



Terms & Conditions – Mill Hill Heavy Engineering Ltd

1 General

1.1 In these Terms the following expressions shall have the following meanings:

'Additional Documentation' means the documents listed within the relevant part of the Quotation, relating to the Goods and/or Services;

'ADR Notice' shall take the meaning given to it in clause 16.1;

'Authorised Representative' means the individual(s) named in the Quotation as such or otherwise an individual who signs the Quotation;

'Business Day' means any day which is not a Saturday, Sunday or public holiday in England; **'Change Control Request'** means a request in writing from the Customer to the Company to vary the Quotation after it has been accepted and for reasons otherwise than those provided for in these Terms;

'Company' means the company whose details are set out in the 'Company Details' section of the Quotation;

'Contract' means the legally binding contract between the Customer and the Company, comprising of the Quotation and these Terms and any other documents specifically referred to therein;

'Customer' means the person, firm or company with whom the Contract is made by the Company, whether directly or indirectly through an agent or factor who is acting for, instructed by or whose actions are ratified by such person, firm or company;

'Delay Rate' means the rate specified within the Quotation, chargeable by the Company to the Customer in accordance with clause 3.5;

'Delivery Address' means the address set out in the Quotation at which delivery of the Goods takes place in accordance with clause 5;

'Dispute' and **'Dispute Notice'** shall take the meanings given to them in clause 16.1;

'Errors' shall take the meaning given to it in clause 2.4;

'Expert' shall take the meaning given to it in clause 16.1;

'Free Issue Materials' any materials, items, tools, fixtures and fittings made available to the Company by the Customer (or a third party acting on its instructions) on a 'free issue basis' and including any items provided on loan to the Company.

'Goods' means the articles, items or products or any of them referred to in the Quotation and where applicable, more particularly detailed within the Specification to be supplied by the Company to the Customer;

'Further Documentation' takes the meaning given to it in clause 2.3;

'Import Laws' shall take the meaning given to it in clause 5.2;

'Loss' means any charges, claims, costs, damages, demands, expenses, fees, liabilities and losses;

'Normal Business Hours' means 09:00 to 17:00 (inclusive) on a Business Day;

'Offer' shall take the meaning given to it in clause 2.1;

'Order Acknowledgement' means the document issued to the Customer by the Company in accordance with clause 2.1, signifying its acceptance of the Offer.

'Premises' means the premises (if any) which the Customer has the right to access (whether as owner or tenant) and which the Company will need to access for the purposes of performing its obligations under this Contract;

'Price' means the price for the Goods and/or Services as set out within the Quotation; **'Quotation'** means the information supplied in the document headed as such and to which the Specification and any Additional Documentation are incorporated and which if accepted together with these Terms form the Contract. A document only forms part of the Quotation if it is annexed to it and specifically referred to therein;

'Quotation Date' means the date stated on the Quotation;

'Revised Quotation' shall take the meaning given to it in clause 8.1;

'Services' means the services referred to in the Quotation and where applicable, more particularly detailed within the Specification to be supplied by the Company to the Customer; **'Specification'** means the document annexed to the Quotation and headed as such within which particulars of the Goods and/or Services to be provided to the Customer by the Company are detailed;

'Storage Fee' means the daily fee specified within the Quotation, chargeable by the Company to the Customer in accordance with clause 9.4;

'Terms' means these terms and conditions;

'Transfer' shall take the meaning given to it in clause 18.1; and

'VAT' means value added tax at the rate in England as at the date on which the Company issues its invoice to the Customer.

- 1.2 Unless the context otherwise requires reference to any clause sub-clause or schedule is to a clause sub-clause or schedule (as the case may be) of or to this Contract.
- 1.3 Headings contained in this Contract are for reference purposes only and shall not be incorporated into this Contract and shall not be deemed to be any indication of the meaning of the clauses and sub-clauses to which they relate.
- 1.4 Reference to any Act, statutory instrument or other instrument shall include references to such instrument as amended, re-enacted or consolidated from time to time and also to any subordinate instrument made under it.
- 1.5 All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this Contract shall include all genders and the plural and the successors in title to the parties.
- 1.6 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression or followed by the terms "or otherwise", "or any other", "or any similar", "or any analogous" or any cognate expression shall be construed as illustrative and shall not limit the sense of the words following or preceding such terms. The word 'agreed' shall include 'deemed acceptance'.

