

# Proact IT UK Limited

**Terms and Conditions of Purchase of Goods and Services  
V 1.0**

01 January 2016

Public - Freely Distributable Document

## Document Control

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## Revision History

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**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 public holiday) when banks in London are open for business.
  - 1.1.2 Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 17.6.
  - 1.1.3 Contract: the contract between the Customer and the Supplier for the sale and purchase of the Goods or Services in accordance with these Conditions.
  - 1.1.4 Customer: Proact IT UK Limited, a company registered in England and Wales with company number 03968273 and whose registered office is at Grayson House, Venture Way, Chesterfield S41 8NE.
  - 1.1.5 Deliverables: all products and materials developed by the Supplier in relation to the Project in any media, including without limitation computer programs, data, diagrams, reports and specifications (including drafts).
  - 1.1.6 End User: the Customer, its employees or customers.
  - 1.1.7 Goods: the goods (or any part of them) set out in the Order.
  - 1.1.8 Order: the Customer's order for the Goods or Services, as set out in the Customer's purchase order form.
  - 1.1.9 Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in 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 without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, 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.
  - 1.1.10 Services: the services to be supplied, and obligations to be performed, by the Supplier as set out in the Order.
  - 1.1.11 Software: all computer programs and computer software (in whatever form or media) installed on or supplied with the Goods and which is either necessary for its operation in the manner contemplated by the Purchaser or otherwise referred to in the Order.
  - 1.1.12 Specification: any specification for the Goods or Services, including any related plans and drawings, which is agreed in writing by the Customer and the Supplier.
  - 1.1.13 Supplier: the person or firm from whom the Customer purchases the Goods or Services.
  - 1.1.14 VAT: value added tax chargeable under English law for the time being and any similar tax.
- 1.2 Construction. In these Conditions, unless the context requires otherwise, 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 personal representatives, successors or permitted assigns;
  - 1.2.3 a reference to a statute or statutory provision is a reference to such statute or 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;
  - 1.2.5 a reference to writing or written includes faxes and e-mails.

**2. BASIS OF CONTRACT**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and the Supplier hereby specifically confirms that any standard terms which are referred to on the Supplier's quotation or in an order acknowledgement but which have not been specifically agreed to in writing by the Customer shall not apply to the Contract.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods or Services in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
- 2.3.1 the Supplier issuing a written acceptance of the Order; and
  - 2.3.2 the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 2.4 The Contract shall continue, unless terminated earlier in accordance with clause 13, for the term as set out in the Order.
- 2.5 In the event that there is no term detailed in the Order, the Contract shall continue until the first anniversary of the date of the Order when it shall terminate automatically without notice.
- 2.6 For the avoidance of doubt, under no circumstances shall the term of the Contract automatically renew.

**3. THE GOODS**

- 3.1 The Supplier shall ensure that the Goods shall:
- 3.1.1 correspond with their description and any applicable Specification;
  - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
  - 3.1.3 be free from defects in design, material and workmanship and remain so for 12 months after delivery;
  - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - 3.1.5 be authorised for re-sale and use within the European Economic Area (EEA) and the Supplier undertakes to produce evidence in writing forthwith of such authorisation;
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 The Supplier hereby grants to the Customer without further charge the irrevocable right and licence to use the Software and to assign such rights and use to its End User.
- 3.4 The Supplier warrants that at the time of installation, all Software will be free from viruses, worms or anything else that would impair performance of the Software as it might reasonably be expected to operate.
- 3.5 The Supplier will supply to the Customer all user manuals, training and other documentation for the Goods and Software without any further charge in such form and quantity the Customer may reasonably request.
- 3.6 The Customer shall have the right to inspect and test the Goods at any time before delivery.
- 3.7 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

**4. DELIVERY**

- 4.1 The Supplier shall ensure that:
- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - 4.1.3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
- 4.2.1 on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order (Delivery Date);
  - 4.2.2 to the Customer's premises as set out in clause 1.1.4 or such other location as is set out in the Order, or as instructed by the Customer prior to delivery (Delivery Location); and
  - 4.2.3 during the Customer's normal business hours, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 4.4 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 14.

**5. TITLE AND RISK**

Title and risk in the Goods shall pass to the Customer on completion of delivery.

