



# **BUSINESS TERMS AND CONDITIONS**

**Climate Energy Group**

**(Climate Electrical Ltd & Climate  
Plumbing & Heating Ltd)**

**The Customer's attention is particularly drawn to the provisions of clause 9 – Limitation of Liability**

## **1. INTERPRETATION**

1.1 Definitions. In these Conditions, the following definitions apply:

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

**Charges:** the charges payable by the Customer for the supply of the Goods and/or Services as detailed in clause 6 of these Conditions.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.8.

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

**Credit Limit:** a monetary limit which has been imposed by the Supplier upon the Customer in respect of the Goods and/or Services which will be provided before receiving payment from the Customer and confirmed in writing by the Supplier.

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

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

**Delivery Location:** the location set out in the Order or such other location as the parties may agree in writing.

**Force Majeure Event:** has the meaning given to in clause 12.1.

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

**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 and/or Services, as set out in the Order Form.

**Order Form:** the order form including but not limited to details of the Goods and/or Services and Charges.

**Services:** the services, including any Supplier Materials and Deliverables, supplied by the Supplier to the Customer as per the Order Form.

**Software:** the computer programmes used by the Customer during the provision of the Services.

**Specification:** the description or specification of the Goods and/or Services provided in writing by the Supplier to the Customer.

**Supplier:** [ ] registered in England and Wales with company number [ ].

**Supplier Materials:** has the meaning set out in clause 5.1(g)

## **2. BASIS OF CONTRACT**

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

2.2 The Order shall only be deemed to be accepted when the Supplier issues to the Customer a countersigned Order Form at which point and on which date the Contract shall come into existence (Commencement Date).

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.

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

2.5 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.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.7 All these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### **3. SUPPLY OF GOODS**

3.1 The Goods are described in the Order Form.

3.2 The Supplier reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements.

3.3 The Supplier shall deliver the Goods to the Delivery Location at any time after the Supplier notifies the Customer that the Goods are ready.

3.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

3.5 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.

3.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

3.7 If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

3.8 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.

3.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3.10 The Supplier warrants that on delivery, and for a period of 6 months from the date of delivery (Warranty Period), the Goods shall:

- (a) conform in all material respects with the Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

3.11 Subject to clause 3.13, the Supplier shall at its option, repair or replace the defective Goods or refund the price of the defective Goods in full if:

- (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.10;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.

3.12 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 3.10 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 3.11;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

3.13 Except as provided in this clause 3, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 3.10.

3.14 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 3.11.

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

3.16 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;
- (b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due; and
- (c) any other sums due to the Supplier by the Customer including (but not limited to) any amounts payable in respect of any Services supplied by the Supplier.

3.17 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 on the Supplier's behalf from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(l); and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

3.18 If before title to the Goods passes to the Customer:

- (a) the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(l); or
- (b) the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly,

then, provided 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.

3.19 If the Goods are recovered under clause 3.18 the Supplier shall be entitled to recover any and all of its losses arising as a result of such recovery

## 4. SUPPLY OF SERVICES

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

4.2 Where the Services fail to comply with clause 4.1 the Supplier will, at its option, provide a full refund or re-perform the Services to comply with the clause 4.1, provided that:

(a) the Customer informs the Supplier in writing within 10 Business Days of completion of the Services that the Services do not comply with clause 4.1; and

(b) the Customer gives the Supplier a reasonable opportunity to investigate any allegedly defective Services.

4.3 The terms of these Conditions will apply to any re-performed Services.

4.4 The Supplier will not be liable for any failure of any Services to comply with clause 4.1 to the extent that such failure is:

(a) caused by the Customer's failure to comply with the Supplier's instructions in relation to the Services;

(b) caused by the Supplier following any specification or other document supplied by or instruction from the Customer;

(c) caused by the Customer altering the Services or the results of the Services without the Supplier's prior written agreement; or

(d) caused by the Customer using the Services or the results of the Services after notifying the Supplier that the Services do not comply with clause 4.1.

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

4.6 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.

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

## 5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides to the Supplier are complete and accurate;

- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier and at the times agreed by the Supplier;
- (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 accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start including (but without limitation) any consents from any third parties which are required for the Supplier to have lawful access to the premises in which the Services and/or Goods are to be delivered/provided; and
- (g) 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.

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

- (a) without limiting or affecting any other rights or remedy available to it, 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; and
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 5.2.

5.3 The Customer shall indemnify and keep indemnified the Supplier in full against any and all costs, claims, threatened claims, demands, charges, penalties, interest, liabilities, expenses, losses and fees (including without limitations, legal and other professional fees on a full indemnity basis), actions proceedings, agreements awards and damages, suffered or incurred by the Supplier arising as a result, direct or indirectly, out of or in connection with clause the Customer's breach of clause 5.1 or a Customer Default.

## **6. CHARGES AND PAYMENT**

6.1 Subject to clauses 6.2 to 6.7, the Charges for the Services shall be as set out in the Order.

6.2 The Supplier reserves the right to increase the Charges in the event that:

- (a) the Customer requests additional work to be undertaken in addition to the Services; and/or

(b) the scope of the Services goes beyond what was anticipated by the Supplier at the outset of the Contract.

