

## 1. INTERPRETATION

### 1.1 DEFINITIONS. IN THESE CONDITIONS, THE FOLLOWING DEFINITIONS APPLY:

**Backorder:** means an Order where the Goods are not available at time of Order placement and which are still to be acquired by the Supplier from its main supplier.

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

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 18.6.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods and / or Services in accordance with these Conditions. **Customer:** the person, company or firm who purchases the Goods and / or Services from the Supplier.

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

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

**Insolvency Event:** has the meaning given to it in clause 15.1.

**Order:** the Customer's order for the Goods and / or Services made verbally or in writing as the case may be.

**Services:** any customisation, implementation, installation or configuration services (or any part of them), relating to the Goods, provided by the Supplier to the Customer from time to time.

**Supplier:** Bluechipworld Sales and Marketing Limited, Orbital Way, Cannock, Staffordshire, WS11 8XW.

1.2 Construction. In these Conditions, the following rules apply:

- 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 or permitted assigns.
- C. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- D. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- E. Clause headings shall not affect the interpretation of these Conditions.
- F. A reference to writing or written, subject to clause 18.2, includes faxes and e-mails.

## 2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (including under any purchase order, confirmation of Order, specification or any other document), or which are implied by trade, custom, practice or course of dealing.

2.2 In preparing any quotation, the Supplier shall be entitled to ask the Customer for, and the Customer shall provide within 15 Business Days, such information as the Supplier may require in its absolute discretion. It shall be a condition of any quotation that the information provided by the Customer is correct, accurate, not misleading and a complete response to the Supplier's request(s) when provided and remains so for at least until the later of the date when the quotation lapses or the relevant Goods and/or Services are delivered.

2.3 The Customer shall indemnify the Supplier in full against all losses, costs, damages, claims, charges and/or expenses (including without limiting effect any obligation to pay any sum(s) to the relevant manufacturer(s) of relevant Goods or the provider of relevant Services) incurred by the Supplier as a result (whether directly or indirectly) of information provided by the Customer in accordance with clause 2.2 being or subsequently becoming incorrect, inaccurate, misleading and/or incomplete or of the Customer acting other than in accordance with such information.

2.4 Save where indicated to the contrary on the Supplier's quotation, the Supplier's quotation shall automatically lapse after 30 days of the date of the quotation.

2.5 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is solely responsible for ensuring that the terms of the Order are complete and accurate.

2.6 The Order shall only be deemed to be accepted when the Supplier confirms acceptance of the Order by formal acknowledgment or by processing the Order for delivery (whichever is earlier), at which point the Contract shall come into existence. The Supplier shall be entitled to either accept or to reject the Customer's offer and shall for the avoidance of doubt be under no obligation to accept the Customer's offer, particularly where its supplier is unable or unwilling to supply the Goods to the Supplier for onward supply to the Customer.

2.7 The Supplier's acceptance of all Backorders shall be subject to the Supplier's approval of the Customer's credit status.

2.8 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. In entering into the Contract, the Customer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for, any such representations which are not so confirmed (unless such representations were fraudulently made).

2.9 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and / or Services described in them. They shall not form part of the Contract or have any contractual force.

2.10 The Supplier reserves the right to vary any specification of the Goods and / or withdraw, modify or amend any Goods without prior notice. Any such variation, withdrawal or modification shall not affect any Order that has already been accepted by the Supplier, save that the Supplier reserves the right to make any changes in any specification of the Goods which are required to conform with any applicable statutory requirements.

### **3. TELECOMMUNICATIONS GOODS**

3.1 Where the Goods supplied by the Supplier are to be used in conjunction with British Telecom ("BT") lines or apparatus then the following additional conditions shall apply:

- A. BT shall have the right to require modifications to be carried out to Goods already installed and in use and the modifications will be carried out at the Customer's expense;
- B. the Customer shall indemnify the Supplier against all and any liability, cost or expense arising out of or in connection with damage, loss or injury to BT goods or personnel in connection with or arising out of the Customer's acts or omissions.

### **4. DELIVERY**

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery 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.

4.2 The Supplier shall deliver the Goods to the location stipulated in the Order, or such other location as the parties may agree (Delivery Location), within a reasonable period following receipt of the Order or within such other period as shall be specifically agreed in writing by the Customer and the Supplier.