**6. THE SERVICES**

- 6.1 Time is of the essence as to the performance of the Services. If the Supplier fails to deliver the Services within the time stipulated for their delivery or to meet any performance dates in the Specification or Order, the Customer shall be entitled to:
- 6.1.1 cancel the Order in whole or in part without liability to the Supplier;
  - 6.1.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 6.1.3 purchase substitute services elsewhere;
  - 6.1.4 hold the Supplier accountable for any loss and additional costs incurred; and
  - 6.1.5 have refunded by the Supplier all sums previously paid by the Customer to the Supplier for the Order.
- 6.2 The Supplier shall:
- 6.2.1 co-operate with the Customer in all matters relating to the Services including complying with the Customer's reasonable security requirements; and
  - 6.2.2 appoint a project manager, who shall have authority to commit the Supplier on all matters relating to the Services.
- 6.3 The Customer may, acting reasonably, decline to accept any persons (including replacements) proposed by the Supplier to carry out the Services, and in such event the Supplier shall propose a replacement person without delay.
- 6.4 The Supplier acknowledges and agrees that (if provided):
- 6.4.1 the Customer is entering into the Contract on the basis of the Specification and that the Specification is accurate and complete in all material respects, and is not misleading; and

- 6.4.2 if it considers that the Customer is not or may not be complying with any of its responsibilities under these Conditions, it shall only be entitled to rely on this as relieving performance:
  - 6.4.2.1 to the extent that it restricts or precludes performance of the Services by the Supplier; and
  - 6.4.2.2 if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Customer in writing.
- 6.5 The Customer shall:
  - 6.5.1 co-operate with the Supplier in all matters relating to the Services;
  - 6.5.2 provide such access to the Customer's premises and data, and such office accommodation and other facilities, as may reasonably be required by the Supplier and agreed by the Customer in advance for the purposes of carrying out the Services; and
  - 6.5.3 provide, in a timely manner, such information as the Supplier may request, and the Customer considers reasonably necessary, in order to carry out the Services and ensure that all information the Customer provides is accurate in all material respects.

## **7. QUALITY OF SERVICES**

- 7.1 The Supplier warrants to the Customer that:
  - 7.1.1 the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards;
  - 7.1.2 the Services will conform with all descriptions and specifications provided to the Customer by the Supplier, including the Specification and; and
  - 7.1.3 the Services will be provided in accordance and the Supplier will comply with all applicable legislation from time to time in force.
- 7.2 The Customer's rights under the Contract are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.
- 7.3 The provisions of this clause 7 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Supplier.

## **8. CHARGES AND PAYMENT**

- 8.1 The price of the Goods 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 in force as at the date the Contract came into existence.
- 8.2 Where the Services are provided on a time-and-materials basis:
  - 8.2.1 the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates in force for the supply of the Services, details of which are set out in the Order;
  - 8.2.2 the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on a Business Day;
  - 8.2.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's personnel unless it has the Customer's prior written consent to do so; and
  - 8.2.4 the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT, where appropriate) for the month concerned, calculated as provided in this clause 8 . Each invoice shall set out the time spent by each of the Supplier's personnel and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 8.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Order and the Supplier shall invoice the Customer for the charges payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in this clause 8.

- 8.4 The price of the Goods or Services is exclusive of amounts in respect of VAT, but includes the costs of any packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 8.5 The Supplier may invoice the Customer for the Goods or Services on or at any time after the completion of Services, or delivery of Goods.
- 8.6 The Customer shall pay correctly rendered invoices within 30 days of the end of the month in which it receives the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.7 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Lloyds's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 8.8 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under these Conditions.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 The Supplier hereby assigns to the Customer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).
- 9.2 The Supplier shall, promptly at the Customer's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of these Conditions, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Customer in accordance with clause 9.1 or clause 13.3.

## **10. INDEMNITY**

- 10.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to 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 Customer as a result of or in connection with:
- 10.1.1 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the Goods or Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 10.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- 10.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 10.2 This clause 10 shall survive termination of the Contract.

