

FEN-BAY SERVICES LIMITED TERMS & CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"**Business Hours**" means the period from 9.00 am to 5.00 pm on any Business Day.

"**Conditions**" means these terms and conditions as amended from time to time in accordance with these Conditions.

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

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

"**Customer**" means the person or firm who purchases the Goods or Services or Goods and Services from the Supplier.

"**Deliverables**" means all documents, products, correspondence and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

"**Goods**" means the goods (or any part of them) set out in the Purchase Order.

"**Goods Specification**" means any specification for the Goods, including any related plans or drawings, that is agreed in writing by the Customer and the Supplier.

"**Intellectual Property Rights**" means any and all:

- (a) patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any such rights, inventions, know how, confidential information, unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software or databases) unregistered design rights and other rights in designs and rights in databases;
- (b) rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in paragraph (a) above; and
- (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) above and in each case in any jurisdiction.

"**Order Acceptance**" means the Supplier's written acceptance of the Purchase Order (including any clarification or amendment to the Purchase Order therein).

"**Purchase Order**" means the Customer's order for the supply of Goods and/or Services, as amended or clarified by the Order Acceptance (if applicable).

"**Price**" means the price that Customer will pay the Supplier for providing the Goods and/or Services as set out in the Purchase Order.

"**Services**" means the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

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

"**Supplier**" means Fen-Bay Services Limited registered in England and Wales with company number 03692535, trading as FBS Hörmann.

1.2 Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** excludes fax but not email.

2. BASIS OF CONTRACT

2.1 The Purchase Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2.2 The Purchase Order shall only be deemed to be accepted when the Supplier issues the Order Acceptance, at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

2.3 Any samples, drawings, illustration, descriptive matter, photographs or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services supplied to the Customer for tendering purposes or contained in the Supplier's 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 nor have any contractual force.

2.4 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 law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. GOODS

3.1 The Goods are described in the Goods Specification.

3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, relevant Customer and Supplier reference numbers, and the type and quantity of the Goods; and

4.1.2 if the Supplier requires the Customer to return any packaging materials 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, but otherwise disposal shall be at the Customer's expense and risk.

4.2 The Supplier shall deliver the Goods to the location set out in the Purchase Order or such other location as the parties may agree (the "**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Unless otherwise agreed by the Customer and Supplier in writing, delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location, with unloading being at the responsibility, cost and risk of the Customer. Signature of a delivery note or equivalent by any person present at the Delivery Location shall be conclusive evidence of the completion of delivery.

4.4 Unless otherwise agreed by the Customer and Supplier, the Supplier shall not be responsible for the removal of any old products from the site. Any old products removed by the Supplier shall become the Supplier's property to sell, use or dispose of as it sees fit without payment to the Customer.

4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

4.7.2 the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

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

5. QUALITY OF GOODS

5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (the "**Warranty Period**"), the Goods shall:

5.1.1 conform in all material respects with their description; and

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

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

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

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

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

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

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- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier, whether itself or via any third party not approved in writing by the Supplier;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1, or otherwise in respect of any defect or deficiency in the Goods.
- 5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier, but this shall not be taken to restart the Warranty Period from such repair/replacement.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods or services provided by the Supplier and not yet paid for.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4; and
- 6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
- (a) the Goods; and
- (b) the ongoing financial position of the Customer.
- 6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product 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. SUPPLY OF SERVICES**
- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Purchase Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. CUSTOMER'S OBLIGATIONS**
- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Purchase Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;
- 8.1.2 co-operate with the Supplier in all matters relating to the Good and/or Services;
- 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- 8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate;
- 8.1.5 prepare the Customer's premises for the supply of the Services and/or delivery of the Goods;
- 8.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 8.1.7 comply with all applicable laws, including health and safety laws;
- 8.1.8 keep all materials, equipment, documents and other property of the Supplier (the "Supplier Materials") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- 8.1.9 comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented, delayed or rendered more costly or inconvenient to the Supplier, by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
- 8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services or supply of the Goods until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 9. CHARGES AND PAYMENT**
- 9.1 The price for Goods:
- 9.1.1 shall be the price set out in the Purchase Order; and
- 9.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer in addition unless stated otherwise in the Purchase Order.
- 9.2 The charges for Services shall be calculated on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Purchase Order;
- 9.2.2 the Supplier's daily fee rates for each individual person are calculated on the basis of working during Business Hours and on Business Days;
- 9.2.3 the Supplier shall be entitled to charge an overtime rate (as specified in the applicable quotation) on top of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and
- 9.2.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.3 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- 9.3.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- 9.3.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 9.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery or as otherwise specified in the Purchase Order. In respect of Services, the Supplier shall invoice the Customer on completion of the Services or as otherwise specified in the Purchase Order.
- 9.5 The Customer shall pay each invoice submitted by the Supplier:
- 9.5.1 within 30 days of the date of the invoice, or such other period as is agreed in writing between the parties, whether in the Purchase Order or otherwise; and
- 9.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). 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 or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use the Deliverables (excluding materials provided by the

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- Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 11. LIMITATION OF LIABILITY**
- 11.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise, and save where expressly stated otherwise applies to both direct and indirect losses.
- 11.3 Nothing in the Contract limits or excludes any liability to the extent that such liability cannot legally be limited or excluded.
- 11.4 The Supplier's total aggregate liability for loss of or damage to property caused by the negligence of the Supplier shall not exceed €6m (six million Euros) per event and in the annual aggregate.
- 11.5 Subject to clause 11.3 and save as set out in clause 11.4, the Supplier's total liability to the Customer shall not exceed the price payable under the Contract.
- 11.6 The Supplier shall have no liability whatsoever in respect of:
- 11.6.1 loss of profits;
 - 11.6.2 loss of sales, business or revenue;
 - 11.6.3 loss of agreements or contracts;
 - 11.6.4 loss of opportunity;
 - 11.6.5 loss of anticipated savings or increase in operating costs;
 - 11.6.6 loss of use or corruption of software, data or information;
 - 11.6.7 loss of or damage to goodwill or reputation; and
 - 11.6.8 indirect or consequential loss.
- 11.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.8 The Supplier shall have no liability whatsoever to the Customer in respect of any act or omission unless the Customer makes a claim in respect of the relevant act or omission within the period of 3 months beginning on the date on which the Customer became or should have become aware of the act or omission in question.
- 11.9 Where the Goods and/or Services supplied to the Customer are supplied onwards by the Customer (directly or indirectly) to any other entity or entities (each such entity being an **End User**), then the Customer shall indemnify the Supplier from and against any liability to such End User which is either (i) in excess of the liability the Supplier would owe to the Customer hereunder or (ii) in duplication of any such liability.
- 11.10 This clause 11 shall survive termination of the Contract.
- 12. TERMINATION**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 12.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 12.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 12.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 12.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 12.2.2 there is a change of control of the Customer.
- 12.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier, if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 13. CONSEQUENCES OF TERMINATION**
- 13.1 On termination of the Contract:
- 13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied in whole or in part or work performed in anticipation thereof but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 13.1.2 the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 13.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 14. CONFIDENTIALITY**
- 14.1 Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
- 14.2.1 to its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
 - 14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 15. FORCE MAJEURE**
- Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for four weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.
- 16. GENERAL**
- 16.1 Assignment and other dealings**
- 16.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 16.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 16.2 Notices.**
- 16.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to any email address included in the Purchase Order or Order Acceptance for a party (or an address substituted in writing by the party to be served).
- 16.2.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by next working day delivery service, at 9.00 am on the Business Day after posting; or
 - (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 16.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 16.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 16.4 Waiver.**
- 16.4.1 A waiver of any right or remedy is only effective if given in writing.
- 16.4.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

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- 16.6 **Entire agreement.**
- 16.6.1 The Contract constitutes the entire agreement between the parties.
- 16.6.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.
- 16.7 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.