



**TOTAL COMPUTER NETWORKS LIMITED
STANDARD TERMS AND CONDITIONS (V.2)**

1 INTERPRETATION

1.1 Definitions.

In these Conditions, the following definitions apply:

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

Collection Location: has the meaning set out in clause 4.2.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

Configuration Specification: has the meaning set out in clause 7.1.

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

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

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 16.1(a).

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

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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.

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

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Manufacturer: means the manufacturer of the relevant Goods.

Quotation: means the quotation provided to the Customer by the Supplier for providing the Customer with the Services and/or the Goods (as applicable).

Sales Order Confirmation: the written confirmation provided to the Customer by the Supplier that the Order has been accepted.

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

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

Supplier: Total Computer Networks Limited registered in England and Wales with company number 04958126 and whose registered address is Newspaper House, Rothwell Road, Kettering, NN16 8GA.

Supplier Materials: has the meaning set out in clause 9.1(g).

1.2 In these Conditions, the following rules apply :

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a **party** includes its personal representatives, successors or permitted assigns;
- (c) 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;
- (d) 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;
- (e) unless the context otherwise requires, words in the singular include the plural and in the plural include the singular; and
- (f) a reference to **writing** or **written** includes emails and faxes.

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.

2.2 The Order shall only be deemed to be accepted when the Supplier issues the Sales Order Confirmation at which point and on which date the Contract shall come into existence (**Commencement Date**). In the event that a Sales Order Confirmation is not issued by the Supplier, the Order shall be deemed to be accepted when the Goods are shipped by the Supplier or the provision of the Services commences and such date shall be the Commencement Date. All prices are subject to change as a result of errors or omissions prior to receipt of the Goods and/or Services by the Customer.

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 catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any Quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue unless otherwise indicated on the Quotation.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 GOODS

- 3.1 The Goods supplied are as described by the Manufacturer unless at the time of ordering the Goods configuration has been ordered (see clause 7) in which case the Goods will be as described by the Manufacturer as modified in accordance with the Configuration Specification.
- 3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4 DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense unless specifically stated to the Customer prior to the order being placed.

- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready or if applicable and agreed between the Customer and Supplier in writing the Customer (or its agent) shall collect the Goods from the Supplier's premises at Newspaper House, Rothwell Road, Kettering, Northamptonshire NN16 8GA or such other location as may be advised by the Supplier prior to delivery (Collection Location) within 3 Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall take place and be completed on the Goods' arrival at the Delivery Location or, if applicable, upon the loading of the Goods at the Collection Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is of the essence unless specifically agreed in writing between the parties. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to collect the Goods (if applicable), the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to collect, accept or take delivery of the Goods within 10 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 11th Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 25 Business Days after the Supplier notified the Customer that the Goods were ready for delivery or collection the Customer has not collected, accepted or taken delivery of them and notwithstanding the fact that Goods have been deemed as delivered under clause 4.6, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 Where any of the Goods are perishable or have a short shelf life, in relation to these goods, the time frames set out in clauses 4.6 and 4.7 shall be amended so that where it reads "10 Business Days" in clause 4.6 this now reads "3 Business Days", where it reads "11th Business Day" at clause 4.6(b) this now reads "4th Business Day" and where it reads "25 Business Days" in clause 4.7, this now reads "5 Business Days".

4.9 The Customer shall not be entitled to reject the Goods if the Supplier delivers or supplies for collection (as the case may be) up to and including 5 per cent more or less than the quantity

of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered or collected.

4.10 The Supplier may deliver or supply for collection (as the case may be) the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery by the Supplier or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 QUALITY OF GOODS

5.1 It is acknowledged by the parties that the Supplier does not manufacture the Goods and is a reseller of the Goods. Goods may be configured prior to delivery or collection in accordance with a Customer's request (see clause 3.1 and clause 7).

5.2 All Goods supplied will carry the benefit of the particular Manufacturer's warranty from time to time (**Manufacturer's Warranty**) and the terms of these will vary from product to product. The Customer should familiarise itself with the terms of the Manufacturer's Warranty and a copy of this is available upon request from the Supplier or from the Manufacturer direct and/or may be included with the Goods when they are delivered. The Customer should be aware that by ordering the configuration of the Goods, the configuration may affect the Manufacturer's Warranty and the rights of the Customer thereunder.

5.3 The Supplier warrants that on delivery and for either the period of warranty given under the terms of the Manufacturer's Warranty or for 30 days after the date of delivery of the Goods whichever is the shorter (**Warranty Period**) the Goods shall:

(a) conform in all material respects with their description; and (b)

be free from material defects in design, material and workmanship.

5.4 Subject to clause 5.5, if:

(a) the Customer gives notice in writing during the Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 5.3;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

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

- 5.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty at clause 5.3 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.4;
 - (b) the defect arises because the Customer failed to follow the Supplier's or Manufacturer's (as applicable) oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Supplier or Manufacturer (as applicable) following any drawing, design or Configuration Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Supplier or Manufacturer;
 - (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal working conditions;
 - (f) the Goods differ from their description or the Configuration Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.6 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 5.3.
- 5.7 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.4.
- 5.8 If the Customer becomes aware of a breach of either the Supplier's warranty in clause 5.3 during the course of the Warranty Period and/or the Manufacturer's Warranty during the course of the warranty period referred to in the Manufacturer's Warranty then the Customer should contact the Supplier. The Supplier will then either direct the Customer to the Manufacturer if appropriate or deal with the matter itself. It is agreed and acknowledged by both parties that the Supplier has no liability to the Customer (or otherwise) under the Manufacturer's Warranty.
- 5.9 If the Customer changes its mind about the Goods (or Good) supplied, and provided that no claim for any breach of warranty or Manufacturer's Warranty is being entertained or considered or undertaken by that Customer, then the Supplier may, always at its absolute discretion accept the return of the Goods (or Good) and provided the Goods (or Good) are returned in an excellent condition and are fit for re-sale, then the Supplier will refund the Customer accordingly subject to any reasonable administration charges and/or any charges incurred by the Supplier for the return of the Goods to the Manufacturer.