4.3 Delivery of the Goods shall be completed:

- A. on the Goods' arrival at the Delivery Location; or
- B. on the completion of loading of the Goods at the Supplier's premises in circumstances where it has been agreed that the Customer will collect the Goods from the Supplier.

4.4 Any dates quoted for delivery 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 howsoever caused.

4.5 If following receipt of the Order, the Supplier is unable to deliver the Goods for reasons beyond its reasonable control (including without limitation any restriction or withholding of supply by any manufacturer), the Supplier shall be entitled to terminate the Contract and the Supplier shall have no liability for such termination.

4.6 If the Customer fails to take or (as appropriate) accept delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- A. delivery of the Goods shall be deemed to have been completed;
- B. risk in the Goods shall pass to the Customer (including for loss or damage cause by the Supplier's negligence);
- C. the Supplier may store the Goods until the Customer takes delivery of the Goods, whereupon the Customer shall be liable for all related costs and expenses (including without limitation storage and insurance);
- D. any discount or other allowance in respect of the Goods, which is or would be otherwise be allowed to the Customer, shall be forfeited by the Customer.

4.7 If the Customer (including in the context of this clause any end user or consumer to whom the Supplier has delivered the Goods at the Customer's request) fails to take delivery or (as appropriate) accept delivery of the Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and issue a credit note to the Customer for the price of the Goods less any reasonable transport and re-stocking costs.

4.8 The Goods may be delivered in instalments. Each delivery shall constitute a separate Contract and failure by the Supplier to deliver any one or more of the instalments (or faulty Goods) in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

4.9 The Customer shall not resell outside the UK any of the Goods covered by the Export Control Act 2002 (or any re-enactment thereof) or the Export Administration Act 1979 (as amended) of the USA (or any re-enactment thereof) without obtaining all necessary licences thereunder and will not resell such Goods within the UK to a purchaser knowing (or being given reasonable grounds to suspect) that the purchaser intends to export such Goods without first obtaining either such licences or a copy of such licences obtained by the purchaser.

4.10 Where Goods are to be exported out of the United Kingdom by the Supplier to the Customer or by the Customer to the Customer's order the provisions of this clause 4.10 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply notwithstanding any other provision of these Conditions:

- A. the terms of purchase will be subject only to the manufacturer's warranty and the Customer shall be solely responsible for ensuring that it fully understands and is aware of such warranty terms;

- B. the relevant tax legislation will be applied in accordance with and under the United Kingdom legislation at the time of the Contract;
- C. the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon;
- D. unless otherwise agreed in writing between the Customer and the Supplier, the Goods shall be delivered FOB at the air or sea port of shipment;
- E. the Customer shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit;
- F. the Customer shall not be entitled to withhold payment of the price for the Goods due to the Customer's failure to comply with the provisions of this clause;
- G. the Goods will be packaged in accordance with the Supplier's standard practice, and the packaging shall meet any reasonable requirements stipulated in advance by any independent contractors or shippers.

## **5. SHORTAGES OR DAMAGE IN TRANSIT**

5.1 The Customer shall examine the Goods immediately upon delivery. The Supplier shall have no liability in respect of claims in respect of shortages or picking errors or damage in transit unless the Customer informs the Supplier's customer services department of such shortages or picking errors or damage by e-mail to [OperationsTeam@bluechipworld.biz](mailto:OperationsTeam@bluechipworld.biz) within 5 Business Days after delivery. The Customer shall have no liability in respect of claims for shortages or damages in transit if the Customer or its representative has signed for the Goods as being received in good condition.

5.2 Any liability of the Supplier for shortages or picking errors or damage in transit shall be limited to replacing the missing or wrongly picked or damaged Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods. The Customer shall return to the Supplier, promptly upon request, and in accordance with the Supplier's returns policy set out in clause 8, any Goods that have been incorrectly delivered.

## **6. NON-DELIVERY**

6.1 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Customer's negligence) unless the Customer informs the Supplier's customer service department of such non-delivery by e-mail to [OperationsTeam@bluechipworld.biz](mailto:OperationsTeam@bluechipworld.biz) within 5 Business Days of the date when the Goods would in the ordinary course of events have been received.

6.2 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## **7. QUALITY**

7.1 Goods that fail on installation or initial use (D.O.As): The Supplier operates a returns procedure for Goods that fail on installation or initial use (D.O.As). The D.O.A returns procedure may vary depending on the manufacturer of the Goods and will be notified to the Customer upon the Customer notifying the Supplier that the Goods have apparently failed on installation or initial use.

