

July 2026

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

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

1. Interpretation

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

Definitions:

Additional Work(s): any services provided by the Supplier to the Customer, other than those set out in the relevant Quotation and charged in accordance with clause 9.

Bespoke Goods: has the meaning given to it in clause 11.2.

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 8.00 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 19.8.

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.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly.

Customer: the person or firm who purchases the Goods or Services or Goods and Services from the Supplier pursuant to any Order.

Customer Default: has the meaning given to it in clause 10.2.

Delivery Location: has the meaning given in clause 5.1.

Estimated Delivery Date: the estimated date specified in a Quotation for delivery of an Order.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

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

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.

Order: the Customer's order for the supply of Goods or Services or Goods and Services, as set submitted in accordance with clause 3, and subject to the Customer's written acceptance of the Quotation.

Quotation Confirmation: the Supplier's written acceptance of a Quotation, including any applicable purchase order number issued by the Customer.

Quotation(s): has the meaning given to it in clause 3.2.

Services: the services, including any deliverables, supplied by the Supplier to the Customer.

Supplier: Aurora HVAC Ltd, a company incorporated in England and Wales with company number 10547679, whose registered office is at Eclipse House, 5 Somerset Place Lane, Plymouth, England, PL3 4BH.

Supplier Materials: has the meaning given in clause 10.1(h).

1.1 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its 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 includes email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and 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, at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 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 on the Supplier's website 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 that 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 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.7 Unless expressly agreed in writing by the Supplier, no Quotation issued by the Supplier includes or allows for any discount, rebate, allowance or deduction of any kind, whether arising from prior dealings, trade custom, course of conduct or otherwise.
- 2.8 These Conditions shall apply to all Orders subsequently placed by or on behalf of the Customer with the Supplier, whether in connection with the same or any other goods or services, unless expressly agreed otherwise by the Supplier in writing.
- 2.9 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.
- 2.10 For the avoidance of doubt, these Conditions constitute the sole and exclusive terms governing the relationship between the parties in respect of the Goods and/or Services provided in relation to any Quotation. Any terms or conditions contained in, referred to in, or sought to be imposed by either party, whether in a purchase order, acceptance, correspondence, portal, procurement process or otherwise, shall be of no effect and are hereby excluded, unless expressly incorporated into these Conditions by a written agreement signed by authorised representatives of both parties.

3. Quotations and Orders

- 3.1 Where the Customer wishes to place an Order with the Supplier, it shall submit a request for a quote to the Supplier either orally (e.g. over the phone), via email, or via the Supplier's website, setting out the details of the relevant Goods and/or Services required.
- 3.2 Further to the receipt of a request for a quote, pursuant to 3.1, above, the Supplier shall issue a quotation to the Customer, setting out an estimate of the Supplier's costs in respect of the Goods and/or Services requested (a "**Quotation**"). For the avoidance of doubt, any Quotation issued by the Supplier shall be valid for a period of thirty (30) Business Days from the date of the Quotation and the Supplier reserves the right to increase any prices included in the Quotation to account for increases in costs associated with labour, materials, transport and any other matters outside its control taking effect between the date of the Quotation and the Estimated Delivery Date. The Quotation shall be deemed accepted by the Customer either: (i) upon receipt by the Supplier of a purchase order from the Customer; or (ii) where the parties otherwise agree in writing that such Quotation has been accepted.
- 3.3 Each Order shall be deemed to be a separate offer by the Customer to buy Goods and/or engage the Supplier to provide the Services under these Conditions.

- 3.4 Unless expressly stated otherwise, a Quotation shall only cover the item/s requested and/or specified in the applicable Order and does not include any of the following (for whatever purpose they may be required): builders, masons, plumbers, painters, electricians or any other trade works, supply and erection of scaffolding ladders or removal of platforms, hoisting and/or lowering gear, off-loading and positioning equipment, fuel, wardrobe, gas or electric current, lighting, fees of district surveyor, insurance inspectors or any other inspecting or legal authority to include any legal fees in whatever form.
- 3.5 Upon confirmation of acceptance of the Quotation by the Customer, the Supplier shall issue a Quotation Confirmation to the Customer. No Order shall be deemed to be accepted by the Supplier until it issues a Quotation Confirmation, unless otherwise expressly agreed in writing between the parties.
- 3.6 For the avoidance of doubt, unless expressly stated otherwise, any Quotation provided is based on the Services being provided during normal Business Hours and any time worked by the Supplier's worker(s) outside of that will be subject to additional charges based on the Supplier's then current overtime charge out rates.
- 3.7 For the avoidance of doubt, the Supplier reserves the right to amend the Order 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/or Services, and the Supplier shall notify the Customer in any such event.

