

CONTRACT FOR SUPPLY OF GOODS & SERVICES

PLEASE READ CAREFULLY

This contract is a legal agreement between the Customer and Supplier for the supply of Goods (as defined below) and Services (as defined below) subject to the terms and conditions below.

IMPORTANT NOTICE TO CUSTOMERS:

The Customer's attention is particularly drawn to the provisions of clause 16 (Limitation of liability).

Subject to any variation under clause 21.8, these terms and conditions form part of the Contract 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).

You should print a copy of this Contract for future reference.

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.

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

"Change/s" If either party requests (i) a change to the scope, type or execution of the Services (including requiring any Design or any other services expressly stated in the Services Specification as not forming part of the Services, or any change to the manner or timing for delivery of the Services) or (ii) a change to the Services as a result of any change in any statutory requirement after the date of the Contract coming into force (in each case a "Change"), the Supplier may choose to either respond to such request or (acting reasonably) reject such request and the Supplier will notify the Customer of such decision within a reasonable time period of the request for a Change.

"Commencement Date" has the meaning given in clause 2.3.

"Conditions" these terms and conditions as amended from time to time in accordance with clause 21.8.

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

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

“Controller”, “processor”, “data subject”, “personal data”, “personal data breach”, “processing” and **“appropriate technical and organisational measures”** has the meaning as set out in the Data Protection Legislation.

“Customer”/“you” the person or firm who purchases the Goods and Services from the Supplier.

“Customer Default” has the meaning ascribed to it in clause 10.2.

“Customer’s Premises” means the premises as agreed at which the Goods will be stored, installed and/or used.

“Data Protection Legislation” means:

- i. To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- ii. To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the party is subject, which relates to the protection of personal data.

“Deliverables” the output(s) of the Services to be provided by the Supplier to the Customer as set out in the Quotation and any other reports, specifications and other materials produced or supplied by the Supplier for the Customer in the performance of the Services.

“Delivery” means the completion of delivery of Goods specified in a Quotation and in accordance with clause 4.3 .

“Delivery Date” the date for delivery of Goods specified in the Quotation in accordance with clause 4.5.

“Design/s” any designs, plans or drawings created by the Supplier in connection with this Contract including the designs, plans or drawings set out in the Quotation.

“Force Majeure Event” has the meaning given to it in clause 20.

“Goods” the goods (or any part of them) set out in the Quotation.

“Goods Specification” any specification for the Goods, set out in the Quotation.

“Group” in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

“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.

“Installation” means the installation of the Goods at the Customer’s Premises so that the Goods work materially in accordance with the Goods Specification and Services Specification and **“Installed”** shall be interpreted accordingly.

"Order" the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form (albeit on these Conditions to the exclusion of all other terms), or the Customer's acceptance of the Supplier's Quotation as the case may be.

"Quotation" means the Supplier's quotation as attached to these Conditions.

"Services" means the services more particularly described in the Supplier's Quotation comprising of one or both of (i) Installation of either (a) goods supplied by the Customer, or (b) Goods supplied by the Supplier and/or (ii) Design services, provided by the Supplier to the Customer, in each case of (i) and (ii) including the Deliverables.

"Services Specification" the description or specification for the Services set out in the Quotation.

"Supplier" PCB Technical Solutions Limited registered in England and Wales with company number 08820139 and registered head office at Unit 6 Barnes Wallis Court Wellington Road, Cressex Business Park, High Wycombe, Buckinghamshire, England, HP12 3PS. or any subsidiary thereof.

"Supplier Materials" has the meaning given in clause 10.1.9.

"Warranty Period" has the meaning given in clause 6.2.

1.2 In these Conditions:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to this Contract includes the Schedules.
- 1.2.3 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.4 This Contract shall be binding on, and enure to the benefit of, the parties to this Contract and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.2.5 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.2.6 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.2.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.8 A reference to **writing** or **written** excludes fax but not email.

2 Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with the Quotation and these Conditions (to the exclusion of all other terms, including any terms referred to in, contained in or referred to from, in each case the Customer's purchase order form).

