

## CONDITIONS OF SUPPLY

### 1. DEFINITIONS AND INTERPRETATION:

1.1 The following terms as used herein shall have the meaning as stated:

**"Company"** means AGD Equipment Limited;

**"Conditions"** means these Conditions of Supply;

**"Confidential Information"** means any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential;

**"Contract"** means any contract between the Company and the Customer for the supply of any Goods and/or Services, incorporating these Conditions;

**"Customer"** means any person, firm, company or other organisation who is the addressee of the Company's quotation or acceptance of order issued by the Company and shall include any successor-in-title of the Customer and any company or entity arising (wholly or partly) by way of any merger, amalgamation, reorganisation or acquisition of the Customer;

**"Deliverables"** means all documents, products and materials developed by the Company or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs and specifications (including drafts);

**"Delivery Point"** means the place where delivery of any Goods is to take place under clause 5;

**"Equipment"** means any goods or materials (including any Goods) in relation to which any maintenance or testing services are to be performed;

**"Free Issue Materials"** means any physical materials provided by the Customer to the Company for use by the Company in the production of any Goods;

**"Goods"** means any goods or materials agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them), including any goods agreed to be supplied with, or in relation to, any Services;

**"Input Material"** means any specification, documents, plans, drawings, patterns, designs or other materials, and any data or other information provided by the Customer to the Company relating to the Goods and/or Services;

**"Intellectual Property Rights"** means any design rights, utility models, patents, inventions, logos, business names, trade marks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;

**"Output Material"** means any documents, plans, drawings, patterns, designs or other materials, and any data or other information provided by the Company to the Customer relating to the Goods and/or Services;

**"Report"** means any report which is compiled by, or any certificate which is issued by, the Company, in relation to the testing of any Equipment;

**"Services"** means any services agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them) including any installation work to be undertaken in relation to any Goods and any maintenance or testing services to be undertaken in relation to any Equipment;

**"Site"** means the premises at which the delivery of any Goods and/or the performance of any Services shall take place, including the Customer's place of business;

**"Supplies"** means the Goods and/or the Services, depending on the context.

**"Working Hours"** means between 09.00 and 17.00 on Monday to Friday inclusive, excluding any public or bank holidays.

- 1.2 A reference to a clause is to a clause of these Conditions. Clause headings shall not affect the interpretation of these Conditions.
- 1.3 Any reference to "**parties**" means the parties to the Contract and "**party**" shall be construed accordingly.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 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.
- 1.6 Words in the singular include the plural and in the plural include the singular.

**2. APPLICATION OF CONDITIONS AND DESCRIPTION OF GOODS AND SERVICES:**

- 2.1 All quotations are made and all orders are accepted by the Company subject only to these Conditions of Supply, which shall prevail notwithstanding any other terms and conditions which the Customer shall bring to the Company's notice.
- 2.2 Any quotation is given on the basis that no Contract shall come into existence until the Company accepts the Customer's order in accordance with the provisions of clause 2.3. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.3 The placing of an order following any quotation or other indication of price and delivery shall not be binding on the Company unless and until accepted by the Company in writing.
- 2.4 The Customer shall ensure that the terms of its order and any Input Material are complete and accurate.
- 2.5 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.6 No order of the Customer may be cancelled by the Customer, except with the Company's express agreement and on such terms as the Company may require.
- 2.7 No order of the Customer may be varied, altered or deferred by the Customer, except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of such variation, alteration or deferment.
- 2.8 The quantity and description of any Goods and/or Services shall be as set out in the Company's quotation or acknowledgement of order.
- 2.9 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 2.10 The Company's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed. The Customer irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the Contract as a result of any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.
- 2.11 The Company reserves the right to charge the Customer for any Output Material provided to the Customer.