4. Supply of Goods

- 4.1 The Goods shall be as described in the applicable Quotation.
- 4.2 The materials and equipment included in the Quotation are selected from the Supplier's current merchant range as available at the time of supply. Where any such materials or equipment are no longer available, the Supplier reserves the right to make reasonable amendments to the specification by supplying materials or equipment of similar specification and quality.

5. Delivery of Goods

- 5.1 The Supplier shall arrange for the delivery of the Goods to the location set out in the Order or such other location as the parties may agree (the "**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.
- 5.2 Delivery of the Goods is completed on the completion of unloading of the Goods at the Delivery Location.
- 5.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 5.4 If the Customer fails to take delivery of the Goods within three (3) Business Days of the Supplier notifying the Customer that the Goods are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store, or otherwise procure the storage of, the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.5 If ten (10) Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage, selling and restocking costs (including a restocking charge of 25% of the value of the affected Goods) and any loss of profit incurred by the Supplier, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.6 The Goods may be delivered in instalments, to the extent applicable, and charges in respect of each such delivery instalment shall be invoiced in accordance with Clause 11. 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.

6. Quality of Goods

- 6.1 The Supplier shall have no liability for any defect, loss, damage, failure or reduction in performance of any Goods and/or Services to the extent arising from any modification, repair, adjustment, interference, misuse, relocation, maintenance or other work carried out by the Customer or any third party without the Supplier's express prior written approval.
- 6.2 Any warranty, guarantee or other obligation of the Supplier in respect of the Goods and/or Services shall automatically cease to apply where the Goods, or any works carried out by the Supplier, have been altered, tampered with, repaired, misused, modified or otherwise interfered with by the Customer or any third party without the Supplier's express prior written consent.
- 6.3 The Supplier gives no warranty or guarantee in respect of the Goods beyond those expressly set out in this clause 6 and makes no representation as to the continued availability, scope or terms of any manufacturer's, supplier's or third party guarantee or warranty. Any claim under such guarantee or warranty shall be subject to the terms and conditions imposed by the relevant manufacturer or third party.
- 6.4 To the extent that any Goods supplied are defective as a result of faulty manufacture, the Customer's sole remedy shall be under the relevant manufacturer's warranty or guarantee (if any), and the Supplier shall have no liability for such defects.

- 6.5 The Supplier may, at the Customer's request, arrange for the replacement and/or reinstallation of defective Goods; however, any such works shall be charged at the Supplier's prevailing rates for Additional Works, as notified to the Customer from time to time.
- 6.6 The Customer shall inspect the Goods promptly following delivery and/or installation (as applicable) and must notify the Supplier in writing of any apparent or alleged defects within three (3) Business Days of such delivery and/or installation. Failure to provide such notice within this period shall relieve the Supplier of any liability or obligation in respect of the actual or alleged defect, to the fullest extent permitted by law.
- 6.7 The Supplier shall have no liability to replace or reinstate any such defective materials or equipment free of charge. At the Customer's request, the Supplier may replace and install such defective materials or equipment, and any associated labour, transport and related costs shall be charged as additional Services in accordance with clause 10.
- 6.8 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. 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 Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 7.3 Until title to the Goods has passed to the Customer (to the extent that this does not occur prior to completion of delivery), 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 15.2(b) to clause 15.2(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 Customer's ongoing financial position.