2 Formation of Contract

- 2.1 The Quotation is an offer by the Company to the Customer to supply the Goods and/or Services in accordance with these Terms and shall remain valid for 14 days from the Quotation Date (**'the Offer'**). For the avoidance of doubt, if the Customer does not make an offer within 14 days, the Quotation shall be deemed to have expired. If the Company accepts the Offer then it shall issue the Order Acknowledgement at which point the Contract shall be deemed to have come into force.
- 2.2 In the case of there being any inconsistency between the Quotation and these Terms, the Quotation shall be deemed to take precedence. Any concession made or latitude allowed by the Company to the Customer shall not affect the strict rights of the Company under this Contract. If in any particular case any of these conditions shall be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.
- 2.3 The Customer shall, in addition to the Additional Documentation, supply the Company at its own expense with any and all necessary documents, drawings or other materials, data or other information relating to the Goods and/or Services to be supplied by the Company which the Company requests or which a reasonable business person in the same position as the Customer would reasonably consider that the Company may require in connection with the supply of the Goods and/or Services (**'Further Documentation'**) and shall provide the Company with the Further Documentation immediately upon becoming aware of its existence. In providing any Further Documentation to the Company, the Customer:
- 2.3.1 warrants that they are accurate and up to date in all respects; and
- 2.3.2 acknowledges and agrees that the Company may make any appropriate adjustments to the Quotation (including but not limited to the Price) that it deems necessary, where the Further Documentation is provided to the Company after the Quotation Date.

- 2.4 Where there are any errors and/or omissions (**'Errors'**) in the Quotation, the Customer must notify the Company of this fact, together with full particulars of any such errors prior to entering into the Contract.
- 2.5 The Customer may only cancel a Contract within 1 Business Day of it being formed. In the event that:
- 2.5.1 any Services have been performed then the Company may charge the Customer for such proportionate level of the Price as it deems necessary at its absolute discretion;
 - 2.5.2 delivery of the Goods (which it holds as stock items) has not taken place in accordance with clause 5 then the Company shall not make any charges to the Customer;
 - 2.5.3 delivery of the Goods (which it either does not hold as stock items or which are made to order or bespoke) has not taken place in accordance with clause 5 then the Company may charge the Customer for such proportionate level of the Price as it deems necessary at its absolute discretion;
 - 2.5.4 delivery of the Goods has taken place in accordance with clause 5, then the Customer shall be responsible for the cost and risk of returning the Goods and the Company may charge the Customer for such proportionate level of the Price as it deems necessary at its absolute discretion,

save that in the event of made to order or bespoke Goods, the Company reserves the right to refuse any cancellation of the Contract.

3 Supply of Goods and/or Services

- 3.1 It is not always the case that a survey will be required; however, if the nature of the Goods and/or Services to be supplied by the Company require a survey to be carried out, then the Company shall make arrangements for this to be undertaken and provide the Customer with a report thereafter.
- 3.2 In the event that the results of a survey or (where a survey has not taken place) any unforeseen circumstances make it clear that:
- 3.2.1 the Goods and/or Services required are in excess of or more complicated than that set out in the Quotation and this could not reasonably have been foreseen at the Quotation Date; and/or
 - 3.2.2 there are substantial technical, structural or practical reasons why the result or purpose to be achieved by the provision of the Goods and/or Services will not be achieved,

then the Company may make any adjustment to the Quotation and in doing so, the process set out in clause 9.2 above shall be followed. In the event that any adjustments to the Quotation are not agreed to then the Company may terminate the Contract on immediate notice.

- 3.3 The provision of the Goods and/or Services may be divided into a number of stages and shall be provided by the Company using reasonable care and skill. The Company shall manufacture and supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.
- 3.4 The Company shall use reasonable endeavours to meet any projected dates, timescales and deadlines for completion of the Goods and/or the Services but for the avoidance of doubt time for delivery or the completion of the provision of the Goods and/or Services (or any particular part of them) shall not be of the essence.
- 3.5 Where and to the extent that the Company needs to access the Premises, the Customer shall facilitate the Company's unobstructed, non-limited, secure and safe access to and around and egress from the Premises.

