

## **TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES**

### **1. INTERPRETATION**

The definitions and rules of interpretation in this condition apply in these conditions.

**Company:** Arrow Imaging Limited.

**Conditions:** these Terms and Conditions of Supply.

**Confidential Information:** Any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential, or the information could reasonably be supposed to be confidential.

**Contract:** any contract between the Company and the Customer for the Supply of any Goods and/or Services, incorporating these conditions.

**Customer:** the person, firm or company who purchases the Goods and/or Services from the Company.

**Customer Materials:** all original documents and other data in any format, that the Customer has requested be transferred to Storage Media.

**Destruction Confirmation:** written statement from the Company confirming that the Customer Materials have been destroyed.

**Goods:** any goods agreed in the Contract to be supplied by the Company to the Customer (including any part or parts of them), including, but not limited to, any goods agreed to be supplied with, or in relation to, any Services.

**Intellectual Property Rights:** any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered.

**Notice of Collection:** a note provided by the Company to the Customer upon collection of the Customer Materials.

**Notice of Receipt:** the note provided by the Company which is to accompany any Goods or Storage Media upon delivery, or any Customer Materials upon return, in either case, to the Customer.

**Permission to Destroy:** written instruction from the Customer enabling the Company to destroy the Customer Materials.

**Services:** any or all of the Company's electronic document management services, (including but not limited to microfilming, scanning, storage and retrieval services, imaging and document management applications), agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them) and any goods associated or used in connection therewith.

**Storage Media:** any media utilized by the Company in storing any information exclusively derived from the Customer Materials.

**Supply:** the sale of any Goods and/or the provision of any Services by the Company to the Customer. For the avoidance of doubt, any Goods so sold, and/or Services so provided, (or to be so sold or provided, as applicable), are **Supplied**.

- 1.1 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.2 Words in the singular include the plural and in the plural include the singular.
- 1.3 A reference to one gender includes a reference to the other gender.
- 1.4 Condition headings do not affect the interpretation of these Conditions.

## **2. APPLICATION OF TERMS**

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to the Supply of any and all Goods and Services by the Company and any variation to these Conditions and any representations about any Goods and/or Services shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

- 2.4 Each order or acceptance of a quotation for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these Conditions.
- 2.5 No order placed by the Customer shall be deemed to be accepted by the Company until:
- (a) a written acknowledgement of order is issued and executed by the Company; or
  - (b) (if earlier) the Company starts to Supply the Goods and/or Services.
- 2.6 Without prejudice to the provisions of Condition 2.5, if the Customer wishes to change any order, any such change is subject to acceptance by the Company and the Customer must pay any additional charges associated with fulfilling the changed order.
- 2.7 The Customer shall ensure that the terms of its order or any applicable specification are complete and accurate and are submitted to the Company within a sufficient time period such as will enable the Company to fulfil the Company's obligations under the Contract.
- 2.8 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches a written acknowledgment of order to the Customer. Any quotation is valid for a period of 30 days only from its date unless stated otherwise, provided that the Company has not previously withdrawn it.

### **3. DESCRIPTION**

- 3.1 The quantity and description of any Goods and/or Services shall be as set out in the Company's quotation / proposal or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's website, catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3 If any Goods are to be manufactured, designed, built or configured and/or any process is to be applied to any Goods by the Company and/or any Services are to be performed by the Company in accordance with any specification submitted by the Customer, the Customer shall hold the Company harmless and shall fully indemnify the Company against any and all loss, damage, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by, the Company, in settlement of any claim for infringement of any patent, copyright, design, trade mark or any other intellectual property right of any other person resulting from the Company's use of any specification so submitted.

3.4 Subject to the provisions of Condition 9.2 (b), the Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.

#### **4. DELIVERY, COLLECTION AND PERFORMANCE**

4.1 The Company only delivers Goods, Storage Media and/or returned Customer Materials (and collects Customer Materials) within the United Kingdom, unless otherwise agreed in writing by the Company.

4.2 Unless otherwise agreed in writing by the Company, and without prejudice to Condition 4.1, delivery of any Goods, Storage Media and/or returned Customer Materials shall take place at the Customer's place of business. All carriage charges in relation to the delivery of any Goods, Storage Media and/or returned Customer Materials, including, without limitation, all costs in relation to transport, insurance and unloading, shall be borne by the Customer.

4.3 Unless otherwise agreed in writing by the Company, and without prejudice to Condition 4.1, the collection of any Customer Materials shall take place at the Customer's place of business. Any provision of these Conditions which relates to delivery shall also relate to collection, mutatis mutandis.