6 TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery (whether completed by the Goods' arrival at the Delivery Location or upon the loading of the Goods at the Collection Location).
- 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:
- (a) the Goods; and
 - (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier'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 on the Supplier's behalf from the date of delivery;
 - (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(l); and
 - (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, 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(b) to clause 14.1(l), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been irrevocably incorporated into another product, and 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 CONFIGURATION OF THE GOODS

- 7.1 Where ordered by the Customer at the time of ordering the Goods, prior to delivery or collection of the Goods, the Goods will be configured by the Supplier in accordance with the specification relating to the configuration supplied by the Customer and agreed by the Supplier (**the Configuration Specification**).
- 7.2 To the extent that the Goods are to be configured in accordance with a Configuration Specification, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier 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 Configuration Specification. This clause 7.2 shall survive termination of the Contract.
- 7.3 The Supplier reserves the right to amend the Configuration Specification if required by any applicable statutory or regulatory requirements.
- 7.4 Configuration is a Service provided subject to the terms for the supply of services as set out herein.

8 SUPPLY OF SERVICES

- 8.1 Subject to clause 8.3, the Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects. Where the Service being provided is the configuration of Goods/a Good, then the Supplier shall provide that Service to the Customer in accordance with the Configuration Specification in all material respects (subject to any amendments required pursuant to clause 7.3 and clause 8.3).
- 8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services indicated by the Customer in correspondence, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 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.
- 8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

9 CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Configuration Specification and the Service Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) 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; and
- (h) provide to the Supplier and its employees, agents, consultants and subcontractors details relating to all hazards at the Customer's premises and comply with all health and safety laws and policies in connection with the presence of the Supplier

and its employees, agents, consultants and subcontractors at the Customer's premises.

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**):

- (a) 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;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

10 CHARGES AND PAYMENT

- 10.1 Subject to clause 10.3, the price for Goods shall be the price set out in the Quotation. The Quotation will include the costs for delivery where appropriate.
- 10.2 Subject to clause 10.3, the charges for Services shall be the price set out in the Quotation. If additional charges need to be levied for the provision of the Services in addition to those set out in the Quotation then these shall be agreed with the Customer in advance and shall be on a time and materials basis.
- 10.3 Where a Quotation is not provided, the price for the Goods and/or the Services (as applicable) shall be advised to the Customer by the Supplier prior to the Commencement Date and if additional charges need to be levied for the provision of the Services in addition to those advised then these shall be agreed with the Customer in advance and shall be on a time and materials basis.
- 10.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery (as set out in clause 4.3) or deemed completion of the delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services or earlier (or in instalments) if specifically agreed between the parties. Where Goods are configured prior to delivery or collection, then the Supplier shall invoice the Customer for both the supply of the Goods and the provision of the Service on or at any time after completion of delivery (as set out in clause 4.3) or deemed completion of the delivery.
- 10.5 The Customer shall pay each invoice submitted by the Supplier (unless otherwise agreed in writing between the parties):
- a) within 30 days of the date of the invoice; and
 - b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 10.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment in accordance with clause 10.5(a) (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 5 per cent per annum above the then current Barclays Bank Plc base rate from time to time accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly. If payment is not made on the Due Date, the Supplier may at its discretion instruct solicitors to take appropriate action against the Customer in order to recover the payment and the Customer shall indemnify and keep indemnified the Supplier in respect of the reasonable costs and charges directly or indirectly incurred by the Supplier in this regard.
- 10.8 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.

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

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial knowhow, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 12 shall survive termination of the Contract.

13 LIMITATION OF LIABILITY:

- 13.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.

- 13.2 Subject to clause 13.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for: (i) any loss of profits, sale, business or revenue;
 - (ii) loss or corruption of data, information or software;
 - (iii) loss of business opportunity;
 - (iv) loss of anticipated savings; or
 - (v) any indirect or consequential loss.
- 13.3 The Supplier's total liability to the Customer in respect of all 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 amount paid or to be paid for the Goods and/or Services.
- 13.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 13.5 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:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing of the breach;
 - (b) 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;
 - (c) 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;
 - (d) 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;

- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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;
- (g) 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);
- (h) 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;
- (i) 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;
- (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 clause 14.1(b) to clause 14.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) 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:

- (a) by giving the Customer one months' written notice; or
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the Due Date.

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:

- (a) the Customer fails to make pay any amount due under this Contract on the Due Date; or
- (b) the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) 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;
- (b) the Customer shall return all of the Supplier Materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) 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
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16 GENERAL

16.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lockouts 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.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16.2 Assignment and subcontracting:

- (a) 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.
- (b) 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.

16.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this 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.
- (b) 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.
- (c) This clause 16.3 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 this Contract shall not be validly served if sent by e-mail.

16.4 Waiver and cumulative remedies:

- (a) 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.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

- 16.5 Severance:
- (a) 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 partprovision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 - (b) 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.
- 16.6 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.
- 16.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8 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.
- 16.9 Warranty: The Customer warrants and represents that it has full authority and capacity to enter into this Contract.
- 16.10 Governing law and jurisdiction: This 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.