8. Supply of Services

- 8.1 The Supplier shall supply the Services to the Customer in accordance with the standard of skill, care and diligence that would be reasonably expected from a skilled worker in the relevant industry. For the avoidance of doubt, no warranty is given as to the materials, fixtures, fittings or equipment themselves, save to the extent expressly stated in the Contract or provided by the relevant manufacturer of the Goods provided.
- 8.2 Any tests or inspections requested by the Customer other than those normally carried out by the Supplier as part of the Services shall be subject to the Supplier's prior written agreement. Any additional costs incurred in carrying out such tests or inspections shall be charged to the Customer as Additional Works in accordance with clause 9.
- 8.3 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

9. Additional Works

- 9.1 Any services or works requested by the Customer, or otherwise carried out by the Supplier, other than those set out in the relevant Order shall be deemed Additional Works.
- 9.2 The Supplier shall calculate costs associated with any Additional Works on a "day work" basis, being the total duration commencing from departure of the Supplier's worker(s) from the Supplier's premises and concluding upon return to those premises following completion of the Additional Works. Accordingly, all travel time to and from the Supplier's premises shall be chargeable at the relevant worker(s)'s prevailing hourly rates.
- 9.3 In addition to those costs set out in clause 9.2, the following costs and/or charges shall be included in the calculations in respect of any Additional Works, where applicable:
- (a) Materials (including any additional Goods) shall be charged at the relevant manufacturer's recommended selling price in respect of such materials, plus the Supplier's customary percentage increase as at the date of the Additional Works, details of which shall, where possible, be provided by the Supplier prior to supplying any Additional Works, to account for overheads relating to such Additional Works,;
 - (b) any transport required for the Additional Works (including delivery of additional Goods etc.) shall be charged at the Supplier's then standard rate for transport; and
 - (c) any travel time required of the Supplier's worker(s) in order to collect any materials that may be required in order to provide the Additional Works shall be charged at the Supplier's then current charge out rate for travelling time and transport.
- 9.4 The Supplier shall supply the Additional Works in accordance with the standard of skill, care and diligence that would be reasonably expected from a skilled worker in the relevant industry.

10. Customer's obligations

10.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in any request for a quotation, the purchase order, or otherwise in any other documentation or correspondence provided to the Supplier is complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its worker(s), agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and at all times maintain all necessary licences, permissions and consents that may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment and tools, documents, data and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (i) comply with any additional obligations as may be agreed between the parties from time to time; and
- (j) comply with all applicable laws, statutes, regulations, by laws, orders, directions and requirements of any governmental, local authority or other competent body in connection with the Goods and Services, and that it has lawfully obtained and will maintain all licences, permits, approvals and consents required for the carrying out of the works and the performance of the Services.

10.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of 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 may suspend performance of the Services until the Customer remedies the Customer Default, and 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 Customer's failure or delay to perform any of its obligations as set out in this clause 10.2; 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 including, but not limited to, the cost of any time spent by the Supplier's personnel in attending the Customer's premises but otherwise being unable to carry out the Services as a result of the Customer Default. Such time to be charged at the Supplier's then current rates in addition to any charges otherwise payable under the Contract.

11. Charges and payment

11.1 The price for the Goods:

- (a) is the price set out in the Quotation; and
- (b) excludes the costs of packaging, insurance and transport of the Goods, which shall be calculated on the basis of the Supplier's current rates for delivery, as specified in the Order and invoiced to the Customer.

11.2 Any Goods manufactured, modified or procured specifically to the Customer's requirements and/or specification (the "Bespoke Goods**") shall be subject to a non-refundable advance payment equal to 50% of the price of the Goods, as set out in the Quotation. The advance payment for the Bespoke Goods shall be payable in accordance with the payment terms of these Conditions, and the Supplier shall have no obligation to procure the manufacture of the Bespoke Goods until such payment has been received.**

11.3 The charges for the Services shall be as agreed between the parties and as set out in the relevant Order.

11.4 The Supplier shall notify the Customer of any additional charges incurred by the Customer (including in respect of any Additional Works and/or overtime charges) and shall invoice the Customer separately for such charges.

11.5 The Supplier shall invoice the Customer for all applicable charges incurred under this Contract and the Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice for Goods delivered or Services (or other applicable works) completed; or
- (b) within 7 days of the date of the invoice for all monthly progress and/or interim payments

in full and in cleared funds to a bank account nominated in writing by the Supplier or as otherwise specified on the invoice.