- 2.12 Any surplus fittings or materials shall remain the property of the Company and shall be returned to it at the Customer's cost.
- 2.13 Unless otherwise agreed in advance by the Company in writing, the Customer shall be solely responsible for determining the accuracy of any measurements which may be required to be furnished to the Company in relation to the supply of any Goods.
- 2.14 The Customer shall be responsible for transporting all Free Issue Materials to the Company's premises, unless otherwise agreed in advance with the Company and the Customer shall, unless otherwise so agreed, also pay any and all costs associated with the same.
- 2.15 All Free Issue Materials must, at the time that they are first provided to the Company, be accompanied by a declaration from the Customer stating:
- (a) the value of the Free Issue Materials; and
  - (b) any special characteristics of the Free Issue Materials.
- 2.16 All Free Issue Materials may be subject to inspection by the Company upon receipt. Any defect in any Free Issue Materials will be notified to the Customer prior to the commencement of the production of any Goods and the Company reserves the right to refuse to produce any Goods based upon any defective Free Issue Materials where any such defect is not remedied prior to commencement of production. Without limitation, if the Company agrees to attempt to remedy the defect or to assist the Customer in so doing, the Customer shall pay any additional charges imposed by the Company in relation to such work.
- 2.17 All Free Issue Materials shall be provided to the Company and released to the Customer at the Customer's sole cost and expense including any additional Free Issue Materials which the Customer may be required to provide to the Company, even if the provision of such additional Free Issue Materials has been occasioned by the fault of the Company.
- 2.18 All Free Issue Materials shall be handled by the Company at the Customer's own risk. The Customer shall be responsible for arranging for a suitable policy of insurance to provide adequate coverage for all Free Issue Materials against all risks which could arise whilst the Free Issue Materials are at the Company's premises (or otherwise under the Company's control), including but not limited to theft, fire and water damage. For the avoidance of doubt, the Company shall not be responsible for anything which may occur whilst the Free Issue Materials are being handled by the Company, including but not limited to any loss or damage which may occur to the Free Issue Materials whilst any process is being applied to the Free Issue Materials by the Company. Any surplus or waste materials derived from any Free Issue Materials may be disposed of by the Company at the Customer's cost, (if any) unless otherwise agreed with the Company in advance.
- 2.19 The Company reserves the right to charge for the storage of Free Issue Materials at such rate as shall be agreed with the Customer if any Free Issue Materials are held by the Company for more than 30 days, or for such reasonable period as is agreed with the Customer when the Customer's order is accepted by the Company.
- 2.20 The specification for the Goods shall be based upon standard contract specification, unless varied expressly in the Customer's order and accepted by the Company.
- 2.21 Without prejudice to clause 2.19, the Company shall use its reasonable efforts to supply the Goods in accordance with any specification submitted by the Customer and approved by the Company, but may in any event effect minor modifications to the Goods without the Customer's approval in order to comply with any applicable safety or statutory requirements, or to effect enhancements to the Goods. The Company will notify the Customer in writing of any proposed material modifications to the Goods and the Customer shall be deemed to have accepted such modifications unless notice in writing to the contrary shall be received by the Company within 3 days of the date of the Company's notice to the Customer.
- 2.22 The Customer shall ensure that any specification submitted by the Customer does not contravene any applicable safety or other statutory or regulatory requirement.

- 2.23 If any Goods are to be manufactured, ordered, designed, built, configured, altered, adapted, or subjected to any process by or on behalf of the Company for the Customer and/or any Services are to be performed by the Company, in each case in accordance with any Input Material or Free Issue Materials submitted by the Customer, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any Intellectual Property Rights of any other person resulting from the Company's use of any Input Material or Free Issue Materials so submitted.
- 2.24 All Goods shall be supplied by the Company to any standard commercial tolerances that apply within the appropriate industry, unless the Customer notifies the Company in its order of any special tolerances that the Customer requires.
- 2.25 Subject to the provisions of clause 9.1 (b), the Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.
- 2.26 The Customer will be liable for any additional costs, charges or expenses which arise from any conditions at the Site being at variance with any conditions perceived by or notified to the Company.
- 2.27 The Company has no obligation to accept any variation to the Contract requested by the Customer, whether by addition, substitution or omission (or, without limitation, to the Goods/and or Services to be provided under the Contract) and no such request shall be deemed to be accepted in the absence of the Company's written agreement to the variation.