4.4 Any dates specified by the Company for delivery of the Goods, Storage Media and/or returned Customer Materials and/or performance of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery and/or performance, as applicable, shall be within a reasonable time. Should expedited delivery of any Goods, Storage Media and/or returned Customer Materials be agreed, the Company reserves the right to levy an extra delivery charge.

4.5 The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's offer in accordance with condition 2.5, unless otherwise specified by the Company.

4.6 Subject to condition 14, and unless the Company specifies that the Services shall not be provided on a repetitive basis, the Services shall be provided for such fixed period as the Company shall determine in advance and shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other 3 months notice.

4.7 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, Storage Media and/or returned Customer Materials and/or performance of the Services (even if

caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

- 4.8 If for any reason the Customer fails to accept delivery of any of the Goods, Storage Media and/or returned Customer Materials, or the Company is unable to deliver the Goods, Storage Media and/or returned Customer Materials on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (a) the Goods, Storage Media and/or returned Customer Materials shall be deemed to have been delivered; and
  - (b) the Company may store the Goods, Storage Media and/or returned Customer Materials until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.9 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods, Storage Media and/or returned Customer Materials.
- 4.10 If delivery involves difficult access to or at the Delivery Point and/or the Delivery Point is located at an unreasonable distance from any feasible vehicular access point, the Company reserves the right to levy an extra delivery charge.
- 4.11 The Company shall use all reasonable endeavours in performing the Services and the Company undertakes and agrees:
- 4.11.1 upon reasonable notice from the Customer and at the Customer's cost, to collect the Customer Materials from the Customer's premises (collection of which is to be acknowledged by the Company's representative signing the Notice of Collection), and to deliver the Customer Materials to the Company's premises;
  - 4.11.2 within a reasonable period of time after signing the Notice of Collection, to make as accurate and complete a copy of the Customer Materials as is reasonably possible onto the Storage Media and to deliver the Storage Media to the Customer's premises, if so requested;
  - 4.11.3 to maintain records of all Customer Materials in its possession; and
  - 4.11.4 to return the Customer Materials to the Customer within a reasonable period of time after receiving written notice from the Customer requesting their return or, upon receipt of a Permission to Destroy, to destroy the Customer Materials and to issue a Destruction Confirmation.

- 4.12 All reasonable precautions will be taken by the Company in transferring the Customer Materials to the Storage Media and in preparing and maintaining the Storage Media, but the Company shall not be responsible for any loss or damage caused by any viruses or bugs contained in, or in any way affecting, the Storage Media.
- 4.13 Any information provided by the Company (whether directly to the Customer, or indirectly through the Company's website, brochures and marketing materials) regarding regulatory compliance is provided for information purposes only and shall not constitute legal advice. Without limitation, the Customer is advised to seek legal advice regarding the legal admissibility of any scanned Customer Materials.
- 4.14 If the Customer utilizes the Company's document hosting service, the Customer shall be solely responsible for maintaining the confidentiality of the Customer's account, user name and password and for restricting access thereto, and the Customer shall be solely responsible and exclusively liable for all activity occurring under the Customer's account, user name and password.
- 4.15 If the Company's performance of its obligations under the Contract is prevented, delayed or suspended for any reason or thing attributable to the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay, but the Customer shall be liable for any costs, charges or losses so sustained or incurred by the Company.
- 4.16 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf) , at any time from the date of the Contract to the expiry of 6 months after the last date of Supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 4.17 Any consent given by the Company in accordance with Condition 4.16 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.

**5. NON-DELIVERY**

- 5.1 Immediately upon delivery thereof to the Customer's premises, the Customer shall sign and date a Notice of Receipt acknowledging the receipt of any Goods, Storage Media and/or returned Customer Materials.
- 5.2 The Customer shall notify and furnish the Company with a written statement of claim of any discrepancy, loss or damage to any Goods, Storage Media and/or returned Customer Materials within three days of the date of the Notice of Receipt.
- 5.3 If the Customer shall fail to give notice as required in Condition 5.2 above then the Goods, Storage Media and/or returned Customer Materials shall be deemed in all respects to be have been delivered in accordance with the Contract and the Customer shall be deemed to have irrevocably and unconditionally accepted them.
- 5.4 Any liability of the Company for non-delivery of any Goods, Storage Media and/or returned Customer Materials shall be limited to replacing any such Goods, Storage Media and/or returned Customer Materials within a reasonable time or, if any such Goods, Storage Media and/or returned Customer Materials cannot be replaced by the Company, any liability of the Company for non-delivery thereof shall be limited to the pro-rated Contract price.

