

*Pioneering innovation, creating a safer more inclusive world*

## 1 Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**):

**Associated Company** means any entity that directly or indirectly controls, is controlled by, or is under common control of the Supplier;

**Bespoke Product** shall have the meaning given to it at Condition 10;

**Bespoke Specification** shall have the meaning given to it at Condition 10;

**Business Days** means a day, other than a Saturday, Sunday or public holiday in England, when the banks in London are open for business;

**Customer** means the person(s), firm or company who purchases the Goods from the Supplier;

**Goods** the goods to be supplied to the Customer by the Supplier under these Conditions;

**Intellectual Property Rights** means patent, trade or service mark (whether or not registered), trade name, registered design, copyright, unregistered design right, or other intellectual property right;

**Order** means any order made by the Customer for the Goods from the Supplier;

**Sale** means the agreement between the Supplier and the Customer for the sale of Goods;

**Supplier** means EVAC + CHAIR International Limited registered in England and Wales with company number 03593826 or any other Associated Company who delivers the Goods or any part of the Goods pursuant to an Order; and

**Warranty Period** has the meaning given to it at Condition 5.1.

1.2 The following rules of interpretation shall apply to these Conditions:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.2 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;



1.2.3 references to Conditions are, unless otherwise provided, references to the clauses of these Conditions;  
and

1.2.4 a reference to **writing** shall include emails.

## 2 **Basis of Sale**

2.1 These Conditions apply to each Sale to the exclusion of any other terms and conditions which the Customer purports to apply under any purchase order or other document or which are implied by trade, custom, practice or course of dealing. No terms or conditions endorsed on, delivered with or contained in an Order, specification or other document shall apply to a Sale simply as a result of such document being referred to.

2.2 Each Order shall be deemed to be an offer by the Customer to purchase the Goods from the Supplier subject to these Conditions. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

2.3 No Order placed by the Customer shall be deemed to have been accepted by the Supplier until the Supplier confirms acceptance in writing or raises an invoice.

2.4 The Supplier may cancel an Order at any time if payment has not been received within the payment period stated in the Order, or credit period (if agreed) pursuant to Condition 3.2 below.

2.5 Except as otherwise provided in these Conditions, all other terms, conditions, warranties and representations (whether oral or in writing) are excluded from each Sale and these Conditions supersede any and all prior promises, representations, undertakings or implications.

2.6 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or on its website are produced for guidance purposes only and shall not form part of the Sale.

2.7 The Supplier reserves the right to substitute goods of equivalent function and quality without prior reference to the Customer and to amend the specification if required by any applicable statutory or regulatory requirements.

## 3 **Payment**

3.1 The price of the Goods shall be set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

3.2 The price (and any shipping cost) shall be due and payable by the Customer in cleared funds by the payment period stated in the Order or, if no credit terms are specified in the Order, within 30 days of receipt of the invoice.

3.3 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

3.3.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

3.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification; or



3.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

3.4 The price of the Goods excludes amounts in respect of value added tax (**VAT**) and transportation costs which will be payable by the Customer as set out in the invoice.

## 4 **Delivery**

4.1 Subject to the Customer having paid the Supplier's invoice in accordance with Condition 3, delivery of the Goods shall take place at the delivery location specified in the Order. Stated delivery times or dates are an estimate only and are not guaranteed. Time for delivery shall not be of the essence.

4.2 If for any reason the Customer fails to take delivery of any of the Goods on the date of delivery, or the Supplier's carrier is unable to deliver the Goods because the Customer has not provided appropriate instructions, documents, licences or authorisations:

4.2.1 risk in the Goods will pass to the Customer;

4.2.2 the Goods will be deemed to have been delivered;

4.2.3 the Supplier may store the Goods until delivery at the Customer's cost (including but not limited to storage and insurance costs); and

4.2.4 if the Customer fails to take delivery of the Goods within 5 days following the date of delivery, 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.

4.3 The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Conditions. Any delay by The Supplier to deliver or any claim by the Customer in respect of any one or more of the instalments in accordance with these Conditions shall not entitle the Customer to treat these Conditions as a whole as repudiated.

4.4 On delivery of the Goods the Customer should check the Goods against the delivery note. The Supplier accepts no liability for damage, destruction, breakages or shortage, unless notice is given by the Customer to the Supplier within 48 hours of delivery.

## 5 **Quality**

5.1 With respect to any third party products sold (but not manufactured) by the Supplier (**Third Party Products**), the Supplier shall use its reasonable endeavours to assign to the Customer the benefit of any third party manufacturer's warranties, guarantees or similar rights that may apply to the relevant Third Party Products (**Manufacturer's Guarantee**). The Manufacturer's Guarantee shall be the Customer's sole and exclusive remedy in respect of any defective Third Party Products and to the fullest extent permitted by law, Conditions 5.2 to 5.6 below shall not apply to any Third Party Products.

5.2 The Supplier warrants that on delivery, and for a period of 5 years from the date of delivery (**Warranty Period**), the Goods shall:

5.2.1 conform in all material respects with the specification (subject to normal variation of +/- 2mm) and be fit for the purposes detailed on the Supplier's website (as applicable); and



- 5.2.2 be free from material defects in design, material and workmanship;
- 5.2.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 5.2.4 be fit for any purpose held out by the Supplier.
- 5.3 Subject to Condition 5.4, if:
- 5.3.1 the Customer gives notice in writing to the Supplier within the Warranty Period that some or all of the Goods do not comply with the warranty set out in Condition 5.1;
- 5.3.2 the Customer provides the Supplier on request with photographic evidence of such Goods' non-compliance;
- 5.3.3 the Supplier is given a reasonable opportunity of examining such Goods;
- 5.3.4 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; and
- 5.3.5 the Supplier reserves the right to test and inspect any Goods and shall, upon being satisfied that there is a breach of Condition 5.2, and that any of the events at Condition 5.4 do not apply, replace or repair the defective Goods at the Supplier's sole discretion.
- 5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in Condition 5.2 in any of the following events:
- 5.4.1 the Customer fails to notify the Supplier of the defect within the Warranty Period;
- 5.4.2 the defect arises because the Customer failed to follow the Supplier's written instructions as to the storage or use of the Goods;
- 5.4.3 the Customer alters the Goods; or
- 5.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 5.5 The provisions of Condition 5.3 shall be the Customer's sole and exclusive remedy in respect of the Goods' failure to comply with the warranty set out in Condition 5.2.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6 Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer from the time of delivery in accordance with Condition 4.1.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received in full and in cleared funds all sums due to it in respect of the Goods and all sums otherwise due or becoming due to the Supplier from the Customer.
- 7 Termination**
- 7.1 Without limiting its other rights or remedies, the Supplier may terminate a Sale immediately on written notice if:



- 7.1.1 the Customer fails to observe or perform any of its obligations under these Conditions or any other contract between the parties; or
- 7.1.2 (being a company) a statutory demand is served on the Customer, a receiver is appointed or any insolvency procedure under the Insolvency Act 1986 is instituted or occurs or notice of intention to institute such a procedure is given in respect of the Customer, or the Customer is unable to pay its debts as they fall due (defined under section 123 of the Insolvency Act 1986), and in circumstances where the Customer is an individual the Customer suffers actions analogous to those specified in this Condition;
- 7.1.3 the Customer suffers actions analogous to those described in Condition 7.1.2 in any jurisdiction;
- 7.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 7.1.5 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under these Conditions has been placed in jeopardy; or
- 7.1.6 there is late or non-payment by the Customer of any monies due to the Supplier under these Conditions or any other contract between the parties.
- 7.2 On termination of a Sale for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 7.3 Termination of a Sale shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of these Conditions that existed at or before the date of termination.
- 7.4 Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 8 Limitation of liability**
- 8.1 Except where the Sale is an international supply contract pursuant to section 26 of the Unfair Contracts Act 1977, nothing in these Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by the Supplier's negligence, for fraud or fraudulent misrepresentation or any other liability that cannot be restricted by law.
- 8.2 Save as provided by Section 12 of the Sale of Goods Act 1979 and in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions.
- 8.3 Subject to Condition 8.1:
- 8.3.1 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with these Conditions shall be limited to the price payable for the Goods under these Conditions; and



8.3.2 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any claim, damage, loss or costs in respect of (whether direct or indirect):

- (a) loss of profit;
- (b) loss of use;
- (c) loss of anticipated contracts and/or savings;
- (d) loss of opportunity;
- (e) loss of business and/or business interruption; or
- (f) any indirect loss or consequential loss or special loss or damage;

and the parties intend that each type of loss under this Condition 8.3.2 shall be severable in accordance with Condition 12.2.

8.4 The Supplier shall not be liable for and the Customer shall indemnify, keep indemnified and hold the Supplier harmless against any and all actions, awards, proceedings or claims, complaints, costs, expenses (including legal expenses and disbursements), penalties, damage or loss arising by reason of the sale and/or use of the Goods after the Customer becomes aware of any defect or after circumstances have occurred which should reasonably have indicated to the Customer the existence of a defect.

## 9 Confidentiality

9.1 Each Order and the subject matter thereof shall be treated as confidential between the parties and shall not be disclosed or publicised to any third party for any reason without either party's prior written consent.

9.2 The Customer will not use the Supplier's name or other identity for advertising or publicity purposes without the prior written consent of the Supplier.

9.3 The Customer will not copy, publicise or make available to any third party any drawings, patterns, tooling of any kind, written instructions, specifications and other technical papers supplied by the Customer or produced by the Supplier at the Supplier's cost for the purposes of any Order and the same shall remain the Supplier's property, and must be returned to the Supplier on demand free of charge.

## 10 Intellectual Property

10.1 The Customer acknowledges that:

10.1.1 the Intellectual Property Rights are the Supplier's (or its licensor's) property; and

10.1.2 nothing in these Conditions shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights.

10.2 The Customer shall not repackage the Goods and/or remove any copyright notices, confidential or proprietary legends or identification from the Goods (save for any removal which is a necessary result of a manufacturing process of which the Customer has been previously notified in writing by the Supplier).



- 10.3 The Customer warrants and represents that, where it has provided any specification including plans, drawings or designs for the Goods (**Bespoke Specification**) and the Supplier has manufactured such Goods in accordance with the Bespoke Specification (**Bespoke Products**), the Customer is the legal owner, or permitted licensee, of all Intellectual Property Rights in such Bespoke Specification and the Customer shall indemnify, keep indemnified and hold harmless the Supplier in full and upon demand, from and against all liabilities, costs, expenses, damages and losses that may be incurred or suffered by the Supplier as a result of or in connection with the Bespoke Specification and/or Bespoke Products infringing the Intellectual Property Rights of any third party.
- 11 **Force majeure**
- 11.1 The Supplier reserves the right to defer the date of delivery or to cancel any Order (without liability to the Customer) and shall not be liable for any failure to meet its obligations under these Conditions if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, but not limited to, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to each party's workforce), failure of a utility service or transport network, or restraints or delays affecting carriers or the inability or delay in obtaining supplies or adequate or suitable materials, or other similar event.
- 12 **General**
- 12.1 The Customer expressly acknowledges that by placing an Order it agrees to these Conditions and it does not rely on any undertaking, promise, statement, representation, assurance or warranty (whether made innocently or negligently) of any person relating to the subject matter of an Order, other than as expressly set out in these Conditions.
- 12.2 If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable by any court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of these Conditions.
- 12.3 The Customer shall not assign, subcontract, or otherwise dispose of any of its rights in respect of a Sale without prior written consent of the Supplier.
- 12.4 These Conditions and the relevant Order constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.5 No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.6 Failure or delay by the Supplier in enforcing or partially enforcing any of its rights or remedies under these Conditions will not be construed as a waiver of any of its rights under these Conditions and shall not prevent the Supplier from later reasserting such rights or remedies.



- 12.7 Any notice to be made by either party to the other shall be sufficiently made if sent by prepaid first class post or facsimile or delivered by hand to the party to be served at the respective party's registered office address or such other address as may be notified in writing by one party to the other. Except in the case of delivery by hand, and save for evidence to the contrary, the notice shall be deemed to have been made on the day on which such communication ought to have been delivered in due course of postal or facsimile communication.
- 12.8 Except as otherwise provided in these Conditions, a person who is not a party to an Order shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions.
- 12.9 These Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection an Order or the subject matter or formation, shall be governed by and construed in accordance with English law. Each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with an Order, its subject matter, formation or these Conditions.



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## SECTION B - TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

### 1 Definitions and interpretations

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**):

**Associated Company** means any entity that directly or indirectly controls, is controlled by, or is under common control of the Supplier;

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

**Contract** means any contract between the Supplier and the Customer for the supply of Services, incorporating the Order and these Conditions;

**Customer** means any person or firm who purchases Services from the Supplier;

**Intellectual Property Rights** means patent, trade or service mark (whether or not registered), trade name, registered design, copyright, unregistered design right, or other intellectual property right;

**Order** means any order made by the Customer for Services from the Supplier;

**Services** means any services supplied by the Supplier to the Customer as set out in the Order; and

**Supplier** means EVAC + CHAIR International Limited registered in England and Wales with company number 03593826 or any other Associated Company which supplies the Services or any part of the Services pursuant to an Order.

