

NIMBUS FOODS LIMITED

TERMS AND CONDITIONS OF PURCHASE

1. INTERPRETATION

1.1 Definitions.

In these Conditions, the following definitions apply:

"Business Day" means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

"Commencement Date" has the meaning set out in clause 2.2;

"Conditions" means these terms and conditions as amended from time to time in accordance with clause 17.8;

"Contract" means the contract between the Customer and the Supplier for the supply of Goods and/or Services;

"Customer" means Nimbus Foods Limited registered in England and Wales with company number 03043114;

"Customer Materials" has the meaning set out in clause 6.3(j);

"Customer Products" means the products in respect of which any Distribution Services and/or Storage Services are performed by the Supplier as part of the Services and Customer Product shall be interpreted accordingly;

"Deliverables" mean all documents, products 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 without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

"Distribution Services" means the distribution of products on behalf of the Customer;

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

"Goods Specification" means any specification for the Goods, including any related plans and drawings, provided by the Customer to the Supplier;

"Intellectual Property Rights" means 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, 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" means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form;

"Services" means the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order together with any installation and commissioning of Goods to be carried out by the Supplier pursuant to clause 5;

"Service Specification" means any specification for Services provided by the Customer to the Supplier;

"Storage Services" means the storage of products on behalf of the Customer;

"Supplier" means the person or firm from whom the Customer purchases the Goods and/or Services;

"Technical Handover" has the meaning set out in clause 5.5.

1.2 Construction

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 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; and
- (e) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 Subject to clause 2.6, the Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions to the exclusion of any others.

2.2 Subject to clause 2.6, the Order shall be deemed to be accepted incorporating these Conditions on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (Commencement Date).

- 2.3 The Customer shall be entitled to cancel the Order if the Supplier has not issued a written acceptance of the Order or carried out any act consistent with fulfilling the Order within 10 days of the date of the Order.
- 2.4 Subject to clause 2.6, these Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Subject to clause 2.6, all of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.6 If a written supply contract has been entered into between the Supplier and the Customer in connection with the supply of any of the Goods and/or the Services (such supply contract being a Relevant Supply Contract) and the Relevant Supply Contract has not terminated prior to the date of the Order, the Order shall constitute an offer by the Customer to purchase the relevant Goods and/or Services from the Supplier in accordance with the Relevant Supply Contract to the exclusion of any other terms and conditions (including these Conditions).

3. SUPPLY OF GOODS

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) comply in all respects to any relevant samples provided by the Supplier to the Customer;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
- (d) where applicable, be free from defects in design, materials and workmanship and remain so for the later of (i) 12 months commencing with the date of first use by the Customer for commercial operation and (ii) 18 months after delivery or, where the Goods are to be installed and commissioned by the Supplier, 18 months after Technical Handover;
- (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
- (f) not be the subject of any security interest or adverse title;
- (g) to the extent that they are foodstuffs or are intended or anticipated for human consumption either directly or indirectly, be wholesome and fit for that purpose at the time of supply and for such period thereafter as the Customer may require either expressly or by implication and the Supplier shall ensure that such Goods shall not:

- (i) require any special method of storage (other than normal refrigeration) except as fully notified to, and agreed with, the Customer prior to the making of the contract for their supply; and
 - (ii) be genetically modified or derived from genetically modified materials unless specifically agreed by the Customer in circumstances where the Customer has been provided in advance with all information relevant to making such a decision;
 - (h) to the extent that they constitute packaging and which are intended or anticipated to be used directly or indirectly for containing foodstuffs, be fit for that purpose and, in particular, shall have no adverse effect on those foodstuffs or on any person who may consume those foodstuffs either in their packaged state or as an ingredient in some other foodstuff; and
 - (i) to the extent that they are Goods of a type referred to in clause 3.1(g) or 3.1(h), be supplied with full traceability as to their derivation.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 The Supplier shall obtain any necessary licences and documentation for the exportation, transportation and importation of the Goods into the country of delivery (including in connection with the payment of any applicable excise or other tax, levy or duty) and shall, on request, provide to the Customer such licences and documentation.
- 3.4 The Customer shall have the right to inspect and test the Goods at any time before delivery.
- 3.5 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer may inform the Supplier and the Supplier shall, at its own cost, immediately take such remedial action as is necessary to ensure compliance.
- 3.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations or the Customer's rights under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special

storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (c) if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order;
- (b) to the delivery location set out in the Order or as instructed by the Customer before delivery (Delivery Location);
- (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.