**6. RISK AND TITLE**

- 6.1 Title to the Customer Materials shall remain at all times with the Customer. The Company shall bear the risk of loss or damage to the Customer Materials and Storage Media whilst they are in its possession.
- 6.2 Title to any Goods or Storage Media supplied to the Customer by the Company shall remain vested in the Company until full payment therefore has been received by the Company.
- 6.3 Unless and until title in any Goods or Storage Media passes to the Customer, the Customer shall have no right to pledge or in any way charge as security any such Goods or Storage Media, as applicable. If the Customer shall be in breach of this provision, all monies owing to the Company shall immediately become due for payment.
- 6.4 In the event that the Customer shall not pay for any Goods or Storage Media on the due date or dates for payment, or if any of the events specified in Condition 14.1(d)-(j) shall occur, or if the Customer shall be in breach of the provisions of Condition 6.3, then in any such case the Customer shall permit the Company, or its duly authorised agents or representatives, at any time to enter the Customer's premises where the Goods or any part thereof are stored, or any Storage Media is held or used, in order to enable the Company to remove all or any of the Company's Goods or to erase the contents of all Storage Media stored by the Customer.

- 6.5 Notwithstanding that the title in all Goods and/or Storage Media to be delivered to the Customer by the Company shall remain vested in the Company until the Company has received payment in full therefore, the risk of damage to, or loss of, all or any such Goods and/or Storage Media shall pass to the Customer immediately upon delivery thereof to the Customer, and from the date of delivery or deemed delivery thereof, the Customer shall be liable to pay the Company the Contract price for all such Goods and/or Storage Media whether or not the same are damaged or lost prior to passage of title therein to the Customer.
- 6.6 If any Goods and/or Storage Media are destroyed by an insured risk prior to the Company receiving full payment for the same, the Customer shall receive and shall hold the proceeds of any such insurance solely for the Company's benefit, as the Company's trustee.

## **7. PRICE**

- 7.1 Unless otherwise agreed by the Company in writing, the price for any Goods and/or Services shall be the price set out in the Company's quotation / proposal published on the date of delivery or deemed delivery (or, if the Contract requires the Company to perform Services for the Customer, on the date of commencement of the performance of said Services).
- 7.2 The price for the Goods and/or Services shall be exclusive of any value added tax. The price of any Goods shall additionally be exclusive of all costs and charges in relation to packaging, loading, unloading, carriage and insurance.
- 7.3 The Customer must complete and sign a Service Level Agreement and the completed and signed Service Level Agreement must be attached to the Customer Materials or received by the Company prior to collection by the Company, in order to avoid the imposition of an additional charge by the Company for preparing the Service Level Agreement.
- 7.4 The Company will invoice the Customer for the number of documents recorded by the Company as having been transferred to Storage Media and the Company shall not, without limitation, be bound by any estimate regarding the number of documents that the Customer requires to be transferred to Storage Media.
- 7.5 The Customer shall pay to the Company any additional sums which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions or any other cause attributable to the Customer. The Company reserves the right to increase the price of any Goods or Services due to any change in delivery dates, quantities or specifications for the Goods or the Services requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

7.6 Without prejudice to Condition 7.4, the Company may review and increase the price of any Goods and/or Services, provided that the Company gives the Customer prior written notice of any such increase.

## **8. PAYMENT**

8.1 The price for any Goods and/or Services shall be paid by the Customer to the Company (or to such other party as may be notified to the Customer in writing), as follows:

8.1.1 If the Company has agreed monthly credit terms with the Customer, the Company's invoices must be paid within 14 days of the date of the invoice; or

8.1.2 If no credit terms have been agreed, then full payment must be made when the Customer's order is placed.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds. In the event that the Customer tenders payment by cheque and said cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.

8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

8.5 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

8.6 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4 % above the base lending rate from time to time of Barclays Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Customer shall reimburse the Company for any and all costs incurred by the Company in recovering payment pursuant to this Condition 8.

8.7 Without prejudice to Condition 8.6, any failure by the Customer to pay the Company any sum by the due date for payment and/or the occurrence of any one or more of the events set forth in Condition 6.5 shall entitle the Company, at any time and without notice to the Customer and

without limitation to any other remedy available to the Company under these Conditions, the Contract, or otherwise:

8.7.1 To suspend or cancel the further delivery of any Goods and/or the performance of any Services, including, without limitation, stopping the delivery of any Goods in transit;

8.7.2 To withdraw or reduce any agreed monthly credit limit; and

8.7.3 To treat the Contract as having been repudiated by the Customer.

8.8 The Customer may not cancel any order for Goods and/or Services for which a written acknowledgment of order has been issued by the Company pursuant to Condition 2.5 and if the Customer cancels, or purports to cancel any such order (or the Contract or any part thereof), then the Company may, by notice in writing to the Customer, elect to treat the Contract as repudiated.

