

# FACE EDGE LIMITED – STANDARD TERMS AND CONDITIONS

These terms and conditions apply to all contracts for work and goods supplied by Face Edge Limited. No terms or conditions endorsed upon, delivered with or contained in the Customer's order, acknowledgement or confirmation of order, specification or similar document will form part of this Contract and the Customer hereby waives irrevocably any right which it otherwise might have to rely on such terms and conditions.

## 1 INTERPRETATION

1.1 In these Conditions, the following definitions apply:

**Acknowledgement of Order:** the Supplier's formal written acknowledgement of any Order placed by the Customer.

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

**Charges:** the charges payable by the Customer for the supply of Goods and/or Services in accordance with clause 10.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.7.

**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 Goods and/or Services from the Supplier.

**Goods:** the Goods stated in the Acknowledgement of Order and described in the Specification produced by the Supplier for the Customer.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Normal Business Hours:** 08:00 to 17:00 local UK time on any Business Day.

**Order:** a written request for Goods and/or Services made in accordance with this Contract, being either: (i) the Customer's purchase order form in response to the Supplier's quotation; or (ii) the Customer's written acceptance of a quotation by the Supplier, as the case may be.

**Services:** the services supplied by the Supplier to the Customer as stated in the Acknowledgement of Order and described in the Specification produced by the Supplier for the Customer (which may include, without limitation, design, product development and installation services).

**Specification:** such descriptions or specifications of the Goods and/or Services including (without limitation) plans, measurements and technical drawings which are: (a) prepared by the Customer; and/or (b) prepared by the Supplier in response to an Order.

**Supplier:** Face Edge Limited registered in England and Wales with company number 3666101 and whose registered office is at Fletcher Industrial Estate, Clovelly Road, Bideford, Devon, EX39 3EU.

**Supplier Materials:** has the meaning set out in clause 9.1.6.

1.2 In these Conditions, the following rules apply:

1.2.1 a reference to **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate

legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.3 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; and

1.2.4 a reference to **writing** or **written** includes faxes and e-mails.

## 2 BASIS OF CONTRACT

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

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order and confirmation of:

2.2.1 Charges;

2.2.2 Specification; and

2.2.3 estimated delivery times,

in the form of an Acknowledgement of Order at which point and on which date the Contract shall come into existence.

2.3 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. Without limiting the generality of the foregoing, the Supplier's employees or agents are not authorised to make any statements, promises or representations concerning the Services or Goods unless confirmed by the seller in writing. Nothing in this clause 2.3 shall limit or exclude any liability for fraud.

2.4 Unless set out in an agreed Specification, any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the supply of the Goods and/or Services.

2.5 Subject to clause 2.3, any advice or recommendation given by the Supplier or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed in writing.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.7 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 trade, custom, practice or course of dealing.

2.8 Any quotation (including, without limitation, as to Charges and delivery dates) given by the Supplier shall not constitute an offer, and is only valid for a period of seven days from its date of issue.

## 3 SPECIFICATION

3.1 Subject to clause 3.2, the Supplier shall supply the Services and/or Goods to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the

nature or quality of such Goods and/or Services, and the Supplier shall notify the Customer in any such event.

3.3 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any Order and any associated documentation including (without limitation) plans, measurements and technical drawings and any applicable Specification provided by the Customer and for giving to the Supplier any necessary information relating to the Goods and/or Services in good time to enable the Supplier to perform the Contract in accordance with its terms.

3.4 If the Supplier manufactures the Goods and/or provides the Services in accordance with Specifications provided by the Customer, the Customer must ensure that:

3.4.1 the Goods are fit for the purposes for which the Customer intends to use them; and

3.4.2 the Specifications and the Goods (prepared in accordance with such Specifications) will not result in the infringement of any Intellectual Property Rights of a third party or any applicable laws or regulations.