- 2.2 Any Quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 (thirty) days' from the date of the Quotation unless otherwise stated.
- 2.3 The Order shall only be deemed to be accepted on the first to occur of (i) when the Supplier issues written acceptance or acknowledgement of the Order or (ii) the Supplier beginning to fulfil the relevant Order, at which point and on which date the Contract shall come into existence on these Conditions ("**Commencement Date**").
- 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 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3 Goods

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the 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 reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Any samples, drawings, descriptive matter, or advertising issued by the Supplier, and any descriptions or illustrations of Goods contained in the Supplier's catalogues, brochures, or website, are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of this Contract or have any contractual force. Goods may differ slightly from such samples, drawings, descriptive matter, or advertising.
- 3.4 The Supplier reserves the right to amend the Goods Specification if required by any applicable law or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4 Delivery of Goods

- 4.1 The Supplier may deliver Goods by instalments. Where Goods are to be delivered in instalments, they may be invoiced and paid for separately.
- 4.2 If the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note or Quotation. 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.
- 4.3 The Supplier shall deliver the Goods to the Customer's Premises or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Customer's Premises or such other location as the parties have agreed, or as deemed in clause 4.7.1.

- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions, failure to accept delivery, or failure of the Customer to provide any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 4.7.2 the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 Change control

- 5.1 Either party may submit a written request for Change to the other party in accordance with this clause 5 but no proposed Change will come into effect until a Change control note has been agreed in writing by the authorised representatives of both parties.
- 5.2 If the Supplier wishes to make a Change, it shall send a draft Change control note to the Customer.
- 5.3 If the Customer wishes to make a Change:
- 5.3.1 it shall submit a written request to the Supplier and provide as much detail as the Supplier reasonably requires, including the timing of the proposed Change, to draft a Change control note; and
- 5.3.2 the Supplier shall, as soon as reasonably practicable after receiving the information at clause 5.3.1, provide a draft Change control note to the Customer.
- 5.4 A Change control note shall contain:
- 5.4.1 a description of the Change;

- 5.4.2 details of the effect of the proposed Change on the Goods, and / or the Services, charges, timetable for the Services, and any other terms of this Contract.
- 5.5 If the parties:
 - 5.5.1 agree to the terms of a Change control note in writing, that Change control note will amend this Contract; or
 - 5.5.2 are unable to agree a Change control note, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure agreed by the parties.
- 5.6 The Customer shall not unreasonably withhold or delay its consent to any Change requested by the Supplier which implements a general change to the Supplier's operational processes or standard service offerings and does not have a material adverse impact on the Services or increase the Charges to a material extent.
- 5.7 If, in the Supplier's reasonable opinion, a Change is required to respond to an emergency, the Supplier shall use reasonable endeavours to obtain the Customer's prior written consent to that Change but may make a temporary Change as necessary to respond to the emergency. Following the implementation of the temporary Change, the Supplier shall notify the Customer of the nature of the temporary Change and the emergency, and the parties shall retroactively comply with the procedure in this clause 5.
- 5.8 If the Customer rejects a Change requested by the Supplier, it shall explain its reasons for doing so in reasonable detail.
- 5.9 The Supplier may charge for the time it spends on preparing and negotiating Change control notes where the Customer has requested the Change under clause 5.3. The Supplier shall charge for its time on a time and materials basis.

6 Quality of Goods

- 6.1 The Supplier shall extend to the Customer, the benefit of any guarantee or warranty which may have been given to the Supplier in respect of the Goods it supplies to the Customer.
- 6.2 The Supplier warrants that on delivery, and for a period of 12 months (or any other period agreed in writing between the Supplier and the Customer at the Supplier's sole discretion) from the date of delivery (**Warranty Period**), the Goods shall:
 - 6.2.1 materially conform with the Goods Specification; and
 - 6.2.2 be free from material defects in design, material and workmanship.
- 6.3 Subject to clause 6.5, if:
 - 6.3.1 the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.2;
 - 6.3.2 the Supplier is given a reasonable opportunity of examining such Goods; and
 - 6.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, in its sole and absolute discretion, repair or replace the defective Goods, or refund the price of the defective Goods less a reasonable amount to take into account use and enjoyment by the Customer.

