

Terms & Conditions

These are the terms and conditions on and subject to which Carton Edge Limited (the Supplier) supplies goods and services to its Customers

The Supplier reserves the right to change these terms and conditions at any time but any such change shall not affect the rights of Customers under contracts made before the date of the change except for services price review in accordance with condition 9.3.

This version of the terms and conditions was first published on 8th May 2017

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

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

Conditions: these terms and conditions.

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

Customer: the person, firm or corporation who purchases the Goods and/or Services and/or Finished Product from the Supplier, such purchase being made for the purposes of or in connection with the business of the Customer.

Customer's Material: any and all material owned by the Customer and provided by it to the Supplier for the purposes of the supplier affixing Goods to it and providing Services with respect to it in order to comply with the Service Specification.

Delivery Location: has the meaning given in clause 4.2.

Finished Product: the Customer's Material as developed by the affixing of the Goods to it and the provision of the Services in relation to it.

Force Majeure Event: has the meaning given to it in clause 15.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, as included in the Supplier's 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 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 Customer's written acceptance of the Supplier's Quotation.

Order Confirmation: the written confirmation issued by the Supplier to the Customer by way of its acceptance of the Order.

Purchased Goods: any and all items purchased by the Supplier for the specific purpose of their sale to the Customer as or as part of the Goods.

Services: the services supplied or to be supplied by the Supplier to the Customer as set out in the Services Specification included in the Supplier's Quotation.

Service Specification: the description or specification for the Services provided or to be provided by the Supplier to the Customer for adapting, processing, altering, decorating, and/or finishing the Customer's Material.

Supplier: Carton Edge Limited a company incorporated with limited liability and registered in England and Wales with company number 02651424 and having its registered office at 206 Upper Richmond Road West, East Sheen, London SW14 8AH.

Supplier Quotation: a quotation provided by the Supplier to the Customer in reply to the Customer's enquiry for the purchase of Goods and/or Services from the Supplier

1.2 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 a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email sent from and to the numbers and addresses appearing in communications between the parties.
- (f) A reference to a clause is a reference to a provision of these Conditions.

2. Basis of contract

- 2.1 The essence of the transaction between the Supplier and the Customer is that the Customer shall provide the Customer Material to the Supplier and the Supplier shall supply the Goods, Services and Finished Product to the Customer in consideration of the Customer paying to the Supplier the charges specified in the Supplier's Quotation.
- 2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order by means of the Order Confirmation at which point and on which date the Contract shall come into existence.
- 2.4 The Order and the Order Confirmation shall, so far as is practicable and relevant include provision for:
- (a) A general description of the Finished Product;
 - (b) Breakdown of Finished Product by description and volume;
 - (c) Price of Finished Product broken down by description, volume and payment terms;
 - (d) The provision by the Customer to the Supplier of the Customer's Material;
 - (e) Purchased Goods to be supplied by the Supplier;
 - (f) Whether or not the Finished Product will be delivered or made available to the Customer by instalments and, if so, the approximate number and quantity of them;
 - (g) Number and contents of any such instalments;
 - (h) Approximate date or dates for delivery of Finished Product;
 - (i) The Delivery Location;
 - (j) Payment terms applicable to the sale of Goods, supply of Services, and delivery of Finished Product;
 - (k) Charges for delivery, insurance and safekeeping and applicable payment terms;
 - (l) Scale of charges applicable if Customer does not lawfully accept delivery;
 - (m) Services to be provided by the Supplier;
 - (n) Purpose and use of the Finished Product.
- 2.5 To the extent, if any, that they are included in the Order or Order Confirmation, provisions within the scope of clause 2.4 shall override any corresponding provision of these Conditions.

- 2.6 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.
- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.8 The Supplier's Quotation shall not constitute an offer or acceptance of an offer, and is only valid for a period of 60 Business Days from its date of issue.
- 2.9 All of these Conditions shall apply to the supply of both Goods, Services and Finished Product except where application to one or the other is specified.
- 2.10 If any period of time specified in these Conditions shall be held to be void but would be valid if such period were reduced or extended such period shall be amended to such reduced or extended period (as the case may be) as would be held to be valid.