7.2 Goods that fail after installation or initial use (Faulty Goods): In no circumstances may the Faulty Goods be returned to the Supplier by the Customer without the prior written consent of the Supplier. The Customer must notify the Supplier of the fault becoming apparent and follow the instructions notified to it by the Supplier in relation to the fault.

7.3 The Supplier's liability (in contract, tort (including negligence), misrepresentation or otherwise) in respect of defects in the Goods shall be limited to the replacement or repair of faulty items or material, or issue a of credit note in respect thereof, or the granting of a refund or

other such compensatory measures as the Supplier at its discretion considers appropriate in the circumstances, and shall be conditional upon the Customer complying with the conditions of the manufacturer's warranty (where applicable). Such measures shall relate only to the actual items or their value.

#### 7.4 General provisions relating to D.O.As and Faulty Goods:

- A. any returns shall be subject to, and the Customer shall comply with, the Supplier's returns authorisation procedures as set out in clause 8;
- B. the Customer shall be responsible for all transportation and insurance costs relating to returned Goods;
- C. the Supplier shall not be responsible for installation of returned Goods after repair or exchange; and
- D. any labour costs and expenses incurred in extracting defective parts and/or components shall be borne by the Customer and if incurred by the Supplier shall be paid for by the Customer at Supplier's then standard applicable rate.

7.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

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

### **8. RETURN OF GOODS**

8.1 A returns authorisation number (RMA) must first be obtained from the Supplier's customer service department either by telephone, letter or email.

8.2 The Supplier will not accept any returns unless they are notified to the Supplier within 14 days of the date of delivery and returned within 14 days of the date of issue of the returns authorisation number (RMA), at the Customer's cost. The notification shall include the reason for the return, e.g. whether the Goods are defective or have been wrongly picked. The Customer has no right to return Goods which have been delivered in accordance with the Contract.

8.3 Goods returned must be in the original packaging and in a clean resalable condition (subject only to defects which have been notified to the Supplier in accordance with clause 8.2. The returns authorisation number must be written on a label attached to the packaging. Any Goods not meeting these criteria may, at the Supplier's discretion, be refused and returned to the Customer and/or, a handling charge (equal to a minimum of 15% of the order value of the Goods involved) will be levied to the Customer's account to cover the additional costs involved (such as, without limitation, repackaging costs and/or the carriage and associated costs of returning the Goods to the Customer). In addition, the Customer will be charged for any damage caused to the Goods whilst they were in the Customer's custody or control.

8.4 If the Customer fails to make Goods ready for collection on the return date agreed with the Supplier, the Supplier reserves the right to charge the Customer a handling fee.

8.5 If, upon examination by the Supplier or the manufacturer, the returned Goods are found not to be defective, the Supplier reserves the right to return the Goods to the Customer and to charge the Customer a handling fee equal to a minimum of 15% of the order value of the relevant Goods. In addition, the Customer shall be deemed to have purchased the replacement goods on these terms and conditions and the Supplier shall be entitled to invoice the Customer for the replacement goods.

8.6 The Supplier shall not be responsible for the loss in transit of any Goods where the Customer makes its own arrangements to return the Goods to the Supplier.

### **9. TITLE AND RISK**

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

9.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- A. the Goods; and
- B. any other goods or services that the Supplier (or any associated company, subsidiary or holding company of the Supplier) has supplied to the Customer.

9.3 Until title to the Goods has passed to the Customer, the Customer shall:

- A. hold the Goods on a fiduciary basis as the Supplier's bailee;
- B. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- C. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- D. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- E. notify the Supplier immediately upon the occurrence of an Insolvency Event; and
- F. give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business;
- G. be obliged to store the Supplier's goods separately and identify them as belonging to the Supplier; and
- H. allow the Supplier access to its premises to verify that the goods have been stored correctly.

9.4 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any Goods has not passed from the Supplier.

9.5 If, before title to the Goods passes to the Customer, the Customer becomes subject to an Insolvency Event, or the Supplier reasonably believes that any Insolvency Event is about to happen and notifies the Customer accordingly, or if the Customer's right to possession of the Goods is terminated in accordance with clause 9.6, or if any sum due to the Supplier as referred to in clause 9.2 is not paid when due, then, provided that the Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods 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.

9.6 The Customer's right to possession of the Goods shall terminate immediately if the Customer becomes subject to an Insolvency Event; however, the Supplier, having been informed of the Customer becoming subject to an Insolvency Event, may consent in writing (subject to such terms as the Supplier may in its sole discretion impose in respect of such consent) to the Customer's continued right of possession of the Goods.

## **10. CUSTOMER'S PROPERTY**

10.1 The Customer's property supplied to the Supplier by or on behalf of the Customer shall, while it is in possession of the Supplier or in transit to or from the Customer, be deemed to be at the Customer's risk and the Customer shall insure accordingly.

10.2 The Supplier shall be entitled to make a reasonable charge for the storage of any of the Customer's property left with the Supplier before receipt of the Order or after notification to the Customer of completion of the Services.

## **11. SUPPLY OF SERVICES**

11.1 The Customer may raise an Order for Services that it wishes the Supplier to provide in connection with the Goods. The Supplier shall, as soon as reasonably possible following its acceptance of any such Order, notify the Customer of the date by which it plans to commence the Services under the Order. Unless otherwise agreed by the parties in writing, the Customer shall not delay the agreed delivery date for the Services.

11.2 In preparation for the Services to be performed, the Customer shall:

- A. at its cost, prepare the Customer site and co-operate with the Supplier in accordance with the Supplier's instructions and timescales; and
- B. provide an adequate environment and space for the safe operation of the Services.

11.3 The Supplier shall provide the Services using reasonable care and skill.

11.4 The Supplier shall be entitled to charge the Customer for any costs incurred by the Supplier as a result of any failure by the Customer to satisfy any requirements of clause 11.2.

11.5 The Customer hereby permits the Supplier to have access to the Customer site for the purpose of carrying out the Services at such times as may be agreed between the Supplier and the Customer, such access not to be unreasonably withheld or delayed.

11.6 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

11.7 If the Services include configuration services the Customer shall be solely responsible for the accuracy of its Order which includes any such configuration services, the specification of the components and their configuration and for ensuring that the configured Goods specified are satisfactory for the purpose for which they are required, including that they have sufficient overall functionality and will support and be compatible and inter-operable with any hardware, software and middleware with which they are intended to operate.

## **12. CREDIT ACCOUNT**

12.1 The Customer may apply to open a credit account with the Supplier by obtaining a credit account application form from the Supplier.

12.2 Once the Customer has returned the credit account application form to the Supplier, the Supplier will review the credit account application and notify the Customer of its acceptance or rejection within 14 Business Days of receiving the credit account application (Application Period).

12.3 The Customer may request that the Application Period is expedited and the Supplier may expedite the Application Period at its sole discretion.

12.4 Following the opening of a credit account, the Supplier will issue a credit statement to the Customer on a monthly basis.

12.5 Credit accounts with overdue balances will be placed on credit hold. This means that no further goods will be despatched and all support and repair/warranty services withdrawn until the account is brought into order. Repeated failure to adhere to the Supplier's credit terms will result in permanent loss of the credit account.

## **13. PRICE AND PAYMENT**

13.1 The price of the Goods and / or Services shall be the price at the date of dispatch or performance and the Supplier reserves the right to amend its quoted prices at any time prior to dispatch.

13.2 The Supplier may, by giving notice to the Customer at any time, increase the price of the Goods and / or Services to reflect any increase in the cost of the Goods and / or Services that is due to:

- A. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, compliance with statutory provisions from time to time in force, and increases in labour, materials and other manufacturing costs and increases in prices charged to the Supplier by any manufacturer);
- B. any request by the Customer to change the delivery date(s), the Delivery Location, quantities, capacity, form, content, style, description or types of Goods and / or Services ordered; or

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

13.3 Unless otherwise expressly agreed in writing the price of the Goods is exclusive of the costs and charges of packaging, insurance, transport of the Goods and any services, all of which will be charged at an extra cost. Any work or services carried out additional to that specified in the relevant quotation or the Order, whether experimentally or otherwise, shall be charged to the Customer.

13.4 The price of the Goods and / or Services is exclusive of amounts in respect of value added tax (VAT). 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 Goods and / or Services.

13.5 The Supplier may invoice the Customer for the Goods and Services on the date of dispatch of the Goods for delivery.

13.6 Unless otherwise agreed between the parties in writing, and except in the case of a cash sale which shall be paid for in accordance with clause 13.7, the Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice.

13.7 Where the Customer does not have a credit account with the Supplier, the Supplier may require immediate payment in full upon placing the Order.

13.8 Payment may be made by credit card. There will be a surcharge of 1.5% for payment by this method. The Supplier accepts the following cards: Visa, Access, Delta, Solo and Maestro.

13.9 The time of payment shall be of the essence of the Contract.

13.10 The Customer shall make all payments in pounds sterling. Where payments in an alternative currency are authorised in writing by an authorised representative of the Supplier prior to the Contract being concluded, such payments shall be made by telegraphic transfer to the account to be designated by the Supplier's authorised representative from time to time.

13.11 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (due date), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount and an administration charge of 5% of the total amount due.

13.12 To the extent that the Customer has negotiated any rebate, discount or other concession directly with any manufacturer of the Goods, this shall be a matter between the Customer and such manufacturer and shall not bind or have any effect on the Supplier including without limitation the Customer's obligation to pay to the Supplier all amounts due under this Contract in full.

13.13 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

13.14 In no case shall any dispute concerning:

- A. any item or separate part of the Goods or Services; or
- B. any other contractual obligation or liability of the Supplier to the Customer, affect the Customer's obligation in respect of payments to be made under these Conditions.

## **14. CANCELLATION, TERMINATION AND SUSPENSION**

14.1 The Customer's Order once accepted by the Supplier may only be cancelled or suspended with the Supplier's written consent and the Customer acknowledges that the Supplier reserves the right to require the Customer to reimburse the Supplier in full for any loss suffered as a result of such cancellation or suspension (including, but not limited to, payment for Services already carried out, materials specifically ordered and other additional costs including storage, loss of profit, damages, charges and expenses). Without limiting its rights under the Contract in any way, the Supplier reserves the right to charge the Customer for lost profit should the Customer cancel the Order without prior written agreement of the Supplier.

14.2 Without limiting its other rights or remedies the Supplier may, without liability to the Customer, suspend, cancel or terminate the Contract (and/or all further deliveries and/or all support and repair/warranty services under the Contract or any other contract between the Customer and the Supplier) with immediate effect by giving written notice to the Customer, and may recover all losses resulting therefrom, if the Customer:

- A. commits a material breach of its obligations under the Contract;
- B. fails to pay any amount due under the Contract on the due date for payment;
- C. fails to pay any amount due under any contract referred to in clause 9.2;
- D. commits or is party to dishonest or fraudulent conduct in relation to the Contract; and / or
- E. becomes subject to an Insolvency Event.

14.3 On termination or suspension of the Contract for any reason:

- A. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- B. the Customer shall return all Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises or any other location 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 the Contract;
- C. the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- D. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **15. INSOLVENCY EVENTS**

15.1 For the purpose of these Conditions, the following events shall be deemed to be Insolvency Events:

- A. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- B. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- C. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- D. (being an individual) the Customer is the subject of a bankruptcy petition or order;
- E. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets;
- F. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- G. (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- H. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- I. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1 (a) to clause 15.1(h) (inclusive);
- J. the Customer encumbers or in any way charges any of the Goods;
- K. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- L. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- M. (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

## **16. LIMITATION OF LIABILITY**

16.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- A. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- B. fraud or fraudulent misrepresentation;
- C. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- D. defective products under the Consumer Protection Act 1987. 16.2 Subject to clause 16.1:
- E. the Supplier shall under no circumstances whatever be liable to the Customer for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence), breach of statutory duty, or otherwise howsoever including those, which fall within any of the following categories (without limitation):
  - I. special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
  - II. loss of profits;
  - III. loss of anticipated savings;
  - IV. loss of business opportunity; and
  - V. loss of goodwill; and
- F. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods and Services.

16.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

16.4 All reference to 'the Supplier' in this clause 16 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Supplier, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.

## **17. FORCE MAJEURE**

The Supplier shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Supplier's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## **18. GENERAL**

### **18.1 Assignment and subcontracting.**

- A. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- B. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or 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, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or fax. Notices will not be validly served if sent by e-mail.
- B. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2 (a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- C. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **18.3 Severance.**

- A. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- B. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**18.4 Waiver.** A waiver by the Supplier of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy by the Supplier shall preclude or restrict the further exercise of that or any other right or remedy.

18.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

18.6 Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

18.7 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.