

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES OF RUBY MACAW LTD T/A RUBY MACAW

INTERPRETATION

Definitions. In these Conditions, the following definitions apply:

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

Commencement Date: has the meaning set out in clause 15.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 31.7.

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

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

Deliverables: the deliverables set out in the Order.

Delivery Location: has the meaning set out in clause 18.2.

Force Majeure Event: has the meaning given to it in 29.

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

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

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Ruby Macaw of Aspen House, Old Mill Lane, Aylesford, ME20 7DT. Ruby Macaