

Terms and Conditions for the supply of services by AVT Ltd

The customer's attention is particularly drawn to the provisions of *clause 11* (limitation of liability).

1. Interpretation

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

1.1 Definitions:

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 7.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.5.

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

Customer: the person, firm or Company who accepts an Order.

Customer Default: has the meaning set out in clause 4.1(l).

Delivery: the transfer of physical possession of the Equipment to the Customer and/or End User at the premises identified in the Order and/or Specification or as otherwise agreed in writing between the parties.

Delivery Date: the date of Delivery, either identified in the Order and/or Specification, as agreed in writing between the parties, or as otherwise may be necessary for the provision of the Services.

Dry Hire Arrangement: an Order for the provision or loan of equipment to the Customer and/or an End User without the provision of a Technician;

End User: means the person, firm or company for whose benefit the Supplier supplies the Services, Equipment and/or Materials specified in the Order (if different from the Customer);

Equipment: any equipment specified in the Order and/or reasonably incidental to the Order that the Supplier agrees to supply or otherwise loan to the Customer and/or the

End User in connection with the Supplier's performance of the Contract, together with all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it;

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.

Materials: all software, artwork, images, computer generated works or other works of any nature produced, created, commissioned or otherwise procured by the Supplier in connection with the Order.

Order: a quotation by one party to the other for the supply to the Customer and/or an End User of Materials, Services and/or Equipment.

Restricted Person: any person employed or engaged by the Supplier in connection with the delivery of the Services and who could materially damage the interests of the Supplier if they were involved in any capacity in the business of the Customer and/or the End User.

Services: the services to be supplied by the Supplier to the Customer and/or the End User as set out in an Order, including any Materials and Equipment stated in that Order.

Specification: the description or specification of the Services, as set out in the Order or referred to in the Order, or as otherwise agreed in writing between the parties after the date of the Order.

Supplier: AVT Limited incorporated and registered in England and Wales with company number 1196354 whose registered office is at AVT House, 7 Stone Street, Brighton BN1 2HB.

Supplier Materials: has the meaning set out in [clause 4.1\(h\)](#).

Technician: an employee, agent or sub-contractor of the Supplier or arranged by the Supplier to oversee the operation of the Equipment

Wet Hire Arrangement: an Order for the provision or loan of Equipment to the Customer and/or an End User with the provision of a Technician.

1.2 Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
 - (i) is a reference to it as it is in force as at the date of this Contract; and
 - (ii) shall include all subordinate legislation made as at the date of this Contract under that legislation or legislative provision.
- (b) 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.
- (c) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 The Order constitutes an offer by one party to the other to provide the Services to the Customer and/or the End user in accordance with these Conditions.
- 2.2 Where the Supplier compiles and sends an Order, the Order is only valid for a period of [20] Business Days from its date of issue unless withdrawn by the Supplier at an earlier date on reasonable notice to the Customer.
- 2.3 The Order shall only be deemed to be accepted when one party issues written acceptance of the Order to the other at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Supply of Services

- 3.1 The Supplier shall supply the Services in accordance with the Specification in all material respects.

- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification, but unless agreed otherwise, any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate prior to acceptance;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) procure that its employees, independent contractors and, where appropriate, any end user, shall co-operate with the Supplier in all matters;
 - (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Supplier;
 - (e) 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;
 - (f) prepare the Customer's premises for the supply of the Services;
 - (g) 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;
 - (h) keep 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;
 - (i) comply with any additional obligations as set out in the Specification;
 - (j) keep secure any passwords issued by the Supplier to the Customer;

- (k) procure that its employees, independent contractors and, where appropriate, any end user, shall keep secure any passwords issued by the Supplier to the Customer in connection with the Services;
- (l) use its best endeavours to ensure that all material, data, software or other information that the Customer, its employees, its independent contractors and, where applicable, any end users provide to the Supplier in connection with the Services are free of viruses, malware and similar;

5. Terms relating to Equipment

- 5.1 If the Services shall include the provision or supply of Equipment, the provisions of this clause shall apply.
- 5.2 If any Equipment identified in the Order and/or the Specification is not available or is defective, the Supplier shall be entitled to provide alternative equipment provided that it does not materially affect the nature or quality of the Services.
- 5.3 The Supplier shall use all reasonable endeavours to effect Delivery of the Equipment by the Delivery Date.
- 5.4 In Dry Hire Arrangements the Customer shall procure that a duly authorised representative of the Customer and/or End User shall be present at the Delivery. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Supplier, the representative shall sign a receipt confirming such acceptance.
- 5.5 In Wet Hire Arrangements, the Supplier shall install the Equipment. The Customer shall procure that a duly authorised representative of the Customer and/or End User shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Supplier, the representative shall sign a receipt confirming such acceptance.
- 5.6 The Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery (and any installation) to be carried out safely and expeditiously.

- 5.7 If the Customer or End User fails to accept delivery of the Equipment on the Delivery Date, then, except where such failure is caused by the Supplier's failure to comply with its obligations under this agreement the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date and remain in the possession of the Customer throughout the Order, but the Supplier shall store the Equipment until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.8 The Equipment shall at all times remain the property of the Supplier, and the Customer and End User shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).
- 5.9 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer at all times when the Equipment is in the possession, custody or control of the Customer and/or End User and until such time as the Equipment is redelivered to the Supplier or its nominated representatives.
- 5.10 Except where the Supplier gives written notice to the Customer to the contrary, the Customer shall (or shall procure that the End User shall) at its or their own expense, obtain and maintain the following insurances:
- (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
 - (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Lessee.
- 5.11 All insurance policies procured by the Customer and End User shall be endorsed to provide the Supplier with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on the Supplier's request name the Supplier on the policies as a loss payee in relation to

any claim relating to the Equipment. The Lessee shall be responsible for paying any deductibles due on any claims under such insurance policies.

- 5.12 If the Customer fails to effect or maintain any of the insurances required under this agreement, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 5.13 The Customer shall, on demand, provide to the Supplier copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to confirm the insurance arrangements.
- 5.14 In all cases the Customer shall (and shall procure that the End User shall):
- (a) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - (b) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Supplier in the Equipment;
 - (c) ensure that the Equipment is kept in a suitable environment;
 - (d) not move or attempt to move any part of the Equipment to any other location without the Supplier's prior written consent;
 - (e) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - (f) not use the Equipment for any unlawful purpose;
 - (g) ensure that at all times the Equipment remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
 - (h) deliver up the Equipment to the Supplier or its nominated representatives at the end of the Services (or on earlier termination of this agreement) at an

address specified by the Supplier, or, if necessary or agreed, allow the Supplier or its representatives access to any premises where the Equipment is located for the purpose of removing the Equipment;

- (i) make no alteration to the Equipment (including to the outer case, mechanisms, nameplates, signs, serial numbers or otherwise) and shall not remove, repair or replace (or seek to remove, repair or replace) any existing component or components from the Equipment.
- (j) not do or permit to be done anything which could invalidate insurances relating to the Equipment.

5.15 In Dry Hire Arrangements the Customer shall (and shall procure that the End User shall) additionally:

- (a) inspect or arrange an inspection of the Equipment prior to use by the Customer and/or the End User, and in the event of a defect in the Equipment, cease using the Equipment immediately (or procure that the End User shall cease using the Equipment immediately) and notify the Supplier immediately of the defect.
- (b) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- (c) take such steps (including compliance with all safety and usage instructions) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (d) ensure the Equipment remains in good and substantial repair in order to keep it in as good an operating condition as it was on Delivery (fair wear and tear only excepted);
- (e) keep the Supplier fully and immediately informed of all material matters relating to the Equipment including (without limitation) loss, accident or damage to the Equipment;
- (f) permit the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and shall grant reasonable access and facilities for such inspection;
- (g) maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;

- 5.16 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer, the End User or their officers, employees, agents and contractors, and the Customer shall indemnify the Supplier in full 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 reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of, or in connection with any failure by the Customer or the End User to comply with the terms of this agreement.

6. Customer Default

- 6.1 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 (including but not limited to withholding or delaying any Materials or Equipment) 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 4.1(l); 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.

7. Charges and payment

- 7.1 The Customer shall pay the Charges (including any expenses) in full as set out in the Order and in accordance with the timescales set out in the Order.
- 7.2 For the avoidance of doubt, any concessions, discounts or special rates that the Supplier shall offer from time to time shall only have effect:
- (a) If stated in the Order or otherwise confirmed in writing personally to the Customer after the Commencement Date; and

- (b) To the extent that the Supplier makes payment in full by the date specified in the Order. For the avoidance of doubt, and without prejudice to the Supplier's rights elsewhere in this agreement and generally, any failure to make payment by the date specified in the Order shall mean that the Supplier is liable to pay the full price without the benefit of any concessions, discounts or special rates otherwise agreed.

- 7.3 In the event that the Customer asks the Supplier to provide Services in excess of the Order or Specification in circumstances where no additional costs are expressly agreed between the parties (**Excess Services**):
 - (a) the Customer shall pay the following additional charges:
 - (i) the Supplier's daily fee rates from time to time for each day or part-day worked by individuals whom it engages on the Services. Daily fee rates are available from the Supplier on written request;
 - (ii) any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses;
 - (iii) the Supplier's standard equipment hire charges from time to time for each day or part-day for which Equipment is so supplied. Standard equipment hire charges are available from the Supplier on written request.
 - (b) The Supplier shall invoice such sums to the Customer on completion of the Excess Services or monthly in arrears at its election; and
 - (c) The Customer shall pay each such invoice within 30 days of the date of the invoice, in full, cleared funds.

- 7.4 Time for payment shall be of the essence of the Contract.

- 7.5 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**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 7.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies elsewhere in this agreement, the Customer shall pay interest on the overdue sum from the due date until payment

of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Intellectual property rights

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 8.2 The Supplier grants to the Customer and the End User, or shall procure the direct grant to the Customer and the End User of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Materials (excluding materials provided by the Customer) exclusively for the purpose of receiving and using the Services and the Materials in its or their business.
- 8.3 The Customer shall not (and shall procure that the End User does not) sub-license, assign or otherwise transfer the rights granted in clause 8.2.
- 8.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer and the End User.
- 8.5 The Customer shall procure the grant to the Supplier by the End User of a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the End User to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer and the End User.

9. Data protection

The parties shall comply with their data protection obligations.

10. Restrictive Covenants

10.1 In order to protect the legitimate business interests of the Supplier, the Customer covenants with the Supplier that it shall not (and shall procure that the End User shall not) except with the prior written consent of the Customer:

- (a) attempt to solicit or entice away; or
- (b) solicit or entice away,

from the employment or service of the Supplier the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at employees or contractors of the Supplier.

10.2 In order to protect the legitimate business interests of the Customer, the Customer covenants with the Supplier that it shall not (and shall procure that the End User shall not) except with the prior written consent of the Customer employ any Restricted Person.

10.3 The Supplier shall be bound by the covenants set out in clauses 10.1 and 10.2 during the term of the Services and for a period of 12 months after their termination or expiry.

11. **Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

11.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1,000,000 per claim. 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.

11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

11.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

11.4 Nothing in this clause 11 shall limit the Customer's payment obligations under the Contract.

11.5 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.6 Subject to clause 11.3 (No limitation in respect of deliberate default), and clause 11.5 (Liabilities which cannot legally be limited), the Supplier's total liability to the Customer and the End User for all loss or damage shall not exceed £1,000,000.
- 11.7 Subject clause 11.3 (No limitation in respect of deliberate default), clause 11.4 (No limitation of customer's payment obligations) and clause 11.5 (Liabilities which cannot legally be limited), this clause 11.7 sets out the types of loss that are wholly excluded:
 - (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information.
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 11.8 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.9 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.10 The Customer shall bring this clause 11 to the attention of the End User prior to the Commencement Date and it shall bind the End User as if the End User were a party to this agreement.
- 11.11 This clause 11 shall survive termination of the Contract.

12. Termination

- 12.1 Without affecting any other right or remedy available to it, either party may terminate an Order with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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.
- 12.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 12.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer becomes subject to any of the events listed in clause 12.1(c) or clause 12.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
 - (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 12.1(b).

13. Consequences of termination

- 13.1 On termination or expiry of the Services, the Customer shall return all of the Supplier Materials and Equipment. 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 the Contract.
- 13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14. General

- 14.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

14.2 Assignment and other dealings.

- (a) The Supplier may at any time assign, subcontract or delegate 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.

14.3 Confidentiality

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall

ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.3; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14.4 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 misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

14.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6 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.

14.7 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 this agreement. If any provision or part-provision of this Contract deleted under this clause 14.7 the parties shall negotiate in good faith to

agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address from which any Order is sent or received.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (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 14.8(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.
- (c) This clause 14.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

14.9 Third party rights. 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

14.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

14.11 **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.