

Healthcare International Research Limited

Terms and Conditions of Supply (B2B non-e-commerce sales)

(revised April 2023)

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. Interpretation

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

1.1 Definitions:

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

Commencement Date: has the meaning given in clause clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

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

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

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Expenses: any out-of-pocket costs incurred by the Supplier in fulfilling an Order, including (without limitation):

- (a) postage, packaging, carriage, freight, and handling charges;
- (b) insurance;
- (c) storage charges;
- (d) currency conversion and banking charges applicable to the payment method used;
- (e) value added tax or any other applicable sales tax in the country in which the Supplier is resident; and
- (f) any customs, import or other duties charged in respect of the sale and importation of Products into the country in which the Customer is resident or the Delivery Location is located.

Force Majeure Event: has the meaning given to it in clause 16.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Products and/or Services, as set out the Customer's purchase order or sent electronically, or the Customer's written or electronic acceptance of the Supplier's quotation, as the case may be.

Products: the goods/products (or any part of them) set out in the Order.

Products Specification: any specification for the Products, specified by the Supplier or agreed in writing by the Customer and the Supplier.

Services: the services (if any), including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification (which may include installation or repair services).

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

Supplier: Healthcare International Research Limited (registered in England and Wales with company number 11883125), registered office: Unit 18 Axis 31, Woolsbridge Industrial Park, Oakfield Road, Wimborne, Dorset, England, BH21 6FE (or where appropriate the relevant Supplier Group Company).

Supplier Group Company: means the Supplier's subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time.

Supplier Materials: has the meaning given in clause 8.1(h).

1.2 Interpretation:

- (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 and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.
- (f) A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

2. Basis of contract

- 2.1** The Order constitutes an offer by the Customer to purchase Products or Services or Products and Services in accordance with these Conditions.
- 2.2** The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (or, if earlier, when the Supplier performs the Services or delivers the Products, as the case may be) at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3** Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Products or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products 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 14 days from its date of issue (unless an alternative validity period is specified in the quotation).
- 2.6** All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

3. Products

- 3.1** The Products are described in the Supplier's catalogue or the relevant manufacturer's sales literature, as modified by any applicable Products Specification.
- 3.2** To the extent that the Products are to be manufactured in accordance with a Products Specification supplied by the Customer (or the Customer's customer), 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 Products Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3** The Supplier reserves the right to amend the Products Specification if required by any applicable statutory or other legal or regulatory requirements.

4. Delivery of Products

- 4.1** The Supplier shall ensure that each delivery of the Products is accompanied by a delivery note which shows the relevant Customer and Supplier order reference numbers, the type and quantity of the Products (including the Supplier's code number of the Products, where applicable), special storage instructions (if any) and:

- (a) if the Order is being delivered by instalments, the outstanding balance of Products 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.

- 4.2** Where it has been agreed that the Products will be:

- (a) delivered by the Supplier to the Customer's designated delivery address, the Supplier shall arrange for suitable transport of the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Products are ready, provided that the Customer shall be liable to pay for all Expenses incurred by the Supplier in relation to such delivery and in complying with any associated instructions from the Customer (and the Supplier shall invoice the Customer for such Expenses accordingly). Acceptance of any change to the Delivery Location requested by the Customer shall be at the Supplier's sole discretion and the Customer shall be liable for any additional Expenses incurred by the Supplier as a result of such change; or
- (b) collected by the Customer from the Supplier, delivery will be effected by the Customer collecting the Products from the Supplier's warehouse at Unit 18, Axis 31, Woolsbridge Industrial Park, Oakfield Road, Wimborne, Dorset, BH216FE, United Kingdom or from such other location as may be advised by the Supplier

before delivery (Collection Location) within 3 Business Days of the Supplier notifying the Customer that the Products are ready.