1.2 The following rules of interpretation shall apply to these Conditions:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.2.3 references to Conditions are, unless otherwise provided, references to the clauses of these Conditions; and

1.2.4 A reference to **writing** or **written** shall include emails.

### 2 Basis of Contract



- 2.1 These Conditions apply to each Contract to the exclusion of any other terms and conditions which the Customer purports to apply under any purchase order or document or which are implied by trade, custom, practice or course of dealing. No terms or conditions endorsed on, delivered with or contained in an Order, specification or other document shall apply to a Contract simply as a result of such document being referred to.
- 2.2 Each Order shall be deemed to be an offer by the Customer to purchase Services from the Supplier subject to these Conditions. A quotation shall only be valid for a period of 30 Business Days from its date of issue.
- 2.3 No Order placed by the Supplier shall be deemed to have been accepted by the Supplier until the Supplier confirms in writing or raises an invoice.
- 2.4 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 The Supplier may cancel an Order at any time if payment has not been received within the payment period specified in the Order, or credit period (if agreed) pursuant to Condition 5.3 below
- 2.7 Except as otherwise provided in these Conditions, all other terms, conditions, warranties and representations (whether oral or in writing) are excluded from each Contract and these Conditions supersede any and all prior promises, representations, undertakings or implications.

### 3 Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with any specification or description set out in the Order.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend an Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill. If any goods are supplied to the Customer by the Supplier as part of the Services, the Supplier warrants that on delivery, and for a period of 6 months from the date of delivery (**Warranty Period**), the goods shall be:
- 3.4.1 free from material defects in design, material and workmanship; and
- 3.4.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).



3.5 If any goods do not conform with the Supplier's undertakings at Condition 3.4 above, provided that the Customer informs the Supplier within the Warranty Period, the Supplier shall replace or repair the defective goods (at the Supplier's sole discretion) subject to: (a) the Customer providing the Supplier on request with evidence of the good's non-compliance; (b) 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); and (c) the Supplier testing and inspecting any goods and being satisfied that there is a breach of Condition 3.4. The provisions of this Condition 3.5 shall:

3.5.1 be the Customer's sole and exclusive remedy in respect of the goods' failure to comply with the warranties set out in Conditions 3.4.1 and 3.4.2 and

3.5.2 apply to any repaired or replacement goods supplied by the Supplier.

## 4 Customer's obligations

4.1 The Customer shall:

4.1.1 ensure that the terms of the Order and any information it provides in the specification are complete and accurate;

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

4.1.3 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;

4.1.4 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;

4.1.5 prepare the Customer's premises for the supply of the Services;

4.1.6 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; and

4.1.7 comply with all applicable laws, including health and safety laws.

4.2 If the Supplier's performance of any of its obligations under these Conditions is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (the **Customer Default**):

4.2.1 the Supplier shall (without limiting or affecting any other right or remedy available to it) 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;

4.2.2 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 Condition 4.2; and

4.2.3 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.



## 5 **Payment**

- 5.1 The price for the Services shall be set out in the Order, or, if no price is quoted, the price set out the Supplier's published price list in force as at the date of delivery.
- 5.2 The Supplier may, by giving notice to the Customer, increase prices on an annual basis with effect from each anniversary of the Order date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Order date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.3 The Supplier shall invoice the Customer on completion of the Services. The Customer shall pay invoices within the payment period stated in the Order, or if credit terms are agreed (at the Supplier's sole discretion), within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 5.4 The price of the Services excludes amounts in respect of value added tax (**VAT**) which shall be payable by the Customer as set out in the invoice.
- 5.5 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 Condition 8, 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 Condition 5.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 6 **Intellectual Property Rights**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the deliverables set out in the Order (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the deliverables in its business.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in Condition 6.2 without the Supplier's prior written consent.
- 6.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 7 **Limitation of liability**

- 7.1 Nothing in these Conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence, for fraud or fraudulent misrepresentation or any other liability that cannot be restricted by law.