### **3. OBLIGATIONS OF THE CUSTOMER:**

- 3.1 The Customer shall:
- (a) be responsible for preparing and maintaining any relevant part of the Site for the performance of the Services and for reinstating any such part of the Site and undertaking any required making good and clean-up work once performance of the Services has been completed;
  - (b) ensure that conditions at the Site are suitable for the performance of the Services and that any relevant thing required to perform the Services thereon is available and in good working order (for the avoidance of doubt, the Company shall not be required to undertake any survey of the Site although the Company may opt to do so);
  - (c) if requested to do so by the Company and without charge, provide facilities at the Site for the off-loading and storage of the Goods and the Company's tools and equipment in a readily accessible and secure storage area protected from theft and damage and shall be solely responsible for the safekeeping of the Goods and the Company's tools and equipment whilst the same are stored at the Site;
  - (d) take all steps to ensure the health and safety of the personnel of the Company whilst they are in attendance at the Site in connection with the performance of the Services and be solely responsible for ensuring the safety of any and all persons who are or may be present at the Site during the performance of the Services, including restricting access to those areas of the Site where the Services are to be performed to those individuals engaged in performing the Services, or providing assistance to those so engaged;
  - (e) provide prompt and unobstructed access to and egress from the Site;
  - (f) inform the Company of any unusual layout, composition or construction of the Site or its parts and for reporting any unusual conditions or obstacles to the performance of the Services at the Site to the Company;
  - (g) notify the Company of any special properties of, or requirements of the Customer in relation to, any surfaces, fixtures or fittings at the Site, as the Company shall not in

any event be held liable for any damage resulting directly or indirectly from the installation of any Goods to the Customer's property, fixtures or fittings, including damage caused by the drilling of walls, tiles, glass or other surfaces, the removal of fixtures and fittings whether obsolete or not, or damage to porous or any other materials, nor shall the Company be held liable for any damage to the Customer's property resulting directly or indirectly from the delivery of Goods to, or the performance of any Services at, the Site, save where such damage is directly attributable to the negligence of Company;

- (h) ensure that any materials and/or surfaces upon which the Services are to be performed comply with any tolerances required by the Company and are of adequate strength to withstand any work undertaken on them by the Company and to support the Goods and the maximum loads to be imposed on the Goods;
  - (i) at all times during the performance of the Services ensure, insofar as it is reasonably practicable to do so, that other trades or operations are not undertaken on that part of the Site where the performance of the Services is to take place, so as to ensure that the Services can be performed in one continuous, uninterrupted operation during Working Hours;
  - (j) be responsible at its own cost (other than for statutory obligations placed solely on the Company) for obtaining all consents, permissions, easements and licences necessary for the performance of the Services in accordance with these Conditions and for complying with all Statutes and Orders, Regulations and By-Laws which are applicable at any time to the Services and shall indemnify and keep indemnified the Company against any actions, proceedings, costs, charges, claims or demands arising out of or in connection with any breach of this clause 3.1 (j);
  - (k) provide the Company with all information, co-operation and support that may be required to enable the Company to carry out its obligations to the Customer; and
  - (l) effect and maintain appropriate insurance at the Site on an all risks basis and in an adequate amount.
- 3.2 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf), at any time from the date of first provision of the Services to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 3.3 Any consent given by the Company in accordance with clause 3.2 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.
- 3.4 Where the Company has agreed to undertake maintenance services for the Customer, the following clauses 3.5 to 3.14 shall govern the supply of maintenance services, without prejudice to the provisions of any other clause of these Conditions.
- 3.5 Preventative maintenance service visits to the Site shall be undertaken at such intervals and upon such dates as shall be designated by the Company, at the Company's sole discretion.
- 3.6 Dates for performance of the preventative maintenance services shall be suggested by the Company to the Customer and mutually agreed in advance. The Company reserves the right to levy a re-scheduling charge should the Customer wish to change any agreed dates for performance of the preventative maintenance services less than 7 days prior to any date so agreed.
- 3.7 During the preventative maintenance visit, (or otherwise thereafter, where appropriate) the Company shall check all aspects of the Equipment and replace or repair any faulty Equipment (or any faulty component of the Equipment).