- 4.3** Delivery of the Products shall be completed on the Products' arrival at the Delivery Location or (as the case may be) upon completion of loading of the Products at the Collection Location.
- 4.4** Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence.
- 4.5** The Supplier shall not be liable for any delay in delivery of the Products, or for any failure to deliver the Products, which 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 Products, or to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations.
- 4.6** If the Customer fails to accept or take delivery of the Products within 5 Business Days of the Supplier notifying the Customer that the Products 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 Products:
- (a) delivery of the Products shall be deemed to have been completed at 9.00 am on the 6th Business Day following the day on which the Supplier notified the Customer that the Products were ready; and
 - (b) the Supplier shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including Expenses).
- 4.7** If 10 Business Days after the Supplier notified the Customer that the Products were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Products and, after deducting from the proceeds its reasonable storage and selling costs of the Products, charge the Customer for any shortfall below the price of the Products under the Contract.
- 4.8** The Customer shall not be entitled to reject the Products if the Supplier delivers up to and including 5% more or less than the quantity of Products 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 Products was delivered.
- 4.9** The Supplier may deliver the Products 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.

Non-Delivery, shortages and damaged Products

- 4.10** The quantity of any consignment of Products as recorded by the Supplier upon despatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide evidence proving the contrary.
- 4.11** All Products supplied by the Supplier must be examined and checked upon receipt by the Customer, and any Products shortages, discrepancies and damage revealed by such examination promptly reported to the Supplier.
- 4.12** The Supplier shall not be liable for any non-delivery or shortages of Products, or discrepancies in the quantity of Products supplied (even if caused by the Supplier's negligence) unless written notice is given to the Supplier within 3 Business Days of the date when the relevant Products would in the ordinary course of events have been received.
- 4.13** The Supplier shall not be liable for any Products damaged in transit (where delivered by the Supplier) or errors with Products supplied (even if caused by the Supplier's negligence) unless written notice is given to the Supplier within 2 Business Days of the date of delivery or collection (as the case may be).
- 4.14** Any liability of the Supplier for non-delivery or shortages of Products, or for damage or errors to Products for which the Supplier is responsible shall be limited to replacing any affected Products within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Products.

5. Quality of Products

- 5.1** The Supplier warrants that all Products sold by the Supplier to the Customer under the Contract shall:
- (a) conform in all material respects with their description and any applicable Products Specification; and
 - (b) be free from material defects in design, material and workmanship.
- 5.2** Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full if:
- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1, (and in relation to any defects in the Products visible on reasonable inspection, such notice in writing shall be notified in writing to the Supplier within 3 Business Days of the date of delivery or collection (as the case may be));
 - (b) the Supplier is given a reasonable opportunity of examining such Products; and

- (c) the Customer provides reasonable co-operation to the Supplier to allow the Supplier or its agent to inspect and collect the Products or (where agreed between the parties, or if asked to do so by the Supplier) return such Products to the Supplier's place of business (in the UK unless otherwise specified by the Supplier) unaltered as soon as possible.

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

- (a) the Customer makes any further use of such Products after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Products Specification supplied by the Customer;
- (d) the Customer alters or repairs such Products without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Products differ from their description or the Products Specification as a result of changes made to ensure they comply with applicable statutory or other legal or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Products supplied by the Supplier.

6. Title and risk

6.1 Unless otherwise agreed in writing between the Supplier and the Customer, the risk in the Products shall pass to the Customer on completion of delivery by the Supplier or on collection by the Customer (as the case may be).

6.2 Title to the Products shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Products and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums; and

- (b) the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Products has passed to the Customer, the Customer shall:

- (a) store the Products separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d)(inclusive); and
- (e) give the Supplier such information relating to the Products as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d)(inclusive), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Products in its possession that have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products 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 agreed by the Supplier in writing, 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, safety 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:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Products 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 in order to supply the Services, and ensure that such information is complete and 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) comply with all applicable laws, including health and safety laws; and
 - (h) 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.

8.2 The Customer undertakes and agrees with the Supplier:

- (a) that it shall upon request promptly provide full details to the Supplier in writing of all retailers or other resellers to which it has supplied any of the Products in the previous 12 month period; and
- (b) it shall comply with any specific marketing guidelines specified by the Supplier from time to time in relation to the appropriate use/application and therapeutic characteristics and qualities of the Products, and shall not (without the Supplier's prior written consent) make or give any representations, warranties or other promises concerning the Products beyond those specified or approved in writing by the Supplier.

8.3 If the Supplier's performance of any of its obligations under the Contract 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) without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case 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 8.3; 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.

9. Charges and payment

9.1 The price for Products and Services shall be the price set out in the Order (subject where applicable to clause 9.2) or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Products is exclusive of all costs and charges of packaging, insurance, transport and other Expenses, which shall be paid by the Customer in addition to the price of the Products.

