

Newfield Fabrications Ltd
Terms and Conditions of Sale

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.

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

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 18.8.

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

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

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

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 17.

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

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.

Materials: any stock, finished goods, bought-in parts or components comprising or intended by the Supplier to comprise part or all of the Goods or otherwise intended by the Supplier to be supplied to the Customer.

Order: the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

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: Newfield Fabrications Company Limited registered in England and Wales with company number **00834173**.

Supplier Materials: has the meaning given in clause 9.2(b).

Warranty Period: has the meaning given in clause 6.1.

1.2 Interpretation:

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- (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 personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions. If an Order includes a drawing or part number but no version number, then the latest version of that drawing or part which Supplier holds as at the date of the Order, shall be the version of the drawing or part which is deemed to be referred to in the Order. If an Order includes both a drawing or part number, and a version number, then it is that version of that drawing or part which shall be deemed to be the basis on which the Order is made.
- 2.2 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**). If, in response to an Order, the Supplier notifies the Customer that further information is required (for example, CAD or STEP files) then such notification shall not constitute acceptance of the Order.
- 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 Goods and Services 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 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue. The Supplier shall be entitled to revise or withdraw any quotation at any time.
- 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 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.8 If the Order specifies that a form of Incoterms shall apply to the Contract, then that form of Incoterms shall apply to the Contract but, to the extent of any consistency between such Incoterms and these Conditions, these Conditions shall prevail (except in relation to Condition 4 (Delivery) when the Incoterms shall prevail).

3. Goods

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties

and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 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 Customer shall ensure that if the Customer Specification, or any other document, states that reusable or other specific packaging is to be utilised by the Supplier then the Customer shall provide such packaging to the Supplier prior to the start of production of the Goods unless otherwise agreed by the parties in writing. If such packaging is not so provided, the Supplier shall be entitled:

- (a) to delay production until such packaging is provided; or
- (b) utilise alternative packaging materials at the cost of the Customer.

4.2 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 agreed delivery date or such date as the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. If the Goods are delivered by the Supplier in the Supplier's vehicle, then the carriage charge stated in the Quotation shall apply. Otherwise, the Customer shall pay the actual cost of delivery.

4.4 Any dates and times quoted for delivery of the Goods are given by the Supplier in good faith but 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 and the Customer shall not be entitled to reject the Goods, cancel the Order, terminate the Contract and/or claim any other remedy due to the Supplier failing to meet the date/time of delivery given to the Customer. If the Supplier is unable to offload the delivery vehicle at the Delivery Location, the Supplier shall only be obliged to wait for a reasonable amount of time in order to be able to offload the vehicle. If the Supplier still unable to offload then the Supplier shall be entitled to charge for re-delivery and for intermediate storage of the Goods.

4.5 If the Supplier totally 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 or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods on or after the date on which delivery is due or the date the Supplier notifies 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 day after the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.7 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 accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.
- 4.8 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. Stock & Tooling

- 5.1 Any Materials stored by the Supplier for the Customer shall be held by the Supplier as bailee whether or not the Customer has title to the Materials. The laws of bailment shall apply subject to the provisions of this clause 5.
- 5.2 The Supplier shall regularly review stocks of Materials stored by the Supplier for the Customer and shall to the extent reasonably practicable, consume such Materials on a first in first out basis.
- 5.3 If any finished goods, or bought in parts acquired specifically for the Customer are stored by the Supplier for the Customer become obsolete or more than 3 months old, then the Customer shall pay the cost of such Materials on being invoiced by the Supplier.
- 5.4 If the parties establish a pattern of business such that the Supplier meets an ongoing requirement of the Customer and the Supplier has a legitimate expectation of ongoing Orders, then the Supplier may buy Materials from a third party in order to meet that requirement even if that requirement is not specified in an Order. If the Materials so purchased, become obsolete or more than 3 months old, then the Customer shall pay the cost of such Materials on being invoiced by the Supplier.
- 5.5 Except to the extent otherwise agreed between the parties:
- (a) if an Order comprises or includes tooling for which the Customer agrees to pay, then when the tooling invoice is paid in full title in the tooling shall pass to the Customer;
 - (b) all Intellectual Property Rights in tooling shall belong to the Supplier notwithstanding the transfer of title in the tooling to the Customer;
 - (c) the Supplier shall maintain and store the tooling free of charge while it is being used for the production of Goods and for a maximum 1 month thereafter;
 - (d) if the tooling is unused for 1 month or more, the Supplier may scrap or dispose of the tooling and shall have no further liability to the Supplier in relation to such tooling; and
 - (e) tooling or any other items not paid for by the Customer remain the property of the Supplier.