7.2 Save as provided by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) and in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.3 Subject to Condition 7.1:

7.3.1 the Supplier's total liability to the Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the Contract shall not exceed the price paid or payable by the Customer for the Services in relation to which the claim arose and the Customer shall have a duty to mitigate any loss and/or damage arising from such claim; and

7.3.2 the Supplier shall not be liable in contract, tort (including negligence), statutory duty or otherwise howsoever for any claim, damage, loss or costs in respect of (whether direct or indirect):

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill;
- (g) wasted expenditure;
- (h) additional costs of procuring and implementing replacements for, or alternatives to, goods or Services not provided in accordance with the Contract. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;
- (i) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer; or
- (j) any indirect loss or consequential loss or special loss or damage;

and the parties intend that each type of loss under this Condition 7.3.2 shall be severable in accordance with Condition 11.3.

7.4 This Condition 7 shall survive termination of the Contract.

## 8 Termination

8.1 Without affecting its other right or remedies, the Supplier may immediately terminate a Contract on written notice if the Customer:



- 8.1.1 commits a material breach of any term of these Conditions and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
- 8.1.2 takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 8.1.3 suffers actions analogous to those described in Condition 8.1.2 in any jurisdiction;
- 8.1.4 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- 8.1.5 financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under these Conditions has been placed in jeopardy; or
- 8.1.6 fails to pay any amount due under the Contract on the due date for payment or any other contract between the parties.
- 8.2 Without prejudice to Condition 8.1, the Supplier may by 7 days' written notice suspend, or terminate, the performance of all or part(s) of the Supplier's Services under a Contract for whatever reason. Where a Contract is terminated under this Condition 8.2, the Customer shall reimburse the Supplier for all reasonable, properly evidenced costs directly incurred by the Supplier as a result of terminating a Contract.
- 8.3 In the event that the Supplier exercises its rights of termination in accordance with Condition 8.1 and/or Condition 8.2 then the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of 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

## 9 Confidentiality

- 9.1 Each Order and the subject matter thereof shall be treated as confidential between the parties and shall not be disclosed or publicised to any third party for any reason without the either party's prior written consent.
- 9.2 The Customer will not use the Supplier's name or other identity for advertising or publicity purposes without the prior written consent of the Supplier.
- 9.3 The Customer will not copy, publicise or make available to any third party any drawings, patterns, tooling of any kind, written instructions, specifications, software and other technical papers supplied by the Customer or produced by the Supplier at the Supplier's cost for the purposes of any Order and the same shall remain the Supplier's property, and must be returned to the Supplier on demand free of charge.

## 10 Force majeure



- 10.1 The Supplier reserves the right to defer the date of delivery or to cancel any Order (without liability to the Customer) and shall not be liable for any failure to meet its obligations under these Conditions if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, but not limited to, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to each party's workforce), failure of a utility service or transport network, or restraints or delays affecting carriers or the inability or delay in obtaining supplies or adequate or suitable materials, or other similar event.
- 11 **General**
- 11.1 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.
- 11.2 The Customer expressly acknowledges that by placing an Order it agrees to these Conditions and it does not rely on any undertaking, promise, statement, representation, assurance or warranty (whether made innocently or negligently) of any person relating to the subject matter of an Order, other than as expressly set out in these Conditions.
- 11.3 If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable by any court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of these Conditions.
- 11.4 The Customer shall not assign, subcontract, or otherwise dispose of any of its rights in respect of a Contract without prior written consent of the Supplier.
- 11.5 These Conditions and the relevant Order constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.6 No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.7 Failure or delay by the Supplier in enforcing or partially enforcing any of its rights or remedies under these Conditions will not be construed as a waiver of any of its rights under these Conditions and shall not prevent the Supplier from later reasserting such rights or remedies.
- 11.8 Any notice to be made by either party to the other shall be sufficiently made if sent by prepaid first class post or facsimile or delivered by hand to the party to be served at the respective party's registered office address or such other address as may be notified in writing by one party to the other. Except in the case of delivery by hand, and save for evidence to the contrary, the notice shall be deemed to have been made on the day on which such communication ought to have been delivered in due course of postal or facsimile communication.
- 11.9 Except as otherwise provided in these Conditions, a person who is not a party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions.



11.10 These Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection an Order or the subject matter or formation, shall be governed by and construed in accordance with English law. Each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with an Order, its subject matter, formation or these Conditions.