3.5 The Customer shall indemnify, defend and hold harmless the Supplier on demand against all claims, actions, proceedings, and all damages, losses, fines, judgments, demands, fees, costs and expenses (including legal fees and disbursements on a full indemnity basis) arising as a result of any action or claim of infringement of Intellectual Property Rights of a third party arising from the Supplier manufacturing the Goods and/or providing the Services in accordance with Specifications provided by the Customer.

#### 4 CANCELLATION

4.1 No Order which has been accepted by the Supplier may be cancelled by the Customer except with agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit) costs (including, without limitation: labour costs; the cost of materials used; and handling, restocking and storage costs in respect of returned Goods), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

#### 5 SERVICES

5.1 Unless otherwise agreed in writing by the parties, the Supplier shall use reasonable endeavours to meet any performance dates specified in the quotation in respect of the Services, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

#### 6 DELIVERY OF GOODS

6.1 Any dates quoted for delivery are approximate, 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.

6.2 Delivery of the Goods shall be as specified in the Order, but if no provision is made then the Customer shall collect the Goods from the Supplier's premises at Fletcher Industrial Estate, Clovelly Road, Bideford, Devon, EX39 3EU, within three (3) Business Days of the Supplier notifying the Customer that the Goods are ready. The Customer shall be responsible for the safe loading of such Goods made available at the Supplier's premises and the use of appropriate packaging materials to ensure safe transit of such Goods. Delivery of the Goods to any location other than the Supplier's premises shall be completed on the Goods' arrival at the relevant delivery location.

6.3 If the Supplier fails to deliver the Goods, its liability in respect of such Goods 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.

6.4 Where the Goods are to be delivered in instalments which are invoiced and paid for separately, each delivery shall constitute a separate Contract and a failure by the Supplier to deliver any one or more of the instalments in accordance with this Contract or any defects in respect of any instalment shall not entitle the Customer to cancel any other instalment or to treat the Contract as a whole to be repudiated.

6.5 If the Customer fails to take or, in the case of delivery to a location other than the Supplier's premises, accept delivery of the Goods within three (3) 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 the Supplier's failure to comply with its obligations under the Contract:

6.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

6.5.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

6.6 If ten (10) Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, then, without prejudice to any other right or remedy available to the Supplier and save in the case 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, the Supplier shall be entitled to:

6.6.1 continue to store the Goods until actual delivery and charge the Customer for the reasonable costs of storage; and/or

6.6.2 at the Supplier's absolute discretion either: (i) invoice the Customer for the full value of such Goods (and any related Services); or (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Charges for such Goods (and any related Services) under the Contract.

#### 7 WARRANTY

7.1 The Supplier warrants that:

7.1.1 on delivery, and for a period of twelve (12) months from the date of delivery (**warranty period**), the Goods shall conform in all material respects with their description and any applicable Specification and be free from material defects in design, material and workmanship; and

7.1.2 the Services will be provided using reasonable care and skill.

7.2 Subject to clauses 7.3 and 7.4, if:

7.2.1 the Customer gives notice in writing to the Supplier 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 7.1;

7.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

7.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace any defective Goods, or refund the price of any defective Goods and the Customer's costs of return of such Goods in full.

