 - 10.6.3 time for payment shall be of the essence of the Contract.
- 10.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (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 at the same time as payment is due for the supply of the Services.
- 10.8 The Customer shall be liable for all other charges and duties which may be levied as a result of the supply of Goods and Services by the Supplier to the Customer, save for taxes on the Supplier's income and profits, and the Customer shall indemnify the Supplier in respect of any such sums paid by or demanded from the Supplier.
- 10.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 10.10 Where the price of Goods set out in the Order is discounted, the discounted price is subject to payment by the Customer of all charges on or before the due date. If the Customer pays after the due date then the Supplier shall be entitled to require payment of the full, undiscounted price.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 11.3 All Supplier Materials are the exclusive property of the Supplier.

12. CONFIDENTIALITY

- 12.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any Confidential Information of the other party or of any member of the group of companies to which the other party belongs, except:

- 12.1.1 to its own employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause; or
- 12.1.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.2 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.
- 12.3 The Customer agrees to participate in a press regarding the award of business to the Supplier and the publication of a case study document that will be available for distribution in hard copy and/or electronic format to the Service Provider's customers and potential customers. The content of such documents will be agreed by the parties (acting reasonably) prior to release.

13. LIMITATION OF LIABILITY

- 13.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 13.1.2 fraud or fraudulent misrepresentation;
 - 13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 13.1.5 defective products under the Consumer Protection Act 1987.
- 13.2 Subject to clause 13.1:
 - 13.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of data, or any indirect or consequential loss arising under or in connection with the Contract ; and
 - 13.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount paid by the Customer under the terms of the Contract.
- 13.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.4 This clause 13 shall survive termination of the Contract.

14. TERMINATION

- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 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 30 days after receipt of notice in writing of the breach;
 - 14.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 14.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other

- party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 14.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 14.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 14.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.12 (inclusive);
 - 14.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - 14.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.2 Without limiting its other rights or remedies, 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 limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- 14.3.1 the Customer fails to make pay any amount due under the Contract on the due date for payment; or
 - 14.3.2 the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12, 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 for any reason:
- 15.2 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 15.3 the Customer shall return all of the Supplier Materials. 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 the Contract;
- 15.4 the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- 15.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. GENERAL

- 16.1 Credit information: The Supplier shall be entitled to conduct searches with credit reference agencies in respect of the Customer from time to time and to keep a record of the results.
- 16.2 Force majeure: For the purposes of the Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- 16.3 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- 16.4 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 6 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.
- 16.5 Assignment and subcontracting: The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 16.6 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.7 Notices: Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 16.8 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 16.9 Clause 16.7 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Contract shall not be validly served if sent by e-mail.
- 16.10 Waiver and cumulative remedies: A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.11 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 16.12 Severance: If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.13 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.14 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.15 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.16 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 16.17 Execution Formalities: The Customer Agreement or any Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery. The parties further agree that they may conduct business transactions using electronic documents and electronic signatures and that any agreement signed electronically using the Adobe EchoSign Service shall for all purposes be deemed to be validly executed by the party or parties so signing.

- 16.18 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.