- 6.4 If the Supplier, after exercising its rights under clause 6.3.2, determines in its sole discretion that there is no defect or fault, or the fault or defect is caused by or attributable to one or more of the circumstances set out in clauses 6.5.1 to 6.5.9 (both inclusive), then, if the Supplier attended at the Customer's Premises in respect of any notification given by the Customer in clause 6.3.1, the Supplier may invoice the Customer a fee in respect of such attendance.
- 6.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.2 if:
- 6.5.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.3;
 - 6.5.2 the defect arises because the Customer failed to strictly follow the Supplier's or manufacturer's oral or written instructions as to the storage, commissioning, installation, use, or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 6.5.3 the defect arises as a result of the Supplier following any drawing, design or Services Specification supplied by the Customer or an agent of the Customer;
 - 6.5.4 the Customer repairs, services or conducts maintenance on such Goods without the Supplier's prior written consent. Where the Supplier has given consent, the Customer has failed to strictly follow the Supplier's or manufacturer's oral or written instructions, or (if there are none) good trade practice regarding the same;
 - 6.5.5 the Customer alters or modifies such Goods without the written consent of the Supplier;
 - 6.5.6 the defect is due to accidental or unforeseen damage, (including lightning and electrical damage), or environmental conditions not recommended by the Supplier or manufacturer's oral or written instruction;
 - 6.5.7 the defect relates to or is in connection with any manufacturer or third-party software supplied with or in respect of any Goods supplied by the Supplier to the Customer;
 - 6.5.8 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 6.5.9 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.6 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.2.
- 6.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7 Product recall

- 7.1 If the Supplier is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) or considers that a product recall is desirable it shall immediately notify the Customer in writing enclosing (where applicable) a copy of the Recall Notice.
- 7.2 Unless required by law, the Supplier may undertake any recall or withdrawal without the written permission of the Customer and shall notify the Customer with instructions about the process of implementing the withdrawal and the Customer shall at no cost to the Supplier comply with such instructions.
- 7.3 If the Supplier receives any notice of recall from the manufacturer of the Goods, the Customer must (i) allow the Supplier full and uninterrupted access to immediately retrieve the Goods, and (ii) give such assistance as the Supplier reasonably requires to recall, and (iii) comply with the Supplier's instructions about the process of implementing that recall or withdrawal of Goods.
- 7.4 The Customer undertakes to maintain appropriate, up-to-date and accurate records to enable the immediate recall of any Goods. These records shall include records of the end-users of the Goods (including serial number(s) of the Goods, name, address, telephone number and email address of the end-user.

8 Title and risk

- 8.1 The risk in the Goods shall pass to the Customer on completion of delivery as set out in clause 4.4.
- 8.2 Title to the Goods shall not pass to the Customer until:
- 8.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 8.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.3.1 until the Goods have been Installed, store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 8.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 8.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 17.2.1 to clause 17.2.3; and
- 8.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
- (a) the Goods; and
- (b) the ongoing financial position of the Customer.

9 Supply of Services

- 9.1 The Supplier shall (unless agreed otherwise by the parties) supply the Services to the Customer in accordance with the Service Specification as set out in the Quotation or any agreed Service Specification.
- 9.2 The Supplier shall perform the Services with reasonable care and skill.
- 9.3 The Supplier shall endeavour to meet any performance dates for the Services specified in the Quotation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services and delivery of Goods.
- 9.4 Prior to the Supplier commencing the Services, the Customer shall provide the Supplier with all information required by the Supplier in respect of the Customer's Premises on which the Services are being provided. The Customer warrants to the Supplier that any such information provided will be accurate and not misleading.
- 9.5 Any failure by the Customer to provide the Supplier with any relevant information pursuant to clause 9.4 which results in the Supplier having to address unanticipated site conditions, the Supplier reserves the right in its sole discretion to amend the prices for the Services.
- 9.6 The Supplier shall not be liable for any delay in provision of the Services that is caused or contributed to by:
- 9.6.1 a Force Majeure Event;
 - 9.6.2 the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the provision of Services;
 - 9.6.3 any changes to the Service Specification and/ or Goods Specification;
 - 9.6.4 any failure or delay by the Customer to give any access required by the Supplier at the Customer's Premises for the purposes of providing the Services;
 - 9.6.5 any impediment, prevention or default whether by act or omission by the Customer or any person acting on behalf of the Customer; or
 - 9.6.6 any suspension by the Supplier of the provision of the Services pursuant to any right in these Conditions.
- 9.7 If the Services comprise Installation, then subject to the Customer complying with clause 10.1.6, the Supplier shall install the Goods at the Customer's Premises in accordance with the Service Specification.
- 9.8 The Supplier shall and shall procure that its personnel and/or sub-contractors comply with any of the Customer's health & safety rules/procedures, site regulations or policies which the Supplier has received prior written notification. In the event of any conflict between these Conditions and the Supplier's obligations in this clause, these Conditions shall prevail.
- 9.9 Unless otherwise expressly agreed in writing, the Supplier shall not be the Principal Designer or Principal Contractor under the Construction (Design and Management) Regulations 2015 or the duty holder Regime under the Building Safety Act 2022. The Customer shall make all appointments required by and comply with the Construction (Design and Management) Regulations 2015 and the duty holder regime.