## **11. INSURANCE**

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the

Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

**12. CONFIDENTIALITY AND CUSTOMER MATERIALS**

- 12.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer or its agents, and any other confidential information concerning the Customer's business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to the Customer, and shall ensure that such employees are subject to obligations of confidentiality corresponding to those which bind the Supplier.
- 12.2 All materials, equipment, tools, copyright, rights in designs and any other Intellectual Property Rights in all drawings, specifications and data supplied by the Customer to the Supplier shall at all times be and remain the exclusive property of the Customer, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer, and shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation.
- 12.3 This clause 12 shall survive termination of this agreement for any reason.

**13. TERMINATION**

- 13.1 Notwithstanding clause 2.4 of these Conditions the Customer may terminate the Contract in whole or in part at any time before delivery of the Goods and/or Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The Customer shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.2 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 13.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of being notified in writing to do so;
  - 13.2.2 the Supplier 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 or limited liability partnership) 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;
  - 13.2.3 the Supplier 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;
  - 13.2.4 (being a company) 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 Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 13.2.5 (being a company) 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 Supplier;
  - 13.2.6 (being a company) the holder of a qualifying floating charge over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
  - 13.2.7 (being an individual) the Supplier is the subject of a bankruptcy petition or order;

- 13.2.8 a creditor or encumbrancer of the Supplier 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;
  - 13.2.9 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
  - 13.2.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.2 to clause 13.2.9 inclusive;
  - 13.2.11 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - 13.2.12 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 13.2.13 (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 13.3 On termination of the Contract for any reason, the Supplier shall immediately deliver to the Customer all copies of information or data provided by the Customer to the Supplier for the purposes of the Contract. The Supplier shall certify to the Customer that it has not retained any copies of such information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 12.
- 13.4 On termination of the Contract by the Customer, the Supplier shall immediately deliver to the Customer all specifications, programs (including source code) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to and vest in the Customer (to the extent that they have not already done so by virtue of clause 9), who shall be entitled to enter the premises of the Supplier to take possession of them.
- 13.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 13.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### **14. REMEDIES**

- 14.1 If the Goods are not delivered on the Delivery Date or do not comply with the undertakings set out in clause 3.1, or any of the Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods or Services:
- 14.1.1 to terminate the Contract;
  - 14.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
  - 14.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 14.1.4 to refuse to accept any subsequent delivery of Goods or provision of any further Services the Supplier attempts to make and to require the immediate repayment by the Supplier of all sums previously paid by the Customer to the Supplier under the Contract;
  - 14.1.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute Goods or Services from a third party;
  - 14.1.6 to require the Supplier, without charge to the Customer, to carry out such additional work as is necessary to correct the Supplier's failure; or
  - 14.1.7 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract not otherwise covered by the foregoing provisions of this clause 14.

- 14.2 These Conditions shall apply to any repaired or replacement Goods or Services supplied by the Supplier.
- 14.3 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

**15. ANTI-BRIBERY**

- 15.1 The Supplier shall:
- 15.1.1 comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
  - 15.1.2 comply with the Customer's Ethics, Anti-Bribery and Anti-Corruption Policies as set out on the Customer's website and which the Customer may update from time to time (Relevant Policies);
  - 15.1.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and will enforce them where appropriate;
  - 15.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
  - 15.1.5 immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier and/or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers or employees and/or direct or indirect owners at the date of the Contract);
- 15.2 The Supplier shall ensure that any person associated with the Supplier who is performing Services or providing Goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 15 (Relevant Terms). The Supplier shall in any circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in any circumstances be directly liable to the Customer for any breach by such persons of any of the Relevant Terms howsoever arising.
- 15.3 Breach of this clause 15 shall be deemed a breach, which is not remedied within the specified period, under clause 13.2.1.
- 15.4 For the purpose of this clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 15 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

**16. FORCE MAJEURE**

- 16.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from an event, circumstance or cause beyond its reasonable control (Force Majeure Event).
- 16.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 16.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 20 Business Days, the Customer may terminate the Contract immediately by giving written notice to the Supplier.

**17. GENERAL**

- 17.1 Assignment and other dealings.
- 17.1.1 The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

- 17.1.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.
- 17.2 Notices.
- 17.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2.1; 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; 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 or e-mail, one Business Day after transmission.
- 17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 17.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.4 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Customer.
- 17.7 Governing law. 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 the law of England and Wales.
- 17.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).