4.3 Where a date for delivery is specified in the Order, such date must be adhered to strictly by the Supplier and time shall be of the essence.

4.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 9.1.

4.6 Risk in the Goods shall pass to the Customer upon Technical Handover or, if the Supplier is not required to install or commission the Goods, on completion of delivery in accordance with these Conditions.

4.7 Title in the Goods shall pass to the Customer upon appropriation of the Goods (or part thereof) to the Order.

4.8 The issue by the Customer of a receipt note for the Goods or a handover receipt provided pursuant to clause 5.5 shall not constitute any acknowledgement of the condition or nature of those Goods or the installation or commissioning of those Goods and shall not prejudice or affect any of the Customer's remedies under clause 9.

5. INSTALLATION AND COMMISSIONING

5.1 Where specified in the Order, the Supplier shall install and commission the Goods at the locations specified in the Order or such other locations notified by the Customer in writing prior to installation.

5.2 In installing and commissioning the Goods, the Supplier shall:

- (a) pay for and supply everything needed to install and commission the Goods in accordance with any applicable Goods Specification;
 - (b) on request, provide the Customer with a list of all personnel used by the Supplier to install and commission the Goods; and
 - (c) complete the installation and commissioning by the dates specified in the Order and inform the Customer as soon practicable if it cannot do so. Time shall be of the essence in relation to such dates specified in the Order.
- 5.3 The Supplier shall ensure that its personnel, when installing and commissioning the Goods, shall:
- (a) always carry suitable identification; and
 - (b) leave the premises at which the Goods are being installed and commissioned clean, tidy and safe.
- 5.4 The Supplier shall use personnel who are suitable and qualified to install and commission the Goods in accordance with these Conditions and shall instruct, supervise and control such persons at all times. The Supplier must cease to use any employee, agent or sub-contractor in connection with the installation and commissioning of Goods if the Customer reasonably requests.
- 5.5 Successful installation and commissioning of the Goods shall take place at such time that the Customer is satisfied (acting reasonably) that the Goods and the installation and commissioning thereof are free from errors and deficiencies and accord to the Contract as signified by a handover receipt signed by an authorised representative of the Customer (Technical Handover).
- 5.6 Upon Technical Handover, the Supplier shall provide to the Customer any reports, certificates, drawings, manuals or other documents required for the successful operation and maintenance of the Goods.

6. SUPPLY OF SERVICES

- 6.1 The Supplier shall from the date set out in the Order (or such other date agreed by the Customer in writing) and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 6.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer. Time shall be of the essence in relation to such performance dates.
- 6.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer (including, without limitation, any instructions with regard to the storage and/or transport conditions in respect of any Customer Products);
 - (b) perform the Services with reasonable care, skill and diligence in accordance with good practice in the Supplier's industry, profession or trade;

- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Order and any Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
- (e) provide all equipment, tools and vehicles and such other items and/or facilities as are required to provide the Services and ensure that they are suitable and adequate for the provision of the Services and maintained in proper working order and in a clean and hygienic condition;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) keep, and produce on written request by the Customer, such records relating to the Services that the Supplier is required to keep pursuant to any applicable law or regulation or as required by the Customer;
- (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises together with such other health and safety rules and regulations notified by the Customer to the Supplier in connection with the Services and/or the Customer Products;
- (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (Customer Materials) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
- (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

6.4 The Customer shall have the right to inspect the performance of the Services and the Supplier's compliance with these Conditions and such right shall include the right for the Customer and its representatives to enter the Supplier's premises for the purposes of carrying out such inspection.

6.5 If following such inspection or testing the Customer considers that the Services are not being performed in accordance with these Conditions the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

6.6 Notwithstanding any such inspection, the Supplier shall remain fully responsible for the provisions of the Services and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

7. DISTRIBUTION SERVICES

The provisions of this clause 7 shall apply where the Services to be provided by the Supplier under the Contract include Distribution Services.