3. Goods and Services

- 3.1 Goods and services provided by the Supplier are generically described in the Supplier's catalogue and it is with reference to these that the Goods Specification and the Services Specification are prepared.
- 3.2 The Supplier reserves the right to amend the Goods Specification and the Services Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event as soon as practicable.

4. Delivery of Finished Product

- 4.1 The Supplier shall ensure that each delivery of the Finished Product is accompanied by a delivery note which shows the date of the Order including, where relevant, all Customer and Supplier reference numbers, the type and quantity of the Finished Product, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Finished Product remaining to be delivered.
- 4.2 The Supplier shall deliver the Finished Product to the location set out in the Order Confirmation or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Finished Product is completed and ready for delivery to the Customer. For the avoidance of doubt the Delivery Location is either:

- (a) The Supplier's premises, in which case the time of delivery of the Finished Product or an instalment of it is completion of loading onto the Customer's nominated vehicle; or
 - (b) Other agreed premises to which the Supplier shall have arranged transport, in which case the time of delivery of the Finished Product or an instalment of it is completion of unloading at such premises.
- 4.3 Any dates quoted in the Order Confirmation for delivery of Finished Product 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 Finished Product 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 Finished Product.
- 4.4 If the Supplier fails to deliver Finished Product on or before any agreed delivery date in respect of which time shall have been agreed to be of the essence, 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 that Finished Product. The Supplier shall have no liability for any failure to deliver Finished Product 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 Finished Product.
- 4.5 If the Customer fails to accept delivery of Finished Product within three Business Days after the Supplier shall have notified the Customer that it is 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 them:
 - (a) delivery of the Finished Product 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 Finished Product was ready; and
 - (b) the Supplier shall store the Finished Product until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If ten Business Days after the Supplier notified the Customer that the Finished Product or an instalment of it is ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of some or all of the Finished Product (or relevant instalment) and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price otherwise payable by the Customer in respect of such Finished Product or charge the Customer for any shortfall below such price (as the case may be).
- 4.7 If the Supplier delivers up to and including 10% more or less than the quantity of Finished Product specified in the Order Confirmation the Customer may not reject them,

but on receipt of notice from the Customer that the wrong quantity was delivered, the Supplier shall make a pro rata adjustment to the invoice for Finished Product.

- 4.8 The Supplier may deliver Finished Product by instalments, which shall each constitute a separate Contract and be invoiced and paid for separately. In any such event:
- (a) any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment, and
 - (b) if the Customer unlawfully declines to accept delivery of more than one instalment the subject of the same Order Confirmation the Customer shall be deemed in all respects to have repudiated the Contract and, without prejudice to any other rights and remedies available to it, shall be entitled to the rights and remedies set out in clause 4.6, 6.6, and 7.2.

5. Quality of Goods and Services

- 5.1 The Supplier warrants that on delivery, the Finished Product shall:
- (a) conform in all material respects with the Goods Specification and the Services 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.
- 5.2 The Customer unconditionally acknowledges and agrees that the nature and intended use of Finished Product are such that a representation or warranty on the part of the Customer that Finished Product will comply with any and each element of clause 5.1 for a period of more than 10 consecutive Business Days after delivery would be inappropriate.
- 5.3 If the Customer considers that on delivery some or all items of Finished Product did not comply with any element of clause 5.1 it shall give notice of such fact within 3 Business Days after delivery, as to which time shall be of the essence, and shall grant the Supplier, at the Supplier's cost, a reasonable opportunity to inspect the Finished Product (or instalment of it as the case may be) at the Customer's Premises. The Customer may not intimate a claim for damages for breach of warranty under this clause later than 10 Business Days after the delivery of Finished Product to which it relates.
- 5.4 If, upon such inspection it is agreed that:
- (a) Up to and including 10% by number of the Finished Product (or instalment) did not comply with any element of clause 5.1 the Supplier shall allow the Customer a corresponding abatement in price which the Customer shall accept in full and

final settlement of any and all claims and remedies it may have against the Supply in respect of such failure to comply; or

- (b) More than 10% by number of the Finished Product (or instalment) did not comply with any element of clause 5.1 the Customer may elect to reject the Finished Product (or instalment) in its entirety or to pay for such amount as does so comply at the rate specified in the Contract and require the Supplier to replace the defective items of Finished Product with compliant Finished Product within 20 Business Days (the Customer supplying at the Supplier's cost any additional Customer's Material needed for the purpose).