- 3.8 The Company shall provide remedial (call-out) maintenance cover in order to fix any faults which may arise in relation to the Equipment. The Company shall use reasonable endeavours to provide remedial (call-out) maintenance cover at the times indicated in the Company's written acceptance of order issued pursuant to clause 2.3 (if any). Any response time indicated in the Company's written acceptance of order is an estimate only and time shall not be of the essence for performance of the maintenance services.
- 3.9 The charges payable for the maintenance services shall cover either (i) all labour costs, together with (ii) the cost of any parts required for replacement or repair, or (i), but not (ii), which shall be separately chargeable. The extent of coverage will be indicated in the Company's written acceptance of order issued pursuant to clause 2.3. The cost of consumable items shall not be covered in either event.
- 3.10 The maintenance services shall be provided within Working Hours. If the Company has confirmed in the written acceptance of order issued pursuant to clause 2.3 that the maintenance services will also be provided outside Working Hours, the maintenance services will be provided during the hours stated in the written acceptance of order. The Customer may request the Company to provide the maintenance services outside Working Hours at any time, provided that the Company reserves the right in its sole discretion not to accede to the Customer's request. Where the Company agrees to the Customer's request, the Customer will be charged for the maintenance services provided pursuant to the Customer's request on a time and materials basis. All waiting time shall be chargeable.
- 3.11 The Customer warrants and undertakes to the Company that it is the owner or authorised user of the Equipment, that it has full power and authority to permit the Company to perform the maintenance services and the Customer undertakes to fully and promptly indemnify and hold the Company harmless against any loss or damage that the Company may suffer as a result of any breach by the Customer of this clause 3.11.
- 3.12 In order to be eligible for maintenance under the Contract, the Equipment must at all times be in a condition suitable for regular planned maintenance and if the Company, in its sole discretion, at any time deems the Equipment not to be in such a condition, the Company may, without liability to the Customer, refuse to undertake maintenance services in relation to the Equipment.
- 3.13 All defective parts removed from the Equipment by the Company shall become the property of the Company and, upon receipt of payment, their replacements shall become the property of the Customer.
- 3.14 The maintenance services shall not include:
- (a) any work in relation to anything which does not form a part of the Equipment; and
  - (b) any maintenance or repair work with respect to any modification of, or addition to, the Equipment, if any such modification or addition has been undertaken without the Company's prior consent; and
  - (c) the repair of any damage to the Equipment caused by fire, water, frost, lightning, wind, damage in transit, burglary, vandalism, or explosion; and
  - (d) the remedy of any defect resulting from any misuse of, neglect of, tampering with, or wilful or accidental damage to the Equipment, or from the utilisation of incorrect mains voltage with the Equipment where relevant, the attachment of the Equipment to any unsuitable or inappropriate devices or the use of defective or inappropriate supplies with the Equipment, or from any failure to follow any instructions contained in any operation or maintenance manual published for, or otherwise specified to be appropriate for use in conjunction with, the Equipment, or from any failure to follow any written or oral instructions of the Company, or from any failure to maintain a suitable environment for the Equipment at the Site where relevant, including any failure to maintain a continuous power supply where required.
- 3.15 Where the Company undertakes the testing of any Equipment for the Customer:

- (a) testing of Equipment will be carried out in accordance with the standards for the time being laid down by the British Standards Institution or other recognised authority, but in the event of such standards not being applicable, testing will be carried out according to a specification to be agreed before the commencement of the testing;
- (b) by arrangement, tests may be witnessed by the Customer or its representative, but the Company shall be entitled to charge the Customer for any additional costs the Company incurs;
- (c) reasonable time and assistance will be provided by the Customer to the Company with respect to the testing of the Equipment, without any liability of the Company to the Customer for any Equipment stoppage period;
- (d) no Report or abridgement or abstract of any Report shall be used in any Customer prospectus, advertisement or other publication, or reproduced on any Equipment or on the packaging thereof, without the prior written consent of the Company;
- (e) without the prior written consent of the Company, no indication shall be given in any advertisement or by markings on any Equipment or the packaging thereof, or by any other means, that the Equipment has been subjected to testing by the Company;
- (f) subject to any other exclusion or limitation of the Company's liability in these Conditions, the Company will only be liable for recommendations, representations, descriptions, illustrations or specifications made by it and contained or referred to in the Report; and
- (g) the Company shall not accept any responsibility for any intermittent or permanent electrical interference at the Site affecting any measurements or readings obtained during the testing of the Equipment, although all normal precautions will be taken to eliminate such problems.