9.10 The Supplier shall:

9.10.1 inspect and test any Installed Goods or Installed goods to ensure that it complies with the requirements of the Goods Specification and / or Services Specification (as applicable); and

9.10.2 if so requested by the Customer, give the Customer reasonable advance notice of such tests, which the Customer shall be entitled to attend.

9.11 If, as a result of any inspection or test under clause 9.10.1, it is found that (i) the Goods or any components comprised within it do not comply with the Goods Specification, and/or (ii) the Installation or Services do not comply with the Services Specification, then in each case of (i) and (ii) the Supplier shall take (at its sole discretion) such steps as are reasonably necessary to ensure compliance.

9.12 Installation shall be deemed complete on the earlier of:

9.12.1 the Customer signing the Supplier's report in respect of an Installation; and

9.12.2 the Customer commencing operational use of the Goods.

9.13 If training is included in the Service Specification, the Supplier shall supply provide training to the Customer's personnel in accordance with the Service Specification on the proper use of the Goods.

9.14 The Supplier reserves the right to amend the Services, or Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. The Supplier reserves the right to invoice the Customer for any additional costs it incurs as a result of having to change the Services, or Services Specification to be compliant with a change in law.

9.15 To the extent that the Services are to be provided in accordance with a Services Specification supplied by the 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 reasonable 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 Services Specification supplied by a Customer. This clause 9.15 shall survive termination of the Contract.

9.16 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

10 Customer's obligations

10.1 The Customer shall:

10.1.1 ensure that any information it provides in either or both the Services Specification and the Goods Specification are complete and accurate and are suitable for the Customer;

10.1.2 co-operate with the Supplier in all matters relating to the Services;

- 10.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's Premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 10.1.4 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;
 - 10.1.5 prepare the Customer's Premises for the supply of the Services;
 - 10.1.6 at its own costs and expense (i) ensure the Customer's Premises are safe, secure and suitable, and (ii) provide the Supplier with adequate and suitable access to electricity, water, internet, toilet facilities and any other services / facilities, and (iii) permit the Supplier at all times free and uninterrupted access to any premises at the Customer's Premises, in each case of (i), (ii) and (iii) as required by the Supplier, to enable the Supplier to provide the Services and/or Goods in terms of this Contract;
 - 10.1.7 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 including those which are needed to allow the Supplier to use and operate the Supplier Equipment in connection with the performance of the Services;
 - 10.1.8 comply with all applicable laws, including health and safety laws;
 - 10.1.9 keep all materials, equipment (including hardware, tools, systems cabling or devices) documents and other property used by the Supplier or its subcontractors (**Supplier Materials**) at the Customer's Premises in safe custody at its own risk, , and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - 10.1.10 comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.
- 10.2 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**):
- 10.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services 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;
 - 10.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10.2; and
 - 10.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

