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The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability).

1. Interpretation

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

"Business Day"	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Commencement Date"	means has the meaning given in clause 3.
"Conditions"	means these terms and conditions as amended from time to time in accordance with clause 18.8.
"Contract"	means the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
"Control"	means has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
"Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures"	means as defined in the Data Protection Legislation.
"Customer"	means the person or firm who purchases the Goods and/or Services from the Supplier.
"Data Protection Legislation"	means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
"Deliverables"	means the deliverables set out in the Order produced by the Supplier for the Customer.
"Delivery Location"	means has the meaning given in clause 5.2.
"Force Majeure Event"	means has the meaning given to it in clause 17.
"Goods"	means the goods (or any part of them) set out in the Order.

"Goods Specification"	means any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
"Intellectual Property Rights"	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Order"	means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form and confirmed to the Customer by the Supplier in the Order Confirmation.
"Order Confirmation"	means the written acknowledgement provided by the Supplier to the Customer confirming the Order and any related particulars of the Order.
"Product Literature"	Means the illustrative, descriptive and specification literature relating to particular Goods.
"Services"	means the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.
"Service Specification"	means the description or specification for the Services provided in writing by the Supplier to the Customer.
"Supplier"	means ST3 Architectural Tiles Limited registered in England and Wales with company number (10048560).
"Supplier Materials"	means has the meaning given in clause 9.1.8.
"UK Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

(b) Interpretation:

(i) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(ii) A reference to a party includes its successors and permitted assigns.

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

(iv) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(v) A reference to **writing** or **written** includes fax and email.

2. Basis of Contract

2.1 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, brochures website or other such locations, are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force, nor shall they constitute a sale by sample. The Supplier cannot guarantee that the display on any electronic device will accurately reflect the colour, texture, shape or porosity of the Goods, which may vary from such illustrations.

2.2 Except for where otherwise agreed by the Supplier in writing, 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.

2.3 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 60 days from its date of issue.

2.4 All of these Conditions relate to the supply of both Goods and Services and shall apply to orders made by Customer for the purchase Goods or Services, or Goods and Services except where application to one or the other is specified.

2.5 Time shall not be of the essence for the contract, unless otherwise provided for in these Conditions or expressly agreed in writing by the Supplier.

3. Order

3.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

3.2 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 (**Commencement Date**) and no Order shall be deemed to be accepted by the Supplier until such acknowledgement has been given.

- 3.3 The Customer shall ensure that the terms specified in its Order, together with any Goods Specification or Service Specification are clear, complete and accurate and that any timescale the Customer requires in relation to the Order is clearly identified such as to give notice of the same to the Supplier.
- 3.4 The Customer shall ensure that it orders a sufficient quantity of the Goods to fulfil the purposes of the Order and the Customer shall make sufficient allowances for wastage, cuttings and breakages that may be incurred during the course of installation and fittings.
- 3.5 The Supplier shall not be responsible or liable to the Customer for the failure of the Customer to procure sufficient quantities of the Goods to fulfil the purpose of the Customer's order.

4. Goods

- 4.1 The Goods are described in the Supplier's Product Literature as modified by any applicable Goods Specification.
- 4.2 To the extent that the Goods are to be manufactured, adapted or procured 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 4.2 shall survive termination of the Contract.
- 4.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 4.4 The Customer acknowledges and accepts that where Goods comprise of random or repeating patterns, such Goods may require an additional minimum expense of tiling in order to display the correct pattern in the proper way. The Supplier shall not be liable to the Customer for the Customer's failure to order a sufficient amount of additional tiling for such Goods.
- 4.5 The Customer acknowledges and accepts that where Goods are manufactured, procured or adapted from natural materials, such Goods may contain natural variations in colour or shape; be made of naturally porous material; contain or be susceptible to irreparable staining or shading; and may differ in colour, texture, shape, porosity (the "**Natural Characteristics**"). The Supplier shall not be liable to the Customer in respect of such Goods in any way as a result of such Goods varying from any sample, display model or previous batch supplied to the Customer or Order of such Goods.
- 4.6 The Customer acknowledges and accepts that the Supplier may be required to supply the Goods in separate boxes of fixed quantities and in such circumstances the quantity of

Goods may need to be rounded up to the nearest box and the Customer shall assume the cost for any such additional boxes. The Customer shall not be entitled to reject the Goods on the basis that a higher quantity of the Goods has been supplied.

5. Delivery of Goods

5.1 The Supplier shall ensure that:

5.1.1 each delivery of the Goods is accompanied by a despatch note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

5.1.2 it states clearly on the despatch note any requirement for the Customer to return any packaging material to the Supplier. 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.

5.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.

5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.4 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.

5.5 If the Supplier fails to deliver the Goods, the Supplier's 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.

5.6 The Supplier shall not be liable of failure to delivery of the Goods (including but not limited to circumstances where the non-delivery has been caused by negligence of the Supplier) unless the Customer gives notice to the Supplier within 3 Business Days of the proposed or estimated date of Delivery, notwithstanding the limitations contained in clause 5.4.

5.7 The Customer shall provide suitable access for the delivery vehicle delivering the Goods at the Delivery Location and shall inform the Supplier on placement of the Order, or in any event, within 5 Business Days of the proposed date of Delivery, of any special requirement the Customer has or any access issues at the Delivery Location, which the Supplier should reasonably require in order to fulfil Delivery.

5.8 The Customer shall supply at its own expense at the Delivery Location adequate and appropriate manual labour and equipment so that the Customer is able to take Delivery.

- 5.9 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 for the Goods or any relevant instruction related to the supply of the Goods.
- 5.10 If the Customer fails to take or accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 5.10.1 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
- 5.10.2 the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.11 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 or accepted 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, or charge the Customer for any shortfall below the price of the Goods.
- 5.12 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a Delivery to the Customer of the shortfall number, or make a pro rata adjustment to the invoice for the Goods.
- 5.13 The Supplier may deliver the Goods by batches or 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. The Customer shall not be entitled to reject the Goods actually delivered on the basis that further instalments or batches are not delivered, which are to follow in order to fulfil the total quantity specified in the Order.

6. Quality of Goods

- 6.1 The Supplier warrants that on Delivery, the Goods shall:
- 6.1.1 conform in all material respects with their description and the Goods Specification;
- 6.1.2 be free from material defects in design, material and workmanship; and
- 6.2 For the purposes of this clause 6.1.2, a "material defect" shall be a defect in the Goods which has a significant detrimental implications on the appearance, finish or functioning of the Goods, to the extent that the Goods are unsafe, or the Goods are unusable for their primary purpose or at all. Nothing in clause 6.1 shall effect the Customer's ability to rely on the manufacturer's warranty which may be supplied with the Goods, but notwithstanding, the

Customer shall be bound by the provisions of this clause 5 in relation to any claim made under a the manufacturer's warranty.

6.3 Subject to clause 6.4, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, provided that:

6.3.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;

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.

6.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:

6.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;

6.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

6.4.3 the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

6.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;

6.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

6.4.6 the Goods differ from their description or the Good Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.4.7 the Goods differ from their description or the Good Specification as a result of any Natural Characteristic (as defined in clause 4.5).

6.5 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 6.1.

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

6.7 The Customers attention is drawn again specifically to those matters contained at clause 13 of these Conditions.

7. Title and Risk

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the earlier of:

7.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time

- of payment of all such sums has been received by the Supplier (in cash or cleared funds); and
- 7.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3 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 deliver and produce a copy of such insurance policy on request;
- 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.4; and
- 7.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1 it does so as principal and not as the Supplier's agent; and
- 7.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.4, then, without limiting any other right or remedy the Supplier may have:
- 7.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 7.5.2 the Supplier may at any time:
- 7.5.2.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- 7.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them. To this end the Customer grants the Supplier an irrevocable licence to enter its premises and agrees to indemnify the Supplier against any liability arising from entering the premises of a third party, in relation to the Supplier exercising it's under this clause 7.5.2.2.

8. Supply of Services

- 8.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

- 8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order ("**Requested Dates**"). Any Requested Dates specified by the Customer shall be deemed to be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Supplier may give notice to the Customer on receipt of the Order, that the Requested Dates are not achievable and may supply the Customer with revised dates for performance of the Services ("**Proposed Dates**"). Any Proposed Dates specified or otherwise mentioned by the Supplier shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.4 The Supplier reserves the right to amend the 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.
- 8.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

9. Customer's Obligations

- 9.1 The Customer shall:
- 9.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
 - 9.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 9.1.3 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;
 - 9.1.4 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;
 - 9.1.5 prepare the Customer's premises for the supply of the Services (if reasonably required for the supply of the Services, or where requested by the Supplier);
 - 9.1.6 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;
 - 9.1.7 comply with all applicable laws, including health and safety laws;
 - 9.1.8 keep all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
 - 9.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification, or where additional obligations are reasonably requested by the Supplier to facilitate the supply of the Services; and

- 9.2 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**"):
- 9.2.1 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;
 - 9.2.2 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 9.2; and
 - 9.2.3 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.

10. Charges and Payment

- 10.1 The price for Goods:
- 10.1.1 shall be the price set out in the Order and shall be confirmed to the Customer in the Order Confirmation 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
 - 10.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
 - 10.1.3 shall be exclusive of any VAT in accordance with clause 9.6.
- 10.2 The charges for Services shall be calculated on a time and materials basis:
- 10.2.1 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 and/or on the the Order;
 - 10.2.2 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;
- 10.3 The Supplier reserves the right to:
- 10.3.1 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:
 - 10.3.1.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 10.3.1.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

- 10.3.1.3 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.
- 10.4 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services.
- 10.5 The Customer shall pay each invoice submitted by the Supplier:
 - 10.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - 10.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, andtime for payment shall be of the essence of the Contract.
- 10.6 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 at the same time as payment is due for the supply of the Services or Goods.
- 10.7 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 15 (Termination), 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 10.7 will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.
- 10.8 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).

11. Intellectual Property Rights

- 11.1 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.
- 11.2 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 and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 11.4 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.

12. Data Protection

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 12, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 12.3 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 12.4 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 12.4.1 process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - 12.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 12.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

- 12.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 12.4.4.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 12.4.4.2 the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
 - 12.4.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 12.4.4.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
 - 12.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 12.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
 - 12.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
 - 12.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 12.5 The Customer consents to the Supplier appointing a third-party processor of personal data under the Contract. Such third-party processor shall be any party which the Supplier deems to be a necessary recipient of personal data under the Contract and may be appointed by the Supplier at any time. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 12.

13. Confidentiality

- 13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
 - 13.2.1 to its employees, officers, representatives 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 this agreement. 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 13; and
- 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 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 this agreement.
- 14. Limitation of Liability: The Customer's Attention Is Particularly Drawn to this Clause.**
- 14.1 The restrictions on liability in this clause 14 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 14.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 14.3.1 death or personal injury caused by negligence;
- 14.3.2 fraud or fraudulent misrepresentation;
- 14.3.3 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); and
- 14.3.4 defective products under the Consumer Protection Act 1987.
- 14.4 Subject to clause ~~14.3~~~~14.4~~, the Supplier's total liability to the Customer shall not exceed the total charges due to the Supplier.
- 14.5 In clause 14.5 "*total charges*". The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of Goods and Services actually supplied by the Supplier, whether or not invoiced to the Customer.
- 14.6 This clause ~~14.6~~~~14.7~~ sets out specific heads of excluded loss and exceptions from them:
- 14.6.1 Subject to clause ~~14.3~~~~14.4~~, the types of loss listed in clause ~~14.6.2~~~~14.7.2~~ are wholly excluded by the parties,.
- 14.6.2 The following types of loss are wholly excluded:
- 14.6.2.1 loss of profits;
- 14.6.2.2 loss of sales or business;
- 14.6.2.3 loss of agreements or contracts;
- 14.6.2.4 loss of anticipated savings;
- 14.6.2.5 loss of use or corruption of software, data or information;
- 14.6.2.6 loss of or damage to goodwill; and
- 14.6.2.7 indirect or consequential loss.
- 14.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 6 and clause 8. 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.

14.8 This clause 14 shall survive termination of the Contract.

15. Termination

15.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

15.1.1 the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

15.1.2 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), 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;

15.1.3 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

15.1.4 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the other Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

15.3 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 15.1.2 to clause 15.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16. Consequences of Termination

16.1 On termination of the Contract:

16.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods 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;

16.1.2 the Customer shall return all of the Supplier Materials 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.

- 16.2 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.
- 16.3 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.

17. Force Majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

18. General

18.1 Assignment and other dealings

- 18.1.1 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.
- 18.1.2 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.

18.2 Notices

- 18.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 18.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 18.2.1.2 sent by fax to its main fax number or sent by email to the address specified in in the Order form.
- 18.2.2 Any notice shall be deemed to have been received:
- 18.2.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - 18.2.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

- 18.2.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.2.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 18.2.3 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.
- 18.2.4 A notice given under the Contract is not valid if sent by email.
- 18.3 **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 18.3the 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.
- 18.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.5 **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.
- 18.6 **Entire agreement.**
- 18.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 18.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 18.7 **Third party rights.**

- 18.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 18.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 18.9 **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.
- 18.10 **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.