8.9 For the avoidance of doubt, and notwithstanding the exercise of any remedy by the Company in accordance with Condition 8.7 or 8.8, or under any other of these Conditions, the Contract, or otherwise, the Customer shall remain liable to pay and shall pay the Company at the Contract rate, any and all payments subsisting at the relevant time.

## **9. WARRANTIES**

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to the other provisions of these Conditions):

- (a) on delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- (b) if the Customer has made it expressly known to the Company in the Customer's order that the Goods shall be suitable for a particular purpose and the Company has expressly stated in the acknowledgment of order that it will supply Goods suitable for that purpose, then the Goods shall, on delivery, be reasonably fit for the purpose so stated; and
- (c) any Services will be performed with reasonable skill and care.

9.3 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 unless:

- (a) the Customer gives written notice of the defect to the Company (and also to the carrier if the defect is a result of damage to any Goods in transit), within 3 days of the time when the Customer discovers or ought to have discovered the defect; and

- (b) the Company is given a reasonable opportunity after receiving the notice of examining any Goods which the Customer has alleged to be defective and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of any of the warranties in Condition 9.2 if:

- (a) the Customer makes any further use of any Goods which the Customer has alleged to be defective after giving notice of any such defect; or
- (b) the defect arises because the Customer failed to follow any oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the defect arises from any specification supplied by the Customer or from the breach of any of the Customer's obligations under Condition 4.15, or from fair wear and tear, wilful damage, negligence, abnormal working conditions or from any misuse of the Goods; or
- (d) the full price for the Goods and/or Services has not been paid by the time for payment stipulated in Condition 8.1; or
- (e) the defect is of a type specifically excluded by the Company by notice in writing.

9.5 Subject to Condition 9.3 and Condition 9.4, if any of the Goods and/or Services do not conform with any of the warranties in Condition 9.2:

- (a) the Company shall at its option repair or replace any such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company. The Company shall, if it opts to replace the defective Goods, then deliver replacement Goods to the Customer at the Delivery Point (at the Company's expense), and ownership of the defective Goods shall, if it has vested in the Customer, re-vest in the Company; and
- (b) the Company shall re-perform any Services which are proved to the reasonable satisfaction of the Company not to have been performed with reasonable skill and care, or at the Company's option, shall refund any monies already paid by the Customer for any such Services.

9.6 If the Company complies with Condition 9.5 it shall have no further liability for a breach of any of the warranties in Condition 9.2 in respect of such Goods.

## **10. LIMITATION OF LIABILITY**

- 10.1 Subject to Condition 4, Condition 5 and Condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these Conditions;
  - (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982 ) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
  - (b) under section 2(3), Consumer Protection Act 1987; or
  - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to Condition 10.2 and Condition 10.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
  - (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **11. INDEMNITY**

- 11.1 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or

consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

11.2 The Customer shall hold the Company harmless and keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by any third party to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

11.3 Without limiting any provision of this Condition 11, the Customer shall fully and promptly indemnify and hold the Company harmless in respect of any damage, loss, charges and costs incurred or likely to be incurred by the Company as a result of:

11.3.1 any actual or alleged Intellectual Property Rights infringement or any actual or alleged libel, in each case arising out of any documentation microfilmed and/or scanned for the Customer; and

11.3.2 any claim relating to the destruction of Customer Materials following the issuance of a Permission to Destroy; and

11.3.3 any actual or alleged breach of the Data Protection Act 1998 or analogous legislation.

## **12. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY RIGHTS**

The Customer and the Company agree that in the course of the Company providing Goods and/or Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.

### **13. DATA PROTECTION**

The Customer acknowledges and agrees that any personal data contained in any of the Customer Materials may be processed by and on behalf of the Company in connection with the Supply of any Goods and/or Services.

### **14. TERMINATION**

14.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) 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; or
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 14.1(d) to condition 14.1(j)condition 14.1(h) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

14.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return all of the Company's Equipment, Output Materials and Deliverables. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

14.3 On termination of the Contract (however arising), conditions 9-14 and 18 shall survive and continue in full force and effect.

**15. ASSIGNMENT/SUBCONTRACTING**

- 15.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 15.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 15.3 The Company, but not the Customer, shall be entitled to subcontract any or all of its obligations under all or any part of the Contract.

**16. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery and/or performance, or to cancel the Contract or reduce the volume of the Goods and/or Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

**17. GENERAL**

- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

- 17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## **18. COMMUNICATIONS**

- 18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent electronically via email.
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
  - (b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 18.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - (b) if delivered by hand, on the day of delivery; or
  - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
  - (d) if sent by email, within twenty four hours of sending.
- 18.3 Communications addressed to the Company shall be marked for the attention of Mr. Nick Hawkes.