**4. PRICE:**

- 4.1 Prices for the Supplies, howsoever given, are based on conditions ruling on the date of their giving and are subject to change. The effective price for the Supplies shall be the price confirmed by the Company in its written notification of acceptance of the Customer's order pursuant to clause 2.3.
- 4.2 The Company reserves the right, by giving notice to the Customer at any time before delivery or provision of the Supplies, to increase the price of the Supplies to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, any increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Supplies which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate, accurate or complete information or instructions.
- 4.3 Unless otherwise stated, the price quoted will be exclusive of Value Added Tax which will be charged at the rate which is applicable at the date of dispatch of the Goods or commencement of performance of the Services.
- 4.4 Unless otherwise agreed in writing between the Customer and the Company, all prices for the supply of Goods are given by the Company on an ex works basis and the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 4.5 The Company's time-based rates are calculated from the time of dispatch or departure from the Company's premises to the time of return. A mileage charge is also charged, as applicable, to overtime rates and call out costs whether or not incurred in an emergency and will be applied based upon such rates and costs as are published by the Company from time to time.
- 4.6 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.

**5. DELIVERY AND PERFORMANCE:**

- 5.1 Unless otherwise agreed in writing by the Company, the delivery of the Goods and the performance of the Services shall take place at the Site.
- 5.2 Any dates specified by the Company for delivery of the Goods and/or performance of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. Should expedited delivery be agreed, the Company reserves the right to levy an extra delivery charge.
- 5.3 The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's offer in accordance with clause 2.3, unless otherwise specified by the Company.
- 5.4 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or performance of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days after the estimated date of performance or delivery.
- 5.5 Unless otherwise stated in the Company's written acknowledgement of order, the Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading and loading the Goods.
- 5.6 If delivery involves difficult access to or at the Delivery Point and/or the Delivery Point is located at an unreasonable distance from any feasible vehicular access point, the Company reserves the right to levy an extra delivery charge.
- 5.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.8 Each instalment shall be a separate contract.
- 5.9 No cancellation or termination of any one contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.
- 5.10 If the Company delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 5.11 If for any reason the Customer fails to accept delivery of any of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, the Company will charge the Customer an abortive delivery charge and:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
  - (b) the Goods shall be deemed to have been delivered; and
  - (c) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage and insurance); or
  - (d) sell the Goods at the best price readily obtainable and (after deducting any reasonable costs and expenses in connection with the storage and expedited sale of the Goods), charge the Customer for any shortfall below the price for the Goods.
- 5.12 Without prejudice to the provisions of clause 5.11, the Company reserves the right to charge for the storage of Goods at such rate as shall be agreed with the Customer, if:
- (a) the Customer requests that its order be put on hold; or
  - (b) if any Goods are held by the Company (through no fault of the Company) for any period of time beyond any date nominated by the Company for the delivery of the Goods.



- 5.13 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.14 The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 48 hours of the time when the Goods would in the ordinary course of events have been received.
- 5.15 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

**6. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS:**

- 6.1 The Customer and the Company agree that in the course of the Company providing Supplies to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party. The parties further agree not to use any Confidential Information for any purpose other than the discharge of their respective obligations under the Contract.
- 6.2 The Customer acknowledges the Company's ownership of any and all Intellectual Property Rights in any Deliverables, any Output Material, any Report and in any Goods and/or Services provided to the Customer pursuant to the Contract. Without limitation, the Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that, without limitation, any and all Intellectual Property Rights developed by the Company in performing any Services or providing any Goods shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this clause 6.2.
- 6.3 If the Goods are to be marked with any trade mark at the request of the Customer, the Customer shall indemnify and hold the Company harmless against all, damages, costs and expenses awarded against or incurred by the Company or any other liability resulting from the Company's marking of the Goods or from the sale or supply of such Goods by the Company, including without limitation any claim, and settlement of any claim, for infringement of any copyright, trade mark or other industrial or intellectual property rights.