6.3 Where the Customer wishes to change the scope of the Services under clause 6.2(a), the additional Services and related additional Charges shall be agreed by the Customer and the Supplier by completing and signing such documentation as is utilised by the Supplier from time to time.

6.4 Where the Supplier wishes to change the scope of the Services under clause 6.2(b), it shall notify the Customer in writing of the additional Services required and related additional Charges.

6.5 Where an increase in the Charges under clause 6.4 is not acceptable to the Customer, the Customer shall notify the Supplier in writing within 1 week of the date of the Supplier's notice and the Supplier shall have the right, without limiting its other rights or remedies, to terminate the Contract by giving 4 weeks' written notice to the Customer provided always that the Supplier will be under no obligation to carry out any additional work to which the notice relates.

6.6 The Supplier shall be entitled to charge overtime at rate of time and a half in the event the Supplier is requested by the Customer to work outside the hours of 8.00 am and 5.00pm and such overtime will be paid in addition to the Charges.

6.7 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

6.8 Subject to clauses 6.9, the Charges for the Goods will be as set out in the Order.

6.9 The Supplier shall be entitled to increase the Charges for the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

6.10 The Supplier shall invoice the Customer when the Supplier deems appropriate unless otherwise agreed by the Customer and the Supplier.

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

- (a) within 30 days of the date of the invoice (unless such other timeframe is agreed in writing by the Supplier with the Customer); and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier or by any other method as agreed with the Supplier

and time for payment shall be of the essence of the Contract.



6.12 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.13 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

6.14 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, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6.15 In the event a Credit Limit is in place the Supplier reserves the right to suspend all Services and/or delivery of any Goods in the event the Credit Limit has been reached and/or exceeded and the Supplier shall be under no obligation to provide any further Services and/or Goods until such time that the Customer has paid to the Supplier an amount equal to the Credit Limit and in the event the Customer fails to pay such an amount within 14 days the Supplier shall be entitled to (but not obliged to) terminate the Contract without limiting its other rights or remedies.

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier, including all Intellectual Property Rights in the Software.

7.2 All Software is password protected for the purposes of protecting the Intellectual Property Rights belonging to the Supplier.

7.3 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 on 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.

7.4 The Customer shall not sub-license, assign or otherwise transfer any rights granted by clause 7.2.

7.5 The Supplier grants the Customer a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the Intellectual Property Rights referred to in clause 7.1 above in so far as they are required in relation to the provision of the Services.

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

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

## **8. CONFIDENTIALITY**

8.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, products, services, customers, clients or suppliers of the other party except as permitted by clause 8.2. Confidential information shall include but not be limited to technical or commercial know-how, specifications, inventions, processes or initiatives.

8.2 Each party shall restrict disclosure of confidential information:

- (a) to such of its employees, agents or subcontractors as need to know it for the purpose of discharging that 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 that party; and
- (b) to that as required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 No party shall use the 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.

8.4 This clause 8 shall survive termination of the Contract.

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

9.1 Nothing in this Contract 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;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

9.2 Subject to clause 9.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

- (a) loss of profit;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; or
- (g) indirect or consequential loss

arising under or in connection with the Contract.

9.3 Subject to clause 9.1, 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 the amount paid by the Customer to the Supplier for the Services and/or Goods provided by the Supplier.

9.4 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.

9.5 This clause 9 shall survive termination of the Contract.

## 10. TERMINATION

10.1 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:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of the breach;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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 14 days;
- (g) 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);
- (h) 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;

- (i) 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;
- (j) 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 clause 10.1(b) to clause 10.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) 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; or
- (m) 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.

10.2 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.

10.3 In the event the Services being provided by the Supplier involve on-going maintenance and/or support to the Customer then without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 3 months' written notice. For the avoidance of doubt, this clause 10.3 shall not apply to any Contracts for Services which do not involve on-going maintenance and/or support.

10.4 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 clause 10.1(b) to clause 10.1(l), 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.

## **11. CONSEQUENCES OF TERMINATION**

11.1 On termination or expiry 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 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;
- (b) the Customer shall return all of the Supplier Materials, the Deliverables and any Goods which have not been fully paid for. If the Customer fails to return the Supplier Materials and any unpaid for Goods, then the Supplier may enter the Customer's premises or any end users premises and take possession of them. Until they have been returned, the Customer or end user shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- (c) 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
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 12. GENERAL

### 12.1 Force majeure

- (a) 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, pandemic, 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.
- (b) 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.
- (c) If a Force Majeure Event prevents the Supplier from providing any of the Goods and/or Services for more than 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.

### 12.2 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 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.
- (b) 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.

### 12.3 Notices

- (a) 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.
- (b) This clause 12.3 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.

### 12.4 Waiver

- (a) 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.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative.

### **12.5 Severance**

- (a) 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.
- (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.

### **12.6 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.

### **12.7 Third parties**

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

### **12.8 Variation**

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

### **12.9 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.