3.6 The Customer warrants and undertakes that:

- 3.6.1 any Free Issue Materials shall be delivered on or before any projected date for delivery of them to the Company; and
- 3.6.2 as at the date of delivery of any Free Issue Materials have been assessed for suitability by the Customer and shall be of the best quality, new, manufactured, engineered, supplied and tested in accordance with best industry practice, damage and defect free and remain so for such period of time as the same are required to be used by the Company and subsequently by the Customer following supply,

and that in the event that the Company is unable to perform or delayed in the performance of its obligations under this Contract as a result of a breach of warranty above, it shall not be liable to the Customer or any third party in any way as a result and the remedy of any such breach shall be at the Customer's cost.

3.7 In the event of any damage to or destruction of the Free Issue Materials caused by the Company, the Customer shall, at the Company's absolute discretion be required to replace them and supply replacement Free Issue Materials to the Company either:

- 3.7.1 free of charge and in which case and for the avoidance of doubt, the Company shall not be liable to the Customer whatsoever; or
- 3.7.2 for a sum equivalent to the replacement cost price of the Free Issue Materials and in which case and for the avoidance of doubt, the Company shall not be liable to the Customer for a sum exceeding that amount; and

save to the extent that the Company shall repeat performance of its Services in relation to the Free Issue Materials at no additional cost.

3.8 The Customer agrees that the Company will not be liable for any failure to perform its obligations under this Contract where such non-performance arises out of or in connection with the Customer's failure or delay to comply with this Contract and in such circumstances, the Customer agrees and acknowledges that the Company charge the Delay Rate for each day (or part day), for which the Company is prevented or delayed from performing its obligations as a result of the Customer's failure or delay.

4 The Customer's Obligations

4.1 The Customer acknowledges and agrees that it shall be required:

- 4.1.1 to remove any removable items from the areas of the Premises (if any) in which the Company requires access in order to perform its obligations under this Contract;
- 4.1.2 to obtain and upon request provide the Company with evidence of all necessary consents, permissions, approvals and licenses to enable the Company to perform its obligations under this Contract;
- 4.1.3 to enable the Company to leave any of its equipment at the Premises (where applicable) in a securely locked location; and
- 4.1.4 to comply as soon as reasonable practicable with all such other of the Company's requests from time to time.

4.2 The Customer warrants that it shall not conceal anything from the Company and that all information, measurements, facts and documentation provided by it to the Company are accurate and true and agrees that the Company shall not be liable in any way for any Loss caused by the Company's reliance on such information, measurements, facts and documentation or where the Customer has been found to have concealed anything from the Company.

5 Delivery

5.1 The Company shall make delivery of the Goods EXW Delivery Address (Incoterms 2010) and for the avoidance of doubt, delivery may be made in any number of instalments as the

Company deems necessary. Such partial shipments may be invoiced separately and shall be paid for when due, without regard to subsequent shipments. Delay in shipments or delivery of any particular instalment shall not relieve the Customer of its obligation to accept subsequent instalments.

5.2 In the event of delivery to an international destination, references to EXW Delivery Address (Incoterms 2010) in clause 5.1 above shall be substituted for FCA Delivery Address (Incoterms 2010) and the Customer acknowledges that the Goods may be subject to certain import costs, duties, taxes, levies and laws and regulations of the country for which the Goods are destined (**'Import Laws'**).

5.3 By entering into this Contract, the Customer warrants that it is aware of all such applicable Import Laws and that it shall be responsible for all associated import costs, duties, taxes and levies and that the Company does not have any control over these. The Company will not be responsible or liable for compliance with the Import Laws, nor if the Customer breaches any Import Law. The Customer agrees that it shall indemnify the Company for any Loss that the Company incurs as a result of any breach of the Import Laws.