**7. PAYMENT:**

- 7.1 Subject only to any special terms agreed in writing between the Company and the Customer, the Company shall be entitled to invoice the Customer for the price of the Supplies on or at any time after acceptance of the Customer's order.
- 7.2 Provided that the Customer has produced references which in the Company's opinion are satisfactory, then settlement terms will be net 30 days from the invoice date. In all other cases payments shall be made in advance upon submission by the Company of a pro-forma invoice. The time of payment of the price shall be of the essence of the Contract.
- 7.3 All payments shall be made without any deduction, withholding or set-off.
- 7.4 Failure by the Customer to pay any invoice by its due date shall entitle the Company to:
- (a) at its option, to charge interest at the rate of five percent (5%) per annum above Natwest Bank plc's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a

- month being treated as a full month for the purpose of calculating interest) or claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- (b) charge the Customer with any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer;
  - (c) suspend any warranty for the Supplies or any other goods or services supplied by the Company to the Customer, whether or not they have been paid for;
  - (d) appropriate any payment made by the Customer to such of the Supplies as the Company may think fit;
  - (e) set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever;
  - (f) terminate the Contract, or suspend or cancel any future delivery of Goods and/or performance of Services; and
  - (g) cancel any discount (if any) offered to the Customer.
- 7.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

**8. FORCE MAJEURE:**

The Company reserves the right to defer the date of provision of the Supplies, or to cancel the Contract or reduce the volume of the Supplies ordered by the Customer (without liability to the Customer) if it is prevented from, or delayed in, the carrying on of its business (wholly or in part) due to circumstances beyond the reasonable control of the Company including Acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, or any inability or delay in obtaining supplies of adequate or suitable materials, or the failure or demise of any source of supply.

**9. WARRANTY:**

- 9.1 Whilst the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company by the manufacturer (where applicable) and the Company warrants (subject to the other provisions of these Conditions) that:
- (a) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in its written acceptance of the Customer's order that it will supply Goods suitable for that purpose, then the Goods shall be reasonably fit for the purpose so stated; and
  - (c) the Services will be performed with reasonable skill and care.
- 9.2 The Company's liability pursuant to clause 9.1 shall be limited:
- (a) for Goods, to the replacement of any part of the Goods found to be defective and notified to the Company within the period set forth in clause 9.3; and
  - (b) for Services, to re-performing those Services found not to have been performed with reasonable skill and care and notified to the Company within the period set forth in clause 9.3.
- 9.3 Any defect or deficiency in, or malfunction or shortage or failure to correspond to specification of the Supplies shall be notified to the Company within 72 hours of the time when the Customer discovers or ought to have discovered the defect or deficiency, or malfunction or shortage or failure to correspond to specification, as applicable; otherwise, the Supplies shall be deemed to be satisfactory and a charge will be made for additional rectification work.

- 9.4 The Company shall not be liable for any breach of any warranty in clause 9.1, if:
- (a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect;
  - (b) the Customer modifies, adjusts, alters or repairs the Goods without the prior written consent of the Company;
  - (c) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - (d) the defect arises from any Input Material or Free Issue Materials supplied by the Customer, or from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse of the Goods or from any other cause which is not due to the neglect or default of the Company;
  - (e) the defect relates to any work external to the Goods, or arises by virtue of any act or omission of the Customer relating to the operation of the Goods, or through transportation or relocation of the Goods not performed by, for or on behalf of the Company, or by subjecting the Goods to any unusual physical or other stress or adverse environmental conditions;
  - (f) the full price for the Goods has not been paid by the time for payment stipulated in clause 7.2; or
  - (g) the defect is of a type specifically excluded by the Company by notice in writing.
- 9.5 If upon investigation, the Company reasonably determines that any defect or deficiency in, or malfunction or shortage or failure to correspond to specification of the Supplies is a result of, or is excused by, any of the matters referred to in clause 9.4, the Customer shall be liable for all costs reasonably incurred by the Company in investigating the same and determining the cause.
- 9.6 Subject to and without limiting the generality of any of the provisions of this clause 9, additional individual warranties may apply to certain Goods and/or Services. The terms of any such warranty (including the warranty period) may be obtained from the Company upon request.