5.5 The Supplier shall not be liable for the failure of any item in the Finished Product to comply with any element of the warranty in clause 5.1 if:

- (a) the Customer makes any use of such item after giving a notice in accordance with clause 5.3;
- (b) the defect arose in transit arranged by the Customer;
- (c) the Customer alters or repairs such item without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (e) Finished Product differs from the description contained in the Goods Specification or Services Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Finished Product's failure to comply with any element of the warranty set out in clause 5.1.

5.7 The terms of these Conditions shall apply to any repaired or replacement Finished Product supplied by the Supplier.

6. Title and risk

6.1 Title in and to the Customer's Material shall at all times be vested in the Customer, but shall be subject to any lien asserted or exercised by the Supplier in accordance with clause 6.6

6.2 Title in and to the Purchased Goods shall be vested in the Supplier unless and until appropriated to the Contract, at which time they shall be deemed to become Customer's Material and be subject to any lien asserted or exercised by the Supplier in accordance with clause 6.6.

- 6.3 If the Customer rejects any Finished Product in accordance with clause 5.4(b):
- (a) title in and to such rejected Finished Product shall automatically pass to the Supplier, and/but
 - (b) the Supplier shall not reimburse the Customer for the cost of the relevant Customer's Material (otherwise than in settlement of the Customer's entitlement to damages for breach of contract)
- 6.4 The risk in the Customer's Material shall be with the Supplier while in the Supplier's possession and shall revert to the Customer on delivery of Finished Product.
- 6.5 The risk in Purchased Goods and Finished Product shall be with the Supplier while in the Supplier's possession and shall pass to the Customer on delivery of Finished Product.
- 6.6 Unless and until the Supplier receives payment in full (in cash or cleared funds) for the Finished Product, the Supplier shall have a lien over the Finished Product and the right to sell it by public auction or otherwise at its discretion for all sums due or to become due from the Customer to the Supplier under or by virtue of the Contract. Such lien and liability shall remain notwithstanding that the Finished Product has been delivered to the Customer. If on sale the net proceeds after deduction of all related costs, charges, expenses, commissions and VAT fail to realise the amount due the Supplier shall be entitled to recover the amount of the shortfall from the Customer.
- 6.7 Until the Customer has paid for the Finished Product, the Customer shall:
- (a) not remove, deface or obscure any identifying mark or packaging on or relating to it;
 - (b) maintain it in satisfactory condition and keep it insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - (c) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(b) to 13.1(d); and
 - (d) give the Supplier such information relating to the Finished Product as the Supplier may require from time to time.
- 6.8 If before the Customer has paid for the Finished Product the Customer becomes subject to any of the events listed in clause 13.1(b) to 13.1(d), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to use Finished Product in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:

- (i) require the Customer to deliver up all Finished Product in its possession; and
- (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where Finished Product lies in order to recover them.

7. Cancellation of Order

7.1 The Buyer may not cancel or revoke the Order once the Contract has come into existence.

7.2 If:

- (a) the Customer fails or is deemed to have failed to accept delivery of Finished Product on due date; or
- (b) the Customer does any act matter or thing which operates so as to repudiate the Contract

the Customer shall indemnify and keep indemnified the Supplier from and against any and all costs, charges, claims, demands, losses and expenses that the Supplier shall thereby sustain or incur.

7.3 In the circumstances of clause 7.2 title to the Finished Product shall pass to the Supplier for its own use and benefit, but the Supplier shall account to the Customer for any proceeds of sale in excess of the price for the Finished Product specified in the Order Confirmation.

7.4 If the Customer seeks to cancel the Contract by agreement with the Supplier (which the Supplier shall have absolute liberty to withhold), the terms of such agreed cancellation may include obligations on the part of the Customer to:

- (a) Reimburse the Supplier at cost for the Purchased Goods;
- (b) Pay to the Supplier 5% of the price specified in the Order Acknowledgement less any payment made under clause 7.4(a) if agreement is reached earlier than 60 Business Days before the anticipated delivery date for the Finished Product;
- (c) Pay to the Supplier 25% of the price specified in the Order Acknowledgement less any payment made under clause 7.4(a) if agreement is reached earlier than 30 Business Days before the anticipated delivery date for the Finished Product; and
- (d) Pay to the Supplier 80% of the price specified in the Order Acknowledgement less any payment made under clause 7.4(a) if agreement is reached earlier

than 7 Business Days before the anticipated delivery date for the Finished Product.

