

## Applicable to all agreements to supply

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

### 1. Interpretation

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

#### 1.1 Definitions

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

**Calibration Services:** the process of determining, checking, or rectifying the graduation of (any instrument giving quantitative measurements) to meet the frequency requirements of the manufacturer or other relevant standards as set out in the Proposal.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.8.

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

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK 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).

**Deliverables:** the deliverables set out in the Proposal produced by the Supplier for the Customer.

**Delivery Location:** has the meaning given in clause 4.1

**Equipment:** any systems and/ or equipment (which may or may not include the Goods) to be calibrated by the Supplier as part of any agreed Calibration Services.

**Force Majeure Event:** has the meaning given to it in clause 16.

**Goods:** the goods (or any part of them) set out in the Proposal.

**Goods Specification:** 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:** 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.

**Programs:** software programs designed by and written by the Supplier whether as part of the Deliverables or otherwise.

**Proposal:** the Supplier's written proposal for the supply of Goods and/or Services to the Customer.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Supplier:** Wavelength Electronics Limited a company registered in the UK whose registered office is 6 Stirling Park, Laker Road, Rochester, Kent, ME1 3QR, (registered number 02755004).

## 1.2 Interpretation

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) 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.
- (d) 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.
- (e) A reference to writing or written includes email but not fax.

## 2. Basis of contract

- 2.1 The Proposal constitutes an offer by the Supplier to supply Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Proposal shall only be deemed to be accepted when the Customer issues written acceptance of the Proposal at which point and on which date the Contract shall come into existence (Commencement Date). If such written acceptance is not issued, but the Supplier and the Customer act in accordance with the terms of the Proposal, the Customer will be deemed to have accepted that the Proposal, including these Conditions, represent the Contract to the exclusion of any other terms.
- 2.3 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 or brochures 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.
- 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 Only the Proposal given by the Supplier shall constitute an offer to the Customer, and shall be valid until the sooner of the expiry of 30 days from its date of issue or until the Supplier notifies the Customer that the Proposal is withdrawn.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 If there is an inconsistency between any of the provisions of these Conditions and the provisions of a Proposal the provisions of the Proposal shall prevail.

## 3. Goods

- 3.1 The Goods are described in the Proposal.
- 3.2 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. Delivery of Goods

- 4.1 The Supplier shall deliver the Goods to the location set out in the Proposal 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.
- 4.2 Delivery of the Goods shall be ex-works (as defined in INCOTERMS). Carriage will be arranged on the request and at the expense of the Customer. In the absence of specific agreement with the Customer regarding the method of delivery, the Supplier may in its sole discretion select the method of delivery of the Goods.
- 4.3 If any licence or consent of any government or authority is required for the export or importation of the Goods or the use or sale of the Goods by the Customer, the Customer shall obtain the same at its own expense and if requested provide evidence of such licence or consent to the Supplier.
- 4.4 In the case of scheduled orders, the Supplier reserves the right to deliver to the Customer up to ten per cent more or less than the quantity scheduled for that particular delivery, such variation to be taken into account in future scheduled deliveries under that order. In the case of one-off orders for customised Goods, the Supplier reserves the right to deliver up to five per cent more or less than the quantity ordered. In both cases, the Customer will be liable to pay for the quantity actually delivered at the agreed unit price.

- 4.5 The Supplier shall not be liable for any shortage or defect in Goods delivered unless notice thereof shall have been given to the Supplier in writing within 30 days of the date of delivery. If the Customer fails to notify the Supplier within the said period, the Customer will be deemed to have accepted the shipment in question.
- 4.6 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.
- 4.7 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 for the Goods or any relevant instruction related to the supply of the Goods.
- 4.8 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, 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:
- (a) 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
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.9 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 delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods charge the Customer for any shortfall below the price of the Goods0.
- 4.10 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. Quality of Goods

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:
- (a) conform in all material respects with any applicable Goods Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
- (a) the Customer gives notice in writing 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 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) 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.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - (b) 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;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of 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 on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods in which case title to the Goods shall pass at the time of payment.

6.3 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and 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.

6.4 Where carriage has been arranged or where delivery is other than ex-works the Customer shall immediately notify the Supplier and the carrier of any loss or damage in transit.

## 7. Supply of Services

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

7.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 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.

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

7.5 The Supplier does not warrant that the operation of any Goods or Programs will be uninterrupted or error free. The Supplier shall not be liable to the Customer for any losses of income or profits arising due to the failure to operate of any Goods or Programs provided by the Supplier.

7.6 Where the Services include Calibration Services, the Customer is responsible for arranging for delivery of the Equipment to such location as the Supplier specifies and shall bear all costs of transport. If the parties agree that the Supplier shall arrange delivery of the Equipment to the Customer, this shall be at the Customer's cost. Upon return of the Equipment to the Customer, the Customer shall inspect the Equipment as soon as reasonably possible and shall, in any event, notify the Supplier within 5 Business Days of receipt of the Equipment of any damage to or problems with the Equipment which it considers has arisen during the Supplier's care of the Equipment.

7.7 Where the Services include installation and/ or project works, the following items are not included within such installation and/ or project works unless expressly stated in the Proposal:

- (a) Digging, backfilling or tiling of trenches or any other builders' work;
- (b) Provision and/ or erection of scaffolding, platforms or any other special access plant;
- (c) Provisions of 240v AC mains supply as required to panel positions;
- (d) Aborted or repeat visits arising from access limitations or other cause;
- (e) Heat work or welding; or
- (f) Electrical works.