7.3	In particular, and without prejudice to the generality of clause 7.4:	8	<b>RISK AND PROPERTY</b>
7.3.1	The Customer acknowledges and agrees that changes in temperature may cause materials to expand or contract. The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 caused by temperature changes outside the Suppliers control (including, without limitation, heaters, lighting, electrical equipment, lack of proper ventilation).	8.1	The risk in the Goods shall pass to the Customer on completion of delivery:
7.3.2	The Customer acknowledges and agrees that doors may drop on hinges through usage and normal wear and tear and the Customer may need to adjust hinges after installation. The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 caused by doors dropping on the hinge in accordance with this clause 7.3.2.	8.1.1	in the case of the Goods to be delivered at the Supplier's premises, at the time such Goods are available for collection as notified by the Supplier to the Customer; or
7.4	The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 7.1 if:	8.1.2	in the case of the Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Customer fails to take delivery of the Goods, at the time the Supplier tendered delivery of the Goods.
7.4.1	the Customer makes any further use of such Goods after giving notice in accordance with clause 7.2;	8.2	Notwithstanding delivery and the passing of risk in the Goods, title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods.
7.4.2	the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice;	8.3	Until title to the Goods has passed to the Customer, the Customer shall:
7.4.3	the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;	8.3.1	hold the Goods on a fiduciary basis as the Supplier's bailee;
7.4.4	the Customer alters or repairs such Goods without the written consent of the Supplier;	8.3.2	store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property; and
7.4.5	the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;	8.3.3	maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
7.4.6	the defect arises as a result of materials expanding or contracting as a result of temperature changes outside the Suppliers control (including, without limitation, heaters, lighting, electrical equipment, lack of proper ventilation); or	8.4	The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier. If the Customer does to pledge or in any way charge by way of security for any indebtedness any of the Goods, all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) become immediately due and payable.
7.4.7	the defect arises as a result of doors dropping on hinges through normal usage and normal wear and tear. The Customer may need to adjust hinges after installation.	8.5	If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clauses 14.1.2 to 14.1.10 (inclusive), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, 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. The Customer shall notify the Supplier immediately if it becomes subject to any of the events listed in clauses 14.1.2 to 14.1.10 (inclusive).
7.5	Except as provided in this clause 7, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.	9	<b>CUSTOMER'S OBLIGATIONS</b>
7.6	The Supplier may, on the instructions of the Customer and on behalf of the Customer, procure goods or equipment for use with the Goods. In the event that the Supplier does carry out such instructions, the Customer acknowledges and agrees that unless otherwise agreed in writing the warranty set out in clause 7.1 shall not apply to such goods or equipment procured on the Customer's behalf. Nothing in this clause 7.6 shall operate to exclude or limit any warranty available to the Customer from the manufacturer or supplier of such goods or equipment procured on behalf of the Customer. The Customer acknowledges and agrees that the use of certain goods or equipment for business purposes (including without limitation domestic appliances) may invalidate any such manufacturer or supplier warranty which would otherwise be available to the Customer.	9.1	The Customer shall:
7.7	Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.	9.1.1	co-operate with the Supplier in all matters relating to the Services;
7.8	These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.	9.1.2	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;
		9.1.3	provide the Supplier with such information and materials as the Supplier may reasonably require in order to provide the Services, and ensure that such information is accurate in all material respects;
		9.1.4	prepare the Customer's premises for the provision of the Services and provide safe working conditions in compliance with all then current health and safety legislation;
		9.1.5	obtain and maintain all necessary licences, permissions and consents which may be required

before the date on which the Services are to start; and

9.1.6 keep and maintain 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.

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

9.2.1 the Supplier shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

9.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and

9.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 10 CHARGES AND PAYMENT

10.1 Subject to clause 10.2, the price of the Goods and/or Services shall be the price set out or referred to in the Acknowledgement of Order.

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

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

10.2.2 any request by the Customer to change the performance dates in respect of Services, the delivery date(s) in respect of the Goods, quantities or types of Goods ordered, or the Specification in each case that is accepted by the Supplier;

10.2.3 the Customer's delivery requirements or requirements for Services change such that the Customer is required to perform such obligations outside Normal Business Hours;

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

10.2.5 any special access equipment is required at the location at which Services are to be performed or Goods delivered which were not otherwise specified in the Order; or

10.2.6 utilities and on-site services (including, without limitation, water and electricity) are not available or are inaccessible for the purposes of the performance of the Services.

10.3 The Charges are 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.

10.4 Unless otherwise agreed in writing by the parties and subject to clause 10.5, the Supplier shall be entitled to invoice the Customer for the Goods and/or Services on or at any time after delivery of the Goods and/or completion of the Services (respectively), unless the Customer fails to collect the Goods or fails to accept delivery of the Goods, in which case the Supplier shall be entitled to invoice the Customer for such Charges at any time after the Supplier has notified the Customer that the Goods are available or (as the case may be) the Supplier has tendered delivery.