11.6 In respect of the Goods, the Supplier may invoice the Customer on or at any time before the completion of delivery of the Goods, provided that:

- (a) where the Goods are expressly described and priced in the Order, the Supplier may invoice for such Goods on a fixed price or interim payment basis as specified in the Order; and

- (b) where the Goods are not expressly described and priced in the Order, including any additional, replacement, provisional, bespoke or variation items supplied in connection with the Services, the Supplier may invoice for such Goods on a time and materials basis or an interim payment basis.
- 11.7 In respect of the Services (including any Additional Works), the Supplier shall be entitled to invoice the Customer:
 - (a) before or on completion of the Services, or at such other intervals as the Supplier may determine; or
 - (b) on the basis of monthly and/or interim progress updates, as agreed between the parties.
- 11.8 The Supplier reserves the right to:
 - (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index;
 - (b) 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:
 - (i) 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);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - (iii) 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.
- 11.9 Where Goods or materials have been manufactured, assembled or procured by the Supplier to meet the Customer's specific requirements and delivery or collection is prevented, delayed or deferred for any reason not attributable to the Supplier, the Supplier shall be entitled to invoice the Customer and the Customer shall pay the relevant charges as if delivery or collection had taken place, together with any cancellation, restocking, storage or other costs incurred by the Supplier in connection with such Goods or materials.
- 11.10 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 Goods or Services or both, as applicable, at the same time as payment is due for the supply of the Goods or Services.

- 11.11 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 this Contract, 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 11.11 will accrue each day at 8% a year above the Bank of England's base rate from time to time.
- 11.12 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).
- 11.13 Without prejudice to any other right or remedy available to it, where the Customer fails to make any payment due under the Contract by the applicable due date, the Supplier shall be entitled to exercise the following rights in the order set out below:
- (a) The Supplier may withhold or restrict the performance of any further Services (including Additional Works) or deliveries of Goods and may require the Customer to provide payment security for future amounts due under the Contract, in a form and amount reasonably acceptable to the Supplier, as a condition of continuing performance.
 - (b) If the Customer's failure to make payment continues, the Supplier may suspend the provision of the Services and/or the delivery of any Goods until payment of all outstanding sums has been made in full.
 - (c) Where non-payment continues following suspension, the Supplier may, by written notice to the Customer, terminate or abandon the Contract in whole or in part.
 - (d) Upon suspension, termination or abandonment under this clause 11, the Supplier may remove from the site any unfixed Goods, materials, equipment or construction plant supplied by it and may recover, store and resell such Goods or materials, applying the proceeds of sale towards the sums due from the Customer (after deduction of reasonable costs of recovery, storage and sale).
 - (e) The Supplier shall not incur any liability to the Customer for any loss, delay or damage arising as a result of the lawful exercise of its rights under this clause 11.
- 11.14 If the Customer pledges, charges or otherwise deals with any Goods in breach of the Supplier's retention of title, all sums owing by the Customer to the Supplier under the Contract shall immediately become due and payable, without prejudice to any other rights or remedies of the Supplier.
- 11.15 For the avoidance of doubt, the Supplier's entitlement to payment under the Contract is not conditional upon the Customer receiving payment from any third party, and the Customer shall not withhold or delay payment by reason of any dispute, delay or non-payment under any other contract or arrangement.

12. Intellectual property rights

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier, unless otherwise agreed in writing between the parties.

- 12.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier, as may be needed, for the term of the Contract for the purpose of providing the Services to the Customer.

13. Data protection

- 13.1 The following definitions apply in this clause 13:

- (a) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*).
- (b) **UK GDPR:** has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 13.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

- 13.3 The parties acknowledge that for the purposes of the Data Protection Legislation, each party shall be a Controller (as defined in the Data Protection Legislation) in respect of any Personal Data (as defined in the Data Protection Legislation) processed under this Contract.

14. Limitation of liability

- 14.1 References to liability in this clause 14 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence) or otherwise.

- 14.2 The Supplier shall not be liable to the Customer for any loss of or damage to the Goods howsoever occurring after delivery to the Customer or to the Delivery Location.