## 8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Proposal and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services and comply with all recommendations and instructions which the Supplier may make from time to time regarding the Services and/ or Goods;
- (c) 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;

- (d) provide the Supplier free of charge 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;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) 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;
- (g) ensure that suitable backups are made of all data that is stored using any Program or Goods provided by the Supplier. The Supplier shall not be responsible for any costs incurred by the Customer in replacing data due to a failure to operate of any Program or Goods provided by the Supplier
- (h) comply with all applicable laws, including health and safety laws;
- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification; and
- (j) to the maximum extent permissible in law, as between the Supplier and the Customer, take full responsibility and fulfil all obligations for taking back and/ or recycling electrical and electronic equipment according to the European Directive on Waste Electrical and Electronic Equipment (WEEE 2002/96/EC) (as amended) and /or according to all implementing legislation of such Directive and all other applicable local laws.

8.2 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):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations (including any failure or delay in implementing any recommendation of the Supplier) as set out in this clause 8; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Proposal 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
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be as set out in the Proposal (whether or not these have been calculated on a time and materials basis).

9.3 Unless otherwise set out in the Proposal, in respect of Goods, the Supplier shall invoice the Customer on or at any time after dispatch of the Goods and in respect of Services, the Supplier shall invoice the Customer in at any time after the Services have been provided.

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

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- (c) time for payment shall be of the essence of the Contract.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable (or other analogous taxes) 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.

- 9.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (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 9.6 will accrue each day at 1% per month and any discounts or margins extended to the Customer by the Supplier may be withdrawn with immediate and retrospective effect. The Supplier may also suspend provision of any Services until all overdue invoices have been paid in full.
- 9.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. Intellectual property rights**

- 10.1 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.
- 10.2 Subject to clause 10.3, the Supplier grants to the Customer an irrevocable, royalty-free, non-exclusive license in respect of the Intellectual Property Rights in any records and materials supplied to the Customer as part of any Deliverables to use the same for the purposes of obtaining the full benefit of the Deliverables in its business.
- 10.3 The Customer may not modify, adapt or otherwise translate any Programs provided to it by the Supplier as part of any Deliverables. The Customer may not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of any Programs provided to it except to the extent that the Customer may be expressly permitted to decompile under applicable law and it is essential to do so in order to achieve operability of the Programs with another software program, and the Customer has first requested that the Supplier provide the information necessary to achieve such operability and the Supplier has not made such information available. The Supplier has the right to impose reasonable conditions and to request a reasonable fee before providing such information. Any information provided by the Supplier or obtained by the Customer, as permitted herein, may only be used by the Customer for the purpose described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the expression of the Programs as provided as part of the Deliverables.
- 10.4 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.5 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.
- 10.6 The Supplier gives no warranty that the use of the Goods by the Customer or any third party will not constitute an infringement of third-party Intellectual Property Rights.
- 10.7 Save as expressly set out in this Clause 10, nothing in these Conditions shall be construed as transferring or permitting the transfer of any Intellectual Property Rights in the Goods to the Customer.
- 10.8 The Customer shall indemnify the Supplier and its suppliers against all losses, damages, costs and expenses arising from any claim that any Goods made according to designs or specifications provided by the Customer, or any goods produced or distributed by the Customer containing or incorporating the Goods, infringe the Intellectual Property Rights of a third party.

## **11. Data protection**

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.2 Without prejudice to the generality of clause 11.1, 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.
- 11.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a data protection supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under clause 11 and under any data protection agreement referred to in clause 11.

## 12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time during the Contract disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) 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 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 12; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 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.

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

- 13.1 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) 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
  - (d) defective products under the Consumer Protection Act 1987.
- 13.3 Subject to clause 13.2, the Supplier's total aggregate liability to the Customer shall not exceed the price paid for the Goods/ Services under the relevant Contract only.
- 13.4 Subject to clause 13.2, the Supplier shall not be liable to the Customer for any of the following types of loss:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 13.5 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. 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.
- 13.6 Subject to clause 13.2, in the case of Goods not manufactured by the Supplier, the Supplier's liability shall in no circumstances extend beyond the liability to the Seller of the manufacturer of such Goods.
- 13.7 This clause 13 shall survive termination of the Contract.

## 14. Termination

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect at any time by giving written notice to the other party if:
- (a) the other party 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;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), 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;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

14.2 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.

14.3 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 14.1(b) to clause 14.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 15. Consequences of termination

- 15.1 On termination of the Contract 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.
- 15.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 16. Force majeure

16.1 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 time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, save that no Force Majeure Event shall relieve the Customer from or entitle the Customer to any delay in fulfilling its payment obligations under the Contract.

## 17. General

### 17.1 Assignment and other dealings

- (a) 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.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

### 17.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) 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
  - (ii) sent by email to the most recent email address notified by the other party.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the fifth Business Day after posting or at the time recorded by the delivery service; and
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(c) This clause 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.

17.3 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 17.3 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.

17.4 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.

17.5 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.

17.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

17.7 Third party rights.

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

17.8 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).

17.9 Electronic signature. Each party agrees that the Proposal may be signed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of that party's intention to be bound by the Contract as if signed by each party's manuscript signature.

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

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