10.5 The Supplier shall be entitled (but not obliged) to require payment of the Charges for any Goods by any Customer in accordance with any special payment terms as may be agreed by the Customer and as specified or referred to in the Acknowledgement of Order.

10.6 Subject to any deposits payable in accordance with clause 10.5, the Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

10.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the annual rate of three per cent (3%) above HSBC Bank Plc's annual base lending 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.

10.8 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.

## 11 INTELLECTUAL PROPERTY RIGHTS

11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (including, without limitation, any sketches, drawings and plans created by the Supplier) shall be owned by the Supplier. The Customer acknowledges that it may not distribute, reproduce or use any of the Supplier's sketches, drawings and plans (in whole or in part) without the written permission of the Supplier.

11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional upon the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

11.3 All Supplier Materials are the exclusive property of the Supplier.

## 12 CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 12 shall survive termination of the Contract.

## 13 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these Conditions shall limit or exclude the Supplier's

liability for:		14.1.6	a creditor or encumbrancer of the other party 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 and such attachment or process is not discharged within fourteen (14) days;
13.1.1	death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;		
13.1.2	fraud or fraudulent misrepresentation; or		
13.1.3	breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).	14.1.7	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 other party (being a company);
13.2	Subject to clause 13.1:		
13.2.1	the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract including any losses that may result from a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors; and	14.1.8	a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
13.2.2	the Supplier's total liability to the Customer in respect of damage to property caused by its negligence shall not exceed £5,000,000.	14.1.9	a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
13.2.3	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, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed £500,000.	14.1.10	any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 14.1.2 to 14.1.9 (inclusive);
13.3	This clause 13 shall survive termination of the Contract.	14.1.11	the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
<b>14</b>	<b>TERMINATION</b>	14.1.12	the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
14.1	Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:	14.2	Without limiting its other rights or remedies, 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 this Contract on the due date for payment.
14.1.1	the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach;	14.3	Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clauses 14.1.2 to 14.1.12 (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
14.1.2	the other party 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>15</b>	<b>CONSEQUENCES OF TERMINATION</b>
14.1.3	the other party 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;		On termination of the Contract for any reason:
14.1.4	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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;	15.1.1	the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services 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;
14.1.5	the other party (being an individual) is the subject of a bankruptcy petition or order;	15.1.2	the Customer shall return all of the Supplier Materials and any 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;
		15.1.3	the accrued rights, remedies, obligations and liabilities of the parties as at expiry or 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
		15.1.4	clauses which expressly or by implication have effect after termination shall continue in full force

and effect.

## 16 EXPORT TERMS

16.1 Clause 16 of these Conditions applies (except to the extent that it is inconsistent with any written agreement between the parties) where the Supplier supplies the Goods over an international border or overseas.

16.2 In this Contract, **Incoterms** means the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce which are in force at the time when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Contract but if there is any conflict between the provisions of Incoterms and this Contract, the latter shall prevail.

16.3 Unless otherwise agreed in writing, the Goods are supplied "ex works" the Supplier's place of manufacture.

16.4 Where the Goods are to be sent by the Supplier by a route including sea transport the Supplier is under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.

16.5 The Supplier is responsible for arranging testing and inspection of the goods at the Supplier's premises before shipment (unless otherwise agreed). The Supplier is not liable for any defect in the goods which would be apparent on inspection unless a claim is made before shipment. The Supplier is not liable for any damage during transit.

16.6 The Supplier is not liable for death or personal injury arising from the use of the goods delivered in the territory of another State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977).

## 17 FORCE MAJEURE:

17.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

17.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

17.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than four (4) weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## 18 GENERAL

18.1 Assignment and subcontracting:

18.1.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

18.1.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.2 Notices:

18.2.1 Any notice or other communication required to be given to a party under or in connection with this

Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

18.2.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission.

18.2.3 This clause 18.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

18.3 Waiver:

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

18.3.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

18.4 Severance:

18.4.1 If a court or any other 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 deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

18.4.2 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.

18.5 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

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

18.7 Variation: Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

18.8 Governing law and jurisdiction: This 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.

**Terms last updated 11 August 2010**