11 Insurance

- 11.1 From the Commencement Date until the later of either Installation or completion of Design services, the Customer shall maintain in force the appropriate insurance policies with reputable insurance companies, including:
 - 11.1.1 public liability insurance for not less than £5 million per claim; and
 - 11.1.2 comprehensive buildings insurance (including cover for loss of or damage to the Customer's Premises and all permanent fixtures and fittings against the usual risks including fire, storm, subsidence, vandalism, and accidental damage whether by the policyholder or others).
- 11.2 On the Supplier's written request, the Customer shall provide the Supplier with copies of the insurance policy certificates and details of the cover provided.
- 11.3 The Customer shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this Contract which they are contracted to fulfil.
- 11.4 The Customer shall:
 - 11.4.1 do nothing to invalidate any insurance policy; and
 - 11.4.2 notify the Supplier if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 11.5 The Customer's liabilities under this Contract shall not be deemed to be released or limited by the Customer taking out the insurance policies referred to in clause 11.1.
- 11.6 If the Customer fails or is unable to maintain insurance in accordance with clause 11.1, or fails to provide evidence that it has paid the current year's premiums in accordance with clause 11.2, the Supplier may, so far as it is able, purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all costs and expenses it incurs in doing so from the Customer on demand and as a debt.

12 Charges and payment

12.1 The price for Goods:

- 12.1.1 shall be the price set out in the Quotation or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order; and
- 12.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

12.2 The charges for Services shall be calculated on a time and materials basis:

- 12.2.1 the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in its current price list at the date of the Contract displayed in the Quotation;

- 12.2.2 the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- 12.2.3 the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 12.2.2; and
- 12.2.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, tolls, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

12.3 The Supplier reserves the right to:

- 12.3.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, changes in tariffs, increases in taxes, levies and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification, or the Service Specification;
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 12.3.2 charge a fee to the Customer if there is any delay or failure by the Customer to take delivery of the Goods, or if there is any delay in, failure of, or prevention of Installation by the Customer.

12.4 In respect of Goods, the Supplier shall invoice the Customer at its sole discretion either (i) on acceptance of the Order, or (ii) upon completion of delivery or (iii) as set out in a Quotation, or (iv) as otherwise agreed in writing between the parties.

12.5 In respect of Services, the Supplier shall at its sole discretion, invoice the Customer (i) on acceptance of the Order, or (ii) on completion of the Services or (iii) as set out in a Quotation, or (iv) as otherwise agreed in writing between the parties. In each case of (i) to (iv) if completion of the Services is longer or expected to be longer than one month from the Supplier's acceptance of the Order, then the Supplier shall at its sole discretion submit an interim invoice either monthly in arrears or submit an application for interim payment to the Customer, or as otherwise agreed between the parties.

12.6 The Customer shall pay each invoice submitted by the Supplier:

- 12.6.1 in accordance with the payment terms detailed in the relevant Quotation.
- 12.6.2 if no payment terms are detailed in the relevant Quotation, then within 30 days of either (i) the date of the invoice, or (ii) date of payment application (whichever

is the earlier) or (iii) in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

12.6.3 in each case of (i), (ii) and (iii) above 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.

- 12.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 12.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 17, 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 12.8 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 at or below 0%.
- 12.9 All amounts due from the Customer 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).

13 Intellectual property rights

- 13.1 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), including any Goods Specification or Services Specification of the Supplier shall be owned by the Supplier.
- 13.2 All Intellectual Property Rights in any materials provided by the Customer, including any Goods Specification or Services Specification of the Customer shall be owned by the Customer.
- 13.3 The Supplier grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, non-transferable, royalty-free, perpetual licence to use and copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 13.4 Supplier grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, non-transferable, royalty free, perpetual licence to use, and copy the Designs, Goods Specifications and Services Specifications of the Supplier for the purpose of receiving and using the Services and the Designs, Goods Specifications and Services Specifications of the Supplier in its business.
- 13.5 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clauses 13.3 and 13.4.
- 13.6 The Customer grants the Supplier a fully paid-up, non-exclusive, non-terminable perpetual, royalty-free, transferable, sublicensable, licence to use, copy and modify any materials provided by the Customer, (including any Good Specification or Services Specification of the Customer) to the Supplier for any purposes including commercial exploitation.