6. Quality of Goods

- 6.1 Subject to clause 6.2, the Supplier warrants that on delivery, the Goods shall:
- (a) conform in all material respects with the Goods Specification;
 - (b) be free from material defects in material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 6.2 If the Goods Specification is provided by the Customer to the Supplier or if the Goods are otherwise manufactured to the Customer's design and/or specification, then the Supplier gives no warranty or representation as to the performance, suitability, durability or lifespan of such Goods unless otherwise agreed in writing.
- 6.3 Subject to clause 6.4, if:
- (a) the Customer gives notice in writing to the Supplier 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;

- (b) the Supplier is given a reasonable opportunity of examining such Goods;
- (c) the Customer identifies the relevant batch number or other data to verify when the Goods in question were manufactured by the Supplier;
- (d) the Customer stores the Goods in a dry, secure and quarantined area pending return to the Supplier;
- (e) the Goods are not damaged whilst in the control of the Customer; and
- (f) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full and this shall be the full extent of the Supplier's liability in relation to the defective Goods. If the Goods have been removed from the premises to which the Goods were delivered by the Supplier, the Supplier's liability shall be further limited. In such cases, the Supplier's liability shall be no greater than it would have been had the Goods not been removed.

- 6.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.3;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of the Supplier following any drawing, design or 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 requirements.

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 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

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:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods; and
- (b) 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:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d); and
 - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.
- 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:
- (a) it does so as principal and not as the Supplier's agent; and
 - (b) 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 At any time before title to the Goods passes to the Customer, the Supplier may:
- (a) by notice in writing, terminate the Customer's right under clause 7.4 to resell the Goods or use them in the ordinary course of its business; and
 - (b) 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.

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, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 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.
- 8.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8.5 If:
- (a) the Service Specification specifies that the Supplier shall carry out any design or design support work; and/or
 - (b) the Supplier provides any advice or support in relation to any Order,
- such specification, advice and/or support shall be deemed to be the provision of general advice and support only. Such general advice and support is supplied by way of information only and in no circumstances will the Supplier be deemed to have carried out professional services including (without limitation) design services, structural engineering and/or engineering calculations. Any CAD files reviewed for the Customer or provided to the Customer by the Supplier, are reviewed or supplied for information only. Such CAD files are solely intended as dimensionally accurate representations of the Goods. The Supplier shall have no liability for their use or suitability for any given purpose, whether in a design or otherwise.

9. Customer's obligations

- 9.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate; and
 - (b) co-operate with the Supplier in all matters relating to the Goods and Services.
- 9.2 The Customer shall to the extent applicable to any given Service Specification and/or Order:
- (a) 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;
 - (b) 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;
 - (c) comply with any additional obligations as set out in the Service Specification or the Goods Specification or both; and
 - (d) deliver all free issue materials (**Customer Materials**) DDP to the Supplier's premises in good time for the production of the goods and shall ensure that the Customer Materials are in good usable condition. To the extent that Customer Materials are not in good usable condition, then, without prejudice to clause 9.3, the Customer shall be liable for any additional costs incurred by the Supplier as a result of, for example, disruption or delays to production and delivery.
- 9.3 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 as set out in this clause 9.2(d); 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.
- 10. Charges and payment**
- 10.1 The price for Goods:
- (a) shall be the price set out in the Order or, if no price is quoted, the price previously agreed in writing between the parties;
 - (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer unless otherwise specified in the Order;
 - (c) shall be adjusted by the Supplier to reflect any difference between the quantity of Goods stated in a quotation and the quantity of Goods contained in an Order; and
 - (d) shall be subject to a surcharge to cover the cost to the Supplier of obtaining any test certificate required for any Materials.
- 10.2 The charges for Services shall be calculated on a time and materials basis as set out in the Order.

- 10.3 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification or packaging; or
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 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:
- (a) within 30 days of the date of delivery or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 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 or both, as applicable, 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 14:
- (a) 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 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%; and/or
 - (b) the Supplier shall be entitled to suspend deliveries of, and work on, any Goods then in production for the Customer and to suspend the provision of any Services, until such payment is made in full.
- 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 Nothing in these Conditions shall operate as transfer, assignment or licence of any Intellectual Property Right.
- 12. Data protection**
- 12.1 The parties shall comply with their respective obligations under the data protection legislation.
- 13. Limitation of liability**
- 13.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 13.2 References to liability in this clause 13 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 13.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.4 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.
- 13.5 Subject to clause 13.3 and clause 13.4:
- (a) the Supplier's total liability to the Customer shall be limited to the cost of replacing the Goods or the sum quoted in the Order, whichever is lower; and
 - (b) in no circumstance shall either party be liable to the other for indirect or consequential losses.
- 13.6 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 by giving the other party not less than one month's written notice.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of ten days after being notified in writing to do so;
 - (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.
- 14.3 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.
- 14.4 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 14.2(b) to clause 14.2(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:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) 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.
- 15.2 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.
- 15.3 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.
- 16. Confidentiality**
- 16.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 16.2.
- 16.2 Each party may disclose the other party's confidential information:
 - (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 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.
- 17. Force majeure**
- Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for six weeks, the party not affected may terminate the Contract by giving seven days' written notice to the affected party.
- 18. General**
- 18.1 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 without the prior written consent of the Supplier.

18.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be sent by email to such address as is provided from time to time by the relevant party for that or other purposes.
- (b) Any notice shall be deemed to have been received at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (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.

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 18.3, 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.

18.4 Waiver.

- (a) Except as set out in clause 2.7, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it 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.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18.7 Third party rights.

- (a) 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.

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.

18.11 Divisibility. This Contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate Contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided herein, without reference to and notwithstanding any defect of default in delivery of any other instalment.

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