**10. EXCLUSION OF LIABILITY:**

- 10.1 The following provisions set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these Conditions, statutory duty or common law;
  - (b) any use made or resale by the Customer of any of the Goods or of any product incorporating any of the Goods and any use made by the Customer of the Services; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract
- and each of the limitations and/or exclusions in these Conditions shall be deemed repeated and apply as a separate provision for each of the same except that the clauses which place a financial cap on the Company's liability shall apply once in respect of all of the said types of liability.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982 ) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
  - (b) under section 2(3), Consumer Protection Act 1987; or

- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to clause 10.2 and clause 10.3:
  - (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price but to the extent that any of the Company's liability to the Customer would be met by any insurance of the Company then the Company's liability shall be extended to the extent that such liability is actually met by such insurance; and
  - (b) the Company shall not be liable to the Customer for loss of profit, loss of business, business interruption, loss of contracts, loss of opportunity and/or production or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential and/or indirect compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**11. INDEMNITY:**

The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

**12. RISK AND TITLE:**

- 12.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery of the Goods to the Customer.
- 12.2 Title to the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
  - (a) the Goods; and
  - (b) all other sums which are or which become due to the Company from the Customer on any account.
- 12.3 Until title to the Goods has passed to the Customer, the Customer shall:
  - (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and indemnify the Company against all loss or damage of whatsoever nature affecting the Goods;
  - (e) notify the Company immediately if it becomes subject to any of the events listed in clause 13.1 (d)- (k) (inclusive);

- (f) not assign to any other person any rights arising from a sale of the Goods without the Company's written consent (and then only subject to a set of terms and conditions containing a Risk and Title clause which is at least as onerous as this clause 12); and
- (g) give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may resell the Goods in the ordinary course of its business, provided that it shall hold the entire proceeds of any such resale upon trust for the Company until the Goods have been paid for in full and shall keep all such trust monies in a separate bank account which shall not be overdrawn and in which such trust monies are not mingled with its own or any other monies. The Customer acknowledges and agrees that a sale by an administrator or liquidator as part of or in connection with the sale of the assets or part of the assets of the Customer is not in the ordinary course of the Customer's business.

12.4 If:

- (a) the Customer is late in paying for the Goods; or
- (b) the Customer is late in paying for any other goods supplied by the Company; or if
- (c) before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.1 (d)- (k) (inclusive) or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then:

without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, the Company may enter any premises of the Customer or of any third party where the Goods are stored or kept in order to recover them. The Customer shall not keep the Goods at any premises at which the Customer does not have the right to grant access to the Company.

### **13. TERMINATION:**

13.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than 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; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than 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;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
  - (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
  - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
  - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 13.1 (d)- (j) (inclusive); or
  - (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (l) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).
- 13.2 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of any Goods and/or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
  - (b) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

**14. GENERAL:**

- 14.1 No forbearance or indulgence granted by the Company to the Customer shall in any way limit the rights of the Company under these Conditions.
- 14.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.
- 14.3 Neither the Company nor the Customer intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 14.5 The Company shall be entitled at its discretion to perform any of the obligations assumed by it and to exercise any of its rights granted to it under the Contract through any other company or subsidiary.
- 14.6 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 14.7 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties.

The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.

- 14.8 These Conditions (including any associated non-contractual disputes or claims) are governed by English law and the parties hereby accept the jurisdiction of the English courts, such that any proceeding by the Customer shall be brought in the English courts but provided that nothing in these Conditions will prevent the Company from taking proceedings against the Customer in any other court of competent jurisdiction.