7.1 Risk in a Customer Product shall pass to the Supplier:

- (a) if the Supplier is responsible for the loading of the Customer Product on to the Supplier's vehicle, on the commencement of the loading of the Customer Product on to the Supplier's vehicle: or
- (b) if the Supplier is not responsible for the loading of the Customer Product on to the Supplier's vehicle, on completion of the loading of the Customer Product on to the Supplier's vehicle.

7.2 Risk in a Customer Product shall remain with the Supplier until such time that:

- (a) if the Supplier is responsible for the unloading of the Customer Product at the location instructed by the Customer (including any location instructed by the Customer pursuant to clause 7.9), the unloading of the Customer Product at such location is completed; or
- (b) if the Supplier is not responsible for the unloading of the Customer Product at the location instructed by the Customer (including any location instructed by the Customer pursuant to clause 7.9), the unloading of the Customer Product at such location is commenced.

7.3 Where the Supplier is responsible for the loading and/or the unloading of the Customer Products, it shall provide (at its own expense) adequate equipment and personnel for such loading and/or unloading of the Customer Products.

7.4 Title in the Customer Products shall not pass to the Supplier under any circumstances nor shall the Supplier have any lien (whether general or particular) on any of the Customer Products.

7.5 The Supplier shall, whilst risk in the Customer Products remains with the Supplier:

- (a) store the Customer Products in such manner so that they remain readily identifiable as the Customer's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Customer Products; and
- (c) maintain the Customer Products in satisfactory condition and keep them insured against all risks for their full price.

- 7.6 The Supplier shall deliver the Customer Products to the delivery address set out in the Order and shall ensure that it obtains a signature from the intended recipient of the Customer Products on a consignment note evidencing delivery of the Customer Products to the intended recipient.
- 7.7 The Supplier shall promptly notify the Customer upon becoming aware of any damage to, or shortfall in, the Customer Products (and in any event, within 24 hours of becoming so aware).
- 7.8 The Supplier shall, upon becoming aware that it is, or will be, unable to deliver the Customer Products on the date notified by the Customer to the Supplier, promptly notify the Customer of such inability (and in any event, within 24 hours of becoming so aware) and provide reasons for such inability.
- 7.9 In the event that the intended recipient of the Customer Products fails to accept delivery of the Customer Products, the Supplier shall:
- (a) immediately notify the Customer of such failure; and
 - (b) comply with the Customer's instructions as to the return and/or storage of the Customer Products.

The Customer shall be responsible for the Supplier's direct costs reasonably and properly incurred solely in connection with complying with the Supplier's instructions pursuant to this clause 7.9.

- 7.10 The Supplier shall not sell or otherwise dispose of the Customer Products other than in accordance with the Customer's written instructions or authorisation.
- 7.11 All trays, pallets, pallets and other returnable packaging used in connection with the Customer Products shall remain the property of the Customer and, if requested by the Customer, the Supplier shall collect such items and return them to the Customer.

8. STORAGE SERVICES

The provisions of this clause 8 shall apply where the Services to be provided by the Supplier under the Contract include Storage Services.

- 8.1 Risk in a Customer Products shall pass to the Supplier:
- (a) if the Supplier is responsible for the unloading of the Customer Product at the Supplier's premises, on the commencement of the unloading of the Customer Product at the Supplier's premises: or
 - (b) if the Supplier is not responsible for the loading of the Customer Product at the Supplier's premises, on completion of the unloading of the Customer Product at the Supplier's premises.
- 8.2 Risk in a Customer Product shall remain with the Supplier until such time that:

- (a) if the Supplier is responsible for the loading of the Customer Product on to the relevant delivery vehicle, such loading of the Customer Product is completed; or
 - (b) if the Supplier is not responsible for the loading of the Customer Product on to the relevant delivery vehicle, such loading of the Customer Product commences.
- 8.3 Where the Supplier is responsible for the unloading and/or the loading of the Customer Products, it shall provide (at its own expense) adequate equipment and personnel for such unloading and/or loading of the Customer Products.
- 8.4 Title in the Customer Products shall not pass to the Supplier under any circumstances nor shall the Supplier have any lien (whether general or particular) on any of the Customer Products.
- 8.5 The Supplier shall, whilst risk in the Customer Products remains with the Supplier:
 - (a) store the Customer Products in such manner so that they remain readily identifiable as the Customer's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Customer Products; and
 - (c) maintain the Customer Products in satisfactory condition and keep them insured against all risks for their full price.
- 8.6 The Supplier shall promptly notify the Customer of any damage to, or shortfall in, any of the Customer Products howsoever arising (and in any event, within 24 hours of becoming so aware).
- 8.7 The Supplier shall make the Customer Products available for collection on such dates notified to the Supplier by the Customer.
- 8.8 The Supplier shall, unless the relevant Customer Products are to be delivered to the intended recipient by the Supplier, ensure that a consignment note is signed upon collection of the Customer Products from the Supplier's premises evidencing which of the Customer Products have been collected for delivery.
- 8.9 Upon termination of the Contract, the Supplier shall make the Customer Products available for collection by or on behalf of the Customer on such date that the Customer notifies to the Supplier and, until the Customer Products are collected, continue to store the Customer Products in accordance with the provisions of the Contract. If the Supplier fails to make the Customer Products available for collection on such date, the Customer may, without limiting its other rights or remedies, enter the Supplier's premises and take possession of them. Until the Customer Products have been collected, the Supplier shall be solely responsible for their safe keeping and will not sell them nor use them for any purpose. The Supplier's charges for any additional storage services provided by the Supplier pursuant to this clause 8.9 shall be calculated by reference to the charges set out in the Order on a pro-rata basis.
- 8.10 The Supplier shall not sell or otherwise dispose of the Customer Products other than in accordance with the Customer's written instructions or authorisation.

9. CUSTOMER REMEDIES

- 9.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
 - (d) where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 9.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense or require the Supplier to collect the Goods at the Supplier's own risk and expense;
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
 - (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

The Customer shall have a general and particular lien on the Goods (and any associated documentation or records) as security for payment of all sums (whether due or not) claimed by the Customer from the Supplier on any account (relating to the Goods or not).

9.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

9.4 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

10. CUSTOMER'S OBLIGATIONS

The Customer shall:

(a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and

(b) provide such information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing the Services.

11. CHARGES AND PAYMENT

11.1 The price for the Goods:

(a) shall be the price set out in the Order; and

(b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer.

11.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

11.3 In respect of Goods, the Supplier may invoice the Customer on or at any time after completion of delivery or, where the Goods are to be installed and commissioned by the Supplier, on or at any time after Technical Handover. In respect of Services, the Supplier shall, unless stated otherwise in the Order, invoice the Customer monthly in arrears (such invoices to reflect the Services performed in the preceding month). Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

11.4 In consideration of, and subject to, the supply of Goods and/or Services by the Supplier in accordance with the Contract, the Customer shall pay the invoiced amounts to a bank account nominated in writing by the Supplier by the end of the month immediately following the month in which the Customer received a correctly rendered invoice.

11.5 The price for the Goods and the charges for the Services are not subject to any increase (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Customer, which may be withheld in the absolute discretion of the Customer. The Supplier shall be deemed to have satisfied itself before the Commencement Date as to the accuracy and sufficiency of such price and charges.

- 11.6 The Customer shall pay the price for the Goods and the charges for the Services in pounds sterling or such other currency as notified by the Customer.
- 11.7 The Customer shall only be obliged to make payments which are supported by accurate invoices and where the Customer is satisfied that the Goods have been delivered (and, if applicable, satisfactorily installed and fully commissioned) and/or the Services have been performed (in each case) in accordance with the Contract.
- 11.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued 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 Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 11.9 Where the charges are based on a time and materials basis, the Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 11.10 The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 12.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights arising from the Services, including for the avoidance of doubt the Deliverables.
- 12.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 12.4 The Supplier shall, at its own cost, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 12.2.
- 12.5 All Customer Materials are the exclusive property of the Customer.

13. INDEMNITY

- 13.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:
- (a) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
 - (c) any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.
- 13.2 The Supplier shall maintain in force at all relevant times and at its own expense, with a reputable UK insurance company, product liability insurance (where relevant) and public liability insurance together with any other insurances specified in the Order or that are required by law to cover the liabilities that may arise under or in connection with the Contract covering such risks as are usually insured against by persons carrying on the same or similar business as the Supplier and with a limit of indemnity of not less than such amount that is common in the Supplier's industry for such risks and shall promptly, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 13.3 The limits of insurance required under the Contract shall in no way limit or diminish the Supplier's liability under any provisions of the Contract.
- 13.4 This clause 13 shall survive termination of the Contract.

14. CONFIDENTIALITY

The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer, its employees, agents or subcontractors, and any other confidential information concerning the Customer's business or its products or its services which the Supplier may obtain. The Supplier 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 Supplier'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 Supplier. This clause 14 shall survive termination of the Contract.

15. TERMINATION

15.1 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or a limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors including, without limitation, a proposal for or entry into a Company Voluntary Arrangement or an Individual Voluntary Arrangement;
- (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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (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 Supplier (being a company);
- (h) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over material assets of the Supplier or a receiver is appointed over material assets of the Supplier;
- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(b) to clause 15.1(j) (inclusive);

- (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
 - (l) the Customer reasonably anticipates that any of the events mentioned in clause 15.1(b) to clause 15.1(k) (inclusive) are about to occur in relation to the Supplier; or
 - (m) the Supplier (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.
- 15.2 Without limiting its other rights or remedies, the Customer may terminate the Contract:
- (a) in respect of the supply of Services, by giving the Supplier one month's written notice; and
 - (b) in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Customer shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 15.3 In any of the circumstances in these Conditions in which the Customer may terminate the Contract, where both Goods and Services are supplied, the Customer may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

16. CONSEQUENCES OF TERMINATION

On termination of the Contract or any part of it for any reason:

- 16.1 where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Customer Materials and, subject to clause 8.9 (if applicable), any Customer Products that are in the Supplier's possession or under its control. If the Supplier fails to do so, then the Customer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not sell them nor use them for any purpose not connected with this Contract;
- 16.2 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;
- 16.3 if requested by the Customer, the Supplier shall (at its own risk and expense if the Contract is terminated by the Customer pursuant to clause 15.1) remove from the Customer's premises all Goods delivered and make good any damage caused in removing them; and
- 16.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

17. GENERAL

17.1 Force majeure

Should there be a Force Majeure Event and such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than two weeks, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

For the purposes of this clause 17.1 "Force Majeure Event" means, any of the following events and similar events:

- (a) Riot, war, invasion, act of foreign enemies, hostilities, acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power
- (b) Earthquake, flood, fire, named cyclone/hurricane/typhoon, tidal wave and/or other natural disaster
- (c) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or suppliers and that affect the Contract
- (d) Maritime or aviation disasters
- (e) Mandates or laws of a governmental body having jurisdiction prohibiting and/or preventing performance of the Contract

provided that:

- Changes in economic conditions, including without limitation, currency exchange and currency movement, increased costs for or scarcity of raw materials from usual sources of supply;
- or any consequences arising as a result of or in connection with the United Kingdom's withdrawal from the European Union;

shall not be a Force Majeure Event of the Supplier.

17.2 Assignment and subcontracting

- (a) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.
- (b) The Customer 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 or agent.

17.3 Notices

- (a) Any notice 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 shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00am 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 17.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause 17.3, "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.

17.4 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 do not exclude rights provided by law.

17.5 Severance

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (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.

17.6 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.

17.7 Third parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.8 **Variation**

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.

17.9 **Inconsistent terms**

If any of the provisions of these Conditions are inconsistent with the terms of the Order, then those terms of the Order shall take precedence in respect of such inconsistency.

17.10 **Governing law and jurisdiction**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, notwithstanding withdrawal by the United Kingdom from the European Union ('EU Withdrawal') and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and irrevocably waive any objection which they have or may have at any time to the courts of England on the ground that they are an inconvenient or inappropriate forum to settle any dispute (including without limitation on the grounds of EU Withdrawal, related issue or circumstance.)