- 7.5 The Customer accepts that the percentage figures included in clause 7.4 represent a fair assessment of:
- (a) the likely impact on the capacity of the Supplier to obtain and execute replacement business and be paid for it in the period between cancellation and anticipated completion of the Finished Product; and
 - (b) the labour and other costs incurred by the Supplier in the production of the Finished Product up to and including the date of cancellation.

8. Customer's obligations

- 8.1 The Customer shall, and shall at its cost procure that its personnel, servants or agents shall, at all times:
- (a) ensure that the terms of the Order and any information it provides for inclusion in the Service Specification and the Goods Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Goods, Services and Finished Product;
 - (c) allow the Supplier, its employees, agents, consultants and subcontractors access to the Customer's premises and other facilities as reasonably required by the Supplier to exercise any lien to which it may be entitled over the Finished Product;
 - (d) comply with all applicable laws, including health and safety laws; and
 - (e) keep Finished Product at its premises that is or may become subject to the Supplier's lien in safe custody at its own risk, and maintain it in good condition until returned to the Supplier or paid for in full.
- 8.2 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 right or remedy available to it, the Supplier shall have the right to suspend performance of Services and delivery of Finished Product 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 in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations; and

- (b) 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.

8.3 The Customer hereby agrees to indemnify and hold harmless the Supplier and keep it indemnified and held harmless from and against any and all costs, charges, claims, proceedings and damages sustained or to be sustained by the Supplier arising out of any breach by the Customer of its obligations under clause 8.1 or clause 8.2.

9. Charges and payment

9.1 The price for Finished Product:

- (a) shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order Confirmation; and
- (b) shall be exclusive of all costs and charges for packaging, insurance, storage and transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated at the rate of £20 per hour;
- (b) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate of 200% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) 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 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.

9.3 The Supplier reserves the right to increase the charges for the Services on an annual basis with effect from each anniversary of the date of the Order Confirmation in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Order Confirmation and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

- 9.4 If, following an inspection undertaken in accordance with clause 5.3 it is agreed or determined that not more than 5% of the Finished Product failed to comply in any material respect with any element of clause 5.1, the undertaking of such inspection by the Supplier of such inspection shall be deemed in all respects to be a provision of Services and paid for by the Customer within 5 Business Days after the date of a covering VAT invoice supplied by the Supplier.
- 9.5 The Supplier shall invoice the Customer on or at any time after completion of delivery of Finished Product or an instalment of it.
- 9.6 Unless otherwise agreed and evidenced in the Order Confirmation, the Customer shall pay each invoice submitted by the Supplier:
- (a) within 20 Business Days after the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

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

- 9.7 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 Finished Product at the same time as payment is due for the supply of the Finished Product.
- 9.8 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 clause 13 (Termination), 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 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.9 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).

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Purchased Goods and Finished Product (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

11. Confidentiality

- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2
- 11.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information observe and discharge the undertaking contained in clause 11.1 as if they were individually and severally a party to it; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (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.
- 12.2 Subject to clause 12.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (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; and
- (g) any indirect or consequential loss.

12.3 Subject to clause 12.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total price paid or to be paid under the Contract.

12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.5 This clause 12 shall survive termination of the Contract.

13. Termination

13.1 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 its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within seven Business Days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 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 the Customer fails to pay any amount due under the Contract on the due date for payment.

13.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Finished Product 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 13.1(b) to 13.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of termination

14.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services, Goods and Finished Product 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 Finished Product and any Goods which have not been fully paid for.

14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of 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.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

15. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

16. General

16.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, or charge any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

16.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to any email address appearing in correspondence between the parties.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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

16.5 **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.

16.6 **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, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

- 16.7 **Third parties rights.** 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.
- 16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.9 **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.
- 16.10 **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.