- 14.3 The Customer shall insure, or procure the insurance of, the Goods and such materials as may be provided further to the provision of the Services against loss or damage by fire and allied perils for their full replacement value. The Supplier shall not be responsible for loss or damage caused by fire except to the extent that such loss or damage arises directly from the Supplier's proven negligence and is not recoverable under the insurance required to be maintained by the Customer.

- 14.4 The Customer shall indemnify the Supplier against any uninsured losses suffered by the Supplier arising out of fire damage to the Goods or any materials provided further to the provision of the Services, to the extent such risk is allocated to the Customer under this clause 14.

- 14.5 Nothing in the Contract limits any 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);
 - (d) defective products under the Consumer Protection Act 1987;
 - (e) any liability that legally cannot be limited; or
 - (f) the Customer's payment obligations under the Contract.
- 14.6 If, after delivery to the Delivery Location, any Goods are damaged, destroyed or stolen (whether fixed or unfixed and whether by fire, flood, storm, theft, accident or otherwise), the Supplier shall be entitled to full payment in respect of the cost of replacing such materials and for reinstating or restoring any such Goods.
- 14.7 Any replacement, reinstatement or making good of such loss or damage shall constitute additional chargeable work and shall be carried out only upon the Customer issuing instructions, which shall be valued and charged in accordance with the terms of this Contract.
- 14.8 Subject to clause 14.5, the Supplier's aggregate liability to the Customer arising out of or in connection with an Order shall not exceed 100% of the charges paid or payable under the Order giving rise to the claim.
- 14.9 Subject to clause 14.5, the following types of loss are wholly excluded:
 - (a) loss of profits (including loss of anticipated savings);
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of use or corruption of software, data or information;
 - (e) loss of or damage to goodwill; and
 - (f) indirect or consequential loss.
- 14.10 Without prejudice to clause 14.3, the Customer shall insure, in the joint names of the Customer and the Supplier, against loss or damage to:
 - (a) existing structures (together with their contents for which the Customer is responsible);
 - (b) all unfixed materials and goods intended for, delivered to, placed on or adjacent to the works, against risks including fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them, riot and commotion.
- 14.11 If any loss or damage insured under this clause occurs, the Customer shall issue instructions for the reinstatement and making good of such loss or damage, which shall be valued and charged as Additional Work in accordance with the Contract.
- 14.12 The parties agree that the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.13 This clause 14 shall survive termination of the Contract.

15. Termination

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract for convenience by giving the other party not less than a months' written notice.

15.2 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 7 days after being notified in writing to do so;
- (b) the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 15.2(b);
- (c) the other party suspends or ceases, or threatens to suspend or cease carrying on 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.

15.3 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:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

15.4 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 15.2(b) to clause 15.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16. Consequences of termination

16.1 On termination or expiry of the Contract, the Customer shall:

- (a) immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods and/or 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; and

- (b) return all of the Supplier Materials 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 shall not use them for any purpose not connected with the Contract.

16.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies, that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

17. Confidentiality

17.1 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 17.2.

17.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 17; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 No party may 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.

18. Force majeure

The Supplier shall not be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 30 days, the Supplier may terminate the Contract by giving five (5) Business Days' written notice to the affected party.

19. General

19.1 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, provided that it gives prior written notice of such dealing to the Customer.

- (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.

19.2 **Notices.**

- (a) Any notice or other communication given or purported to be given by either party under or in connection with the Contract or any quotation shall be in writing and shall be deemed to have been duly served if sent by the sending party by pre-paid post to the receiving party at its registered office (if a company) or principal place of business (if not), or to such other address as that party may have notified in writing as its last known address for the purposes of the Contract.
- (b) Where a notice is sent by pre-paid first-class post or other next working day delivery service, it shall be deemed to have been received in the ordinary course of post and, in any event, on the second Business Day after posting, whether or not it is actually received.
- (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.

19.3 **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 19.3 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.

19.4 **Waiver.**

- (a) Except as set out in clause 2.9, 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 does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

19.5 **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.

19.6 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause 19.6 shall limit or exclude any liability for fraud or fraudulent misrepresentation.

19.7 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.

19.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19.9 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.

19.10 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.