14 Software

- 14.1 All Intellectual Property Rights in or arising out of or in connection with any software supplied with or in respect of any Goods supplied by the Supplier shall be owned by the relevant third party owner of the software.
- 14.2 In respect of third party owned software:
 - 14.2.1 the Customer acknowledges and agrees that such software shall be subject to the relevant third party license terms; and
 - 14.2.2 the Customer warrants, represents and undertakes its use of such software shall be strictly in accordance with the terms of such third party software owner.

15 Data protection

- 15.1 Each party acknowledges that for the purposes of the Data Protection Legislation, each of them shall act as a data controller of any Personal Data provided to it by the other under or in connection with this Contract.
- 15.2 Each party shall comply with all obligations, responsibilities and duties imposed on it by the Data Protection Legislation in respect of any Personal Data which it passes to the other in connection with the terms of this Contract.
- 15.3 In respect of any Personal Data provided to a party by the other, the disclosing party:
 - 15.3.1 warrants, represents and undertakes that it is entitled to lawfully transfer the relevant Personal Data to the receiving party so that the receiving party may lawfully use and process the relevant Personal Data for the purpose of performing its obligations and enjoying its rights under this Contract;
 - 15.3.2 shall comply with all duties, obligations and restrictions imposed on it by the Data Protection Legislation in respect of the transfer of such Personal Data to the receiving party; and
 - 15.3.3 not by any act or omission in respect of such Personal Data cause the receiving party to be in breach of or not fully compliant with the Data Protection Legislation.

16 Limitation of liability

- 16.1 References to liability in this clause 16 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), under an indemnity, misrepresentation, breach of statutory duty, restitution or otherwise.
- 16.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 16.3 Nothing in the Contract limits any liability for:
 - 16.3.1 death or personal injury caused by negligence;
 - 16.3.2 fraud or fraudulent misrepresentation;

- 16.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 16.3.4 defective products under the Consumer Protection Act 1987; or
 - 16.3.5 any liability that legally cannot be limited.
- 16.4 Subject to clause 16.2 and clause 16.3, the Supplier's total liability to the Customer shall not exceed the greater of (i) £1000 (one thousand pounds) and (ii) the total sums paid by the Customer under this Contract in respect of Goods and Services actually supplied by the Supplier.
- 16.5 The cap on the Supplier's liability under clause 16.4 shall be reduced by amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 16.6 Subject to clause 16.2 and clause 16.3, the Supplier shall not under any circumstances whatever, be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
 - 16.6.1 loss of profits;
 - 16.6.2 loss of sales or business;
 - 16.6.3 loss of agreements or contracts;
 - 16.6.4 loss of anticipated savings;
 - 16.6.5 loss of use or corruption of software, data or information;
 - 16.6.6 loss of or damage to goodwill
 - 16.6.7 additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with this Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials; and
 - 16.6.8 indirect or consequential loss.
- 16.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 6 and clause 9. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 16.8 This clause 16 shall survive termination of the Contract.

17 Termination

- 17.1 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 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 17.2 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:

- 17.2.1 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 17.2.2 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 17.2.3 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
 - 17.2.4 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 17.2.5 there is a change of control of the Customer.
- 17.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 17.2.1 to clause 17.2.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

18 Consequences of termination

- 18.1 On termination of the Contract:
- 18.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied 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
 - 18.1.2 the Customer shall return all of the Designs and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 18.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and 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.
- 18.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

19 Confidentiality

- 19.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any

member of the group of companies to which the other party belongs, except as permitted by clause 19.2.

19.2 Each party may disclose the other party's confidential information:

19.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 19; and

19.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

19.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

20 Force majeure

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 90 days, the party not affected may terminate the Contract by giving not less than 90 days' written notice to the affected party. For the avoidance of doubt, the Customer's obligations to pay invoices by the due date will not be affected by any Force Majeure Event.

21 General

21.1 Assignment and other dealings

21.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

21.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

21.2 Notices.

21.2.1 Any notice 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);

21.2.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) 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;

21.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21.3 **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 21.3 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.

21.4 **Waiver.**

21.4.1 Except as set out in clause 2.6, 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.

21.4.2 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.

21.5 **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.

21.6 **Entire agreement.**

21.6.1 The Contract constitutes the entire agreement between the parties in relation to its subject matter.

21.6.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.7 **Third party rights.**

21.7.1 This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

21.8 **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).

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

21.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.