6 Inspection and Rejection

6.1 The Customer acknowledges and agrees that as the point of delivery:

- 6.1.1 the Company has given the Customer a reasonable opportunity to inspect the Goods;
- 6.1.2 that the Customer has inspected the Goods;
- 6.1.3 that the Customer has satisfied himself as to the condition of the Goods;
- 6.1.4 that the Customer has satisfied himself as to the quantity of the Goods;
- 6.1.5 that the Company has not given any warranty or condition as to the quality or fitness for any purpose of the Goods;
- 6.1.6 that all conditions or warranties, express or implied (whether by statute or otherwise) including but not limited to sections 13 – 15 of the Sale of Goods Act 1979 are expressly excluded; and
- 6.1.7 that delivery of the Goods to the Customer shall be conclusive evidence that the Customer has examined the Goods and that the Goods are in conformity with the contract description, in good order and condition, of satisfactory quality and fit for any purpose to which they may be required.

6.2 In the event that:

- 6.2.1 the Goods are not delivered, the Customer must notify the Company within 10 days of the Company's advice/delivery note; or
- 6.2.2 the Goods are found to be defective and provided that the Customer has marked the Goods as having been received 'unexamined', the Customer must notify the Company within 3 days of delivery,

otherwise the Company shall reject any such claims made for non-delivery or defective Goods.

6.3 The Company shall not be liable for the Goods' failure to comply with this Contract in any of the following events:

- 6.3.1 the Customer makes any further use of those Goods after giving notice in accordance with clause 6.2;
- 6.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 6.3.3 the defect arises as a result of the Company following any drawing, design or Specification;
- 6.3.4 the Customer alters or repairs those Goods without the written consent of the Company;

- 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 6.3.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 If the Customer notifies the Company of a defect in the Goods in accordance with this clause 6 then the Company shall notify the Customer as to whether it wishes the Customer to return the Goods to it or whether it intends to come and inspect the Goods. The Company shall be entitled at its absolute discretion to:

- 6.4.1 repair or replace the Goods; or
- 6.4.2 provide an adequate level of refund to the Customer, with no

further liability to the Customer for the defective Goods.

6.5 The terms of this agreement shall apply to any repaired or replacement Goods supplied by the Company.

6.6 The rejection of a shipment of Goods shall not entitle the Customer to reject further consignments of Goods. Where the Customer rejects a part shipment of Goods the Customer shall not be entitled to reject all of the consignment of Goods or further consignment of Goods.

7 Passing of Title and Risk

7.1 Without regard to which party arranges or pays for insurance, from the time of delivery the Goods shall be at the risk of the Customer which shall be solely responsible for their custody and maintenance.

7.2 Unless otherwise expressly agreed in writing, title to the Goods shall remain with the Company and shall not pass to the Customer until all payments due under this Contract and any other contract or agreement between the parties have been made by the Customer to the Company in full (in cash or cleared funds) and unconditionally.

7.3 Until such time as title to the Goods has passed to the Customer, the Customer shall:

- 7.3.1 keep the Goods insured (with a reputable insurance company) to their full value comprehensively against anything required by law, all usual risks of loss, damage or destruction by fire, theft or accident, to cover any third party or public liability risks and such other risks as the Company may from time to time nominate and do so on the Company's behalf whereby and for the avoidance of doubt the Customer shall obtain an endorsement of the Company's interest in the Goods on its insurance policy;
- 7.3.2 use the Goods only for the purpose for which they were supplied;
- 7.3.3 store the Goods properly and separate and identifiable from all other goods in its possession so that they remain identifiable as the Company's possession;
- 7.3.4 maintain those Goods in satisfactory condition;
- 7.3.5 not sell the Goods on terms containing retention of title provisions any less stringent than those set out in this Contract and where it does so ensure that it obtains the express permission of its customer for the Company to enter onto any premises at which the Goods are located;
- 7.3.6 permit the Company unobstructed access to inspect the Goods and any policy of insurance at any time; and

within 1 Business Day of receipt of a request from the Company, provide the Company with evidence of its compliance with the obligations set out in this clause. Where the Customer fails to comply with the provisions of clause 7.3.1, the Company shall be entitled to effect and maintain such insurance and recover the cost of doing so from the Customer on an indemnity basis.

7.4 If before title to Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 13.1 (or the Company reasonably suspects that they may be due to become subject to any such events) or fails to make any payments due to the Company when they fall due, then, without limiting any other right or remedy:

7.4.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

7.4.2 the Customer agrees and acknowledges (or, as the case may be shall use its best endeavours to procure) that the Company may at any time:

7.4.2.1 require the Customer to deliver up all Goods; and/or

7.4.2.2 enter any premises of the Customer or of any third party without obstruction or hindrance (which for the avoidance of doubt shall permit the Company to break entry into any of the Customer's premises) where the relevant Products are stored to recover and resell them.

7.5 The Customer shall provide the Company with immediate written notice in the event of any loss, accident or damage to the Goods arising out of or in connection with its possession or use of the Goods prior to title in them passing to the Customer.

7.6 In the event of any resale by the Customer of the Goods the beneficial entitlement of the Company shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claim therefore shall be assigned to the Company and until and subject to such assignment shall be held on trust in a separate identified account for the Company by the Customer who will stand in a strictly fiduciary capacity in respect thereof.

7.7 Any powers granted to the Company in accordance with this clause are additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise. In the event that the Company, its agents or subcontractors are required to take any steps to take back possession of the Goods, the Customer shall indemnify the Company in respect of all costs incurred by it in exercising these rights.

8 Change Control Mechanism

8.1 Upon receipt of a Change Control Request the Company will within 10 Business Days produce a revised Quotation ('**Revised Quotation**') for the Customer in default of which the existing Contract shall apply without amendment.

8.2 Upon receipt of a Change Control Request the Company reserves the right to suspend work until a Revised Quotation has been accepted or declined by the Customer, in which case all estimated delivery dates may be altered as a result.

8.3 To accept the Revised Quotation the Customer shall sign and return the Revised Quotation to the Company and the Revised Quotation shall thereafter be the Quotation, provided that the Company shall be entitled to invoice the Customer for the Goods supplied or the Services already commenced under the original Quotation. For the avoidance of doubt, if the Customer does not sign and return the Revised Quotation within 10 Business Days of the date of the Revised Quotation, the Contract shall continue unamended in accordance with the original Quotation.

9 Price and Payment

9.1 The Price of the Goods or the Services shall be that stated in the Quotation save to the extent that it is adjusted in any way in accordance with these Terms.

9.2 In the event that the Company deems it necessary to make any appropriate adjustments to the Quotation in accordance with these Terms as detailed above, the Company shall notify the Customer in writing and unless the Customer notifies the Company of its rejection of such adjustment within 2 Business Days, the Customer shall be deemed to have accepted the adjustment in all respects. Where the Customer rejects the adjustment, it may only terminate

the Contract to the extent that it relates to the adjustment with the remaining (unaffected) parts of this Contract remaining in full force and effect.

9.3 Where the Customer fails to accept the Quotation within the specified period of time in accordance with clause 2.1, the Company reserves the right to adjust the Price and in doing so shall be deemed to have issued a new Quotation with the Quotation Date being amended accordingly and capable of acceptance by the Customer.

9.4 In the event that delivery fails to take place on an agreed date in circumstances where the Customer has failed to collect the Goods and such that the Company is required to store the Goods at its premises beyond any agreed timescale then the Company reserves the right to charge the Storage Fee for each day (or part day) for which it stores the Goods.

9.5 Unless otherwise specified in the 'Payment Terms' section of the Quotation, the Company shall issue the Customer with an invoice, in the case of:

9.5.1 Services, once the performance of the Services have been completed; or

9.5.2 Goods or Goods and Services, once delivery of the Goods has taken place,

and shall become due and payable by the end of the month within which the date falling 30 days from the date of the invoice falls. All monies due to the Company shall be paid in full without any set-off, counterclaim, withholding or other deduction. All invoices shall be paid via the method specified in the relevant invoice.

9.6 All sums payable under the Contract are, unless otherwise stated, exclusive of VAT, which is chargeable additionally. For the avoidance of doubt, if the rate of VAT changes between the date on which the Contract is formed and the date of the invoice, We will charge VAT at the new rate.

9.7 In the event that the Customer wishes to query or dispute any invoice then it must do so within 5 Business Days of the date of the invoice, otherwise it shall be deemed to have been accepted as correct and payable to the Company. In the event of any query or dispute being raised by the Customer about an invoice then this is without prejudice to the Customer's obligation to pay such invoice when it falls due. In circumstances where the Customer pays an invoice which it queries or disputes and the Company agrees that such query or dispute was justified then the Company shall issue a credit to the Company in respect of such payment within 5 Business Days of such agreement.

9.8 The Company may at any time and without notice to the Customer, set off any liability of the Company against any liability of the Customer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises or has arisen under this Contract. If the liabilities to be set off are expressed in different currencies, the Company may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

10 Late Payment

10.1 If the Customer fails to pay any money due to the Company on time, the Company may immediately cease to take orders from and to deliver Goods and/or Services to the Customer and thereafter impose whatever credit limit he considers appropriate in respect of their future dealings.

10.2 Without prejudice to any other rights it may have, the Company is entitled to charge interest on any overdue sum at the maximum rate specified by the Late Payment of Commercial Debts (Interest) Act 1998.

11 Liability and Indemnity

- 11.1 The Company shall not be liable to the Customer in contract, tort (including negligence), breach of statutory duty or otherwise for any Loss whatsoever incurred or suffered by the Customer of an indirect, special or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- 11.2 Except in the case of death or personal injury caused by the Company's negligence, the Company's liability under or in connection with this Contract, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the total sum of payments received by the Company from the Customer under this Contract during the preceding 12 month period provided that the Customer shall within 2 Business Days of becoming aware of such event, notify the Company in writing of the potential Loss that may result and the likely estimated cost of such Loss such that the Company is able to take the requisite steps in order to mitigate its potential liability.
- 11.3 The Company shall have no liability to the Customer for any Loss arising from any instructions or drawings supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non arrival, or any other fault or breach of its obligations by the Customer.
- 11.4 The Customer shall indemnify, keep indemnified and hold harmless the Company from and against any and all Loss, including that of an indirect, special or consequential nature and any economic loss or other loss of turnover, profits, business or goodwill whether arising in contract, tort (including negligence), breach of statutory duty or otherwise for breach of its obligations under this Contract.

12 Intellectual Property

- 12.1 The copyright, design right and all other intellectual property rights in any Goods, Services, materials and other documents or items prepared or produced for the Customer by or on behalf of the Company arising out of or in connection with this Contract shall belong to the Company absolutely and any such materials, documents or items shall be or remain the sole property of the Company.
- 12.2 The Customer shall be entitled to use as a licensee any such materials, documents or other items as are referred to in clause 12.1 above in connection with the Goods and/or Services but shall not be entitled to copy any such items or use them for any commercial purpose unless agreed otherwise in writing between the parties.

13 Termination by the Company

- 13.1 The Company shall be entitled to immediately terminate this Contract forthwith by notice in writing to the Customer on the occurrence of any of the following:
- 13.1.1 If the Customer goes into compulsory liquidation, ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, administrator or administrative receiver appointed over all or any part of its assets or undertaking, or enters into any composition or arrangement, with its creditors or makes any application for a moratorium under the terms of section 1A and Schedule A1 to the Insolvency Act 1986 as amended by the Insolvency Act 2000 or takes any similar action or suffers any other similar event or undergoes any process analogous to the foregoing in any jurisdiction throughout the world;
- 13.1.2 If the Customer (being an individual) is declared bankrupt or a petition is presented for his bankruptcy or (where the Customer is a partnership) any partner is declared bankrupt or a petition is presented for his bankruptcy;
- 13.1.3 If any distress is levied or threatened against any of the assets of the Customer;
- 13.1.4 If the Customer being a natural person dies or becomes mentally incapable;
- 13.1.5 If the Customer breaches any term of this Contract and if capable of remedy, the Customer fails to remedy that breach within 5 Business Days of a written notice being served by the Company to that effect;

- 13.1.6 If the Customer fails to make any payment by the due date for payment;
- 13.1.7 If the Customer makes changes to the order for Goods and/or Services which makes it impractical for the Company to perform; or
- 13.1.8 As otherwise provided for in these Terms.

13.2 In any circumstances in which the Company could terminate, it may at the discretion of the Company suspend the provision of the Goods and/or Services without prejudice to its right to terminate and without any liability to the Customer. In the event of the Company exercising its right to suspend, any agreed timescales and deadlines shall be deemed extended by such period of suspension.

14 Consequences of Termination

14.1 In the event of this Contract howsoever arising:

- 14.1.1 any accrued rights, remedies, obligations and liabilities of the Company as at termination shall not be affected, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and
- 14.1.2 the Company may issue an invoice in respect of any work undertaken under this Contract for which it has not already;
- 14.1.3 the Customer shall immediately pay to the Company all arrears of payments and any other sums due under the terms of the Contract;
- 14.1.4 the Customer shall destroy or, at the request of the Company, return all information and materials belonging to the Company and shall not retain any copies of the same unless otherwise agreed.

14.2 Those terms which by implication are to remain in full force and effect following the termination of this Contract shall continue to have such effect.

15 Variations

15.1 No variations in the work or Goods or Services to be supplied shall be made except by agreement in writing between the Company and the Customer. Unless verbal or telephone orders or any other variation to the Quotation is confirmed in writing by the Customer, the Company shall not be responsible for errors or subsequent misunderstandings.

15.2 The Company reserves the right to amend any design or incorporate any modifications or improvements in the work which maybe found necessary to give proper effect to the intended outcome or otherwise by operation of law.

15.3 No variation of this Contract shall be valid unless made in writing and signed by the Authorised Representatives of each party.

16 Force Majeure

If the Company's performance of this Contract or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the Company it shall be excused from performance to the extent of the prevention, restriction or interference, but the Company shall use its reasonable endeavours to avoid or remove the causes of non-performance and shall continue performance under this Contract whenever such causes are removed or diminished providing it shall be capable of doing so within one month of the date the relevant circumstances beyond its control arose. If the period of one month should expire, the Company may serve immediate notice on the Customer of the immediate termination of this Contract.

17 Status

Nothing in this Contract shall be deemed to constitute a partnership or joint venture between the parties, nor constitute either party becoming in any way the agent of the other party for any purpose.

18 Transfer

- 18.1 The Company reserves the right to assign, transfer, mortgage, charge, sub-contract or deal in any other manner ("**Transfer**") with all or any of its rights and/or obligations under this Contract without the prior written consent of the Customer.
- 18.2 This Contract is personal to the Customer which may not without the Company's prior written consent Transfer all or any of its rights conferred and/or obligations under this Contract.

19 Third party rights

No person other than the Company, any person to whom the Company assigns the Contract and the Customer shall acquire any enforceable rights under or in connection with this Contract in accordance with the Contracts (Rights of Third Parties) Act 1999.

20 Entire Contract

- 20.1 The Contract sets out the entire agreement between the parties in connection with its subject matter and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral.
- 20.2 Neither party has entered into the Contract in reliance on any warranty, representation of statement made by the other which is not set out in the Contract.

21 Waiver

The failure or delay of the Company at any time or times to require performance of any provision hereof shall not affect the Company's right to enforce such provision at a later time. No waiver by the Company of any conditions or the breach of any term, covenant, representation or warranty contained in this Contract in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or be deemed to be or construed as a waiver of the breach of any other term, covenant, representation or warranty in this Contract.

22 Severance

In the event that any provision of this Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, without prejudice to the validity or enforceability of the remainder of the Contract, that provision or part provision shall, to the extent required, be modified or deleted to give full effect to the intentions of the parties or if not agreeable, to the extent necessary to give the provision or part provision legal, valid or unenforceable.

23 Costs

The parties shall pay their own costs in connection with the negotiation, preparation and implementation of this Contract or any contract or agreement incidental to or referred to in this Contract.

24 Notices

- 24.1 Any demand, notice, request or other document produced in relation to this Contract given shall be in writing and may be served:
- 24.1.1 personally, by recorded delivery mail to the address specified in this Contract or such other address as may be notified by that party to the other;
 - 24.1.2 by e-mail, where valid e-mail addresses have been set out in the Contract.
- 24.2 A notice shall be deemed to have been served:

- 24.2.1 if it was served in person, at the time of service;
- 24.2.2 if it was sent by recorded delivery mail, at the time at which delivery is recorded as having taken place; or
- 24.2.3 if it was e-mailed, if sent during Normal Business Hours then at the time of it being sent and if outside Normal Business Hours then at 9:00 on the next Business Day thereafter.

25 Law and Jurisdiction

- 25.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 25.2 Subject to clause 16, where applicable the parties consent to the exclusive jurisdiction of the English courts in all matters affecting this Contract.