9.2 The Supplier reserves the right to:

- (a) increase its standard daily fee rates for the charges for the Services by giving the Customer written notice of any such increase a reasonable time in advance of the proposed date the increase will take effect. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without

limiting its other rights or remedies to terminate the provision of the Services under the Contract by giving written notice to the Customer; and/or

- (b) increase the price of the Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to the Supplier that is due to:
 - (i) 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);
 - (ii) any request by the Customer to change the delivery date(s), Delivery Location, quantities or types of Products ordered, or the Products Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products.

9.3 Subject to clause 9.4:

- (a) in respect of Products, the Supplier shall invoice the Customer on or at any time after completion of delivery; and
- (b) in respect of Services, the Supplier shall invoice the Customer monthly in arrears.

The Customer shall pay each invoice submitted by the Supplier:

- (a) within 28 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.

9.4 The Customer is entitled to a credit account with the Supplier only at the discretion of the Supplier, and the Supplier reserves the right to require payment in full by the Customer in respect of any Products or Services, including any applicable Expenses, prior to delivery of the Products or performance of the Services (as the case may be).

9.5 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**) and any other applicable taxes, duties and other levies payable on the Products. 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 (together with any duties and other levies) as

are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.

9.6 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 (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 3% per annum above the then current Barclays Bank plc base rate in the United Kingdom 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.

9.7 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.

10. Compliance & clearances, licences and consents

The Customer is responsible for complying with any legislation or regulations governing the export of the Products from the UK and the importation of the Products into the country of destination. Save as may otherwise be agreed in writing between the Supplier and the Customer, the Customer shall obtain, at its own cost, such export and import clearances, licences, consents and registrations in relation to the Products as are required from time to time and, as may be required by the Supplier (including to release the shipment) the Customer shall make those export and import clearances, licences, consents and registrations available to the Supplier promptly upon request.

11. Intellectual property rights

11.1 The Supplier hereby grants to the Customer the non-exclusive right to use the Supplier's trade marks relating to the name of the Products (as displayed on the packaging of the Products) (**Trade Marks**) in the advertisement and re-sale of those Products supplied under the Contract, subject to strict compliance by the Customer with the Supplier's rules regarding the appropriate use of those Trade Marks (including those set out in any branding manual or guidelines issued by the Supplier) and the other terms of these Conditions. The Customer shall not sub-license, transfer or otherwise deal with the rights of use of the Trade Marks granted under this clause 11.1.

11.2 The Supplier may terminate the Customer's right to use the Trade Marks granted under clause 11.1 immediately by giving notice to the Customer, in which event the Customer shall immediately stop using all or any part of the Trade Marks (except the right to

display the Products bearing the Trade Marks in the packaging supplied by the Supplier in the course of re-sale of the Products).

- 11.3** The Customer acknowledges and agrees that all rights in the Trade Marks shall remain in Supplier, and that Customer has and will acquire no right in them, (except for the right to use the Trade Marks as expressly provided in clause 11.1 and/or 11.2), or any of the Supplier's patents, design rights or other industrial or Intellectual Property Rights, and at all times such patents, trade marks, design rights and other industrial or Intellectual Property Rights shall remain the absolute property of the Supplier (or its suppliers). All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 11.4** The Customer shall market and sell the Products only under the Trade Marks, and not in association with any other trade mark, brand or trade name, except as permitted by the Supplier. The Customer shall ensure that the appropriate Trade Marks shall appear on all Products, containers and advertisements for the Products, followed by the symbol ®, or the letters RTM, as appropriate. All representations of the Trade Marks that the Customer intends to use shall be submitted to the Supplier for written approval before use.
- 11.5** The Customer shall not, without the prior written consent of the Supplier, alter or make any addition to the labelling or packaging of the Products displaying the Trade Marks. The Customer shall not alter, deface or remove any reference to the Trade Marks, any reference to the Supplier or any other name displayed on the Products or their packaging or labelling.
- 11.6** The Supplier makes no representation or warranty as to the validity or enforceability of the Trade Marks nor as to whether they infringe any intellectual property rights of third parties.
- 11.7** The Customer shall not do, or omit to do, anything in its use of the Trade Marks that could adversely affect their validity or reputation.
- 11.8** The Supplier alone is responsible for the registration and maintenance of any marks or designs that relate to the Products. The Customer shall not obtain or try to obtain or register for itself anywhere in the world any trade marks or trade names the same as or similar to the Trade Marks.
- 11.9** All Supplier Materials are the exclusive property of the Supplier. All written information, drawings, artwork, images and diagrams (excluding the Products themselves) prepared by the Supplier in relation to the supply of Products or Services and the copyright therein and all other items owned by the Supplier and used in the production of the Products shall remain the property of the Supplier and shall be returned by the Customer on

demand. All such information shall be treated as confidential and shall not be copied or reproduced or disclosed to any third party without the prior written consent of the Supplier.

11.10 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.

11.11 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.

12. Confidentiality

12.1 The Customer undertakes that it shall not at any time during the life of the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Supplier or of any member of the group of companies to which the Supplier belongs, except as permitted by clause 12.2.

12.2 The Customer may disclose the Supplier's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising its rights or carrying out its obligations under or in connection with the Contract. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Supplier's confidential information are subject to obligations of confidentiality corresponding to those which bind the Customer under this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 The Customer shall not use the Supplier's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13. Limitation of liability: *The Customer's attention is particularly drawn to this clause.*

13.1 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 loss.

- 13.2** The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.4** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 13.5** Subject to clause 13.4, the Supplier's total liability to the Customer in respect of all breaches of duty under the Contract shall not exceed the cap. In relation to this clause 13.5:
- (a) **cap.** The cap is an amount equal to one hundred percent (100%) of the total charges; and
 - (b) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of Products and Services actually supplied by the Supplier (excluding Expenses), whether or not invoiced to the Customer.
- 13.6** Subject to clause 13.4, the Supplier shall not be liable to the Customer for:
- (a) any indirect, special or consequential loss or damage; or
 - (b) loss of data or other equipment or property; or
 - (c) economic loss or damage; or
 - (d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
 - (e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,
- even if the Supplier is advised in advance of the possibility of any such losses or damages.
- 13.7** The Supplier has given commitments as to compliance of the Products and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, all other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in the Contract are excluded from the Contract to the fullest extent permitted by law.

13.8 This clause 13 shall survive termination of the Contract.

14. Termination

14.1 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:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) 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), 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) 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
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract or (at its discretion) suspend the supply of Services or all further deliveries of Products 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 for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d)(inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14.3 Unless the Customer is entitled to terminate the Contract in any of the circumstances identified in clause 14.1, the Contract (or any Products or instalments of Products comprised in the Contract) may only be cancelled by the Customer with the Company's prior written consent.

15. Consequences of termination

15.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and

Products supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Products 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.

15.2 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.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

16. Force majeure

16.1 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, lock-outs 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.

16.2 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.

16.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Products for more than 12 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.

17. General

17.1 Assignment and other dealings

- (a) 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.

- (b) 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.

17.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post (or airmail if the Customer's address is outside the United Kingdom) or other registered delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (i) sent by email to the other party's designated email address specified by that party in any written order documentation relating to the Contract.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post, airmail or other registered delivery service, at 9.00 am on the third Business Day after posting or at the time recorded by the delivery service; and
 - (iii) 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. In this clause 17.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (a) 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.

17.3 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 17.3 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.

17.4 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it

prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 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.

17.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of 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 misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

17.7 Third party rights.

- (a) Unless it expressly states otherwise, 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

17.8 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).

18. **Language.** These Conditions are drafted in the English language, and if translated into any other language, the English language version shall prevail. Any notice given under or in connection with the Contract shall be in the English language. All other documents provided under or in connection with the Contract shall be in the English language, or accompanied by a certified English translation. The English language version of the Contract and any notice or other document relating to the Contract shall prevail if there is a conflict except where the document is a constitutional, statutory or other official document.

19. Governing law and jurisdiction

19.1 Governing law. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Products shall not apply to the Contract. The International Chamber of Commerce's (ICC) Incoterms® Rules shall apply but where they conflict with the Contract, the Contract shall prevail.

19.2 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.

19.3 Service. Each party irrevocably consents to any process in any legal action or proceedings under clause 19.1 above being served on it in accordance with the provisions of the Contract relating to service of notices. Nothing contained in the Contract shall affect the right to serve process in any other manner permitted by law.

19.4 Proceedings in other jurisdictions. Nothing in this clause 19.19 shall limit the right of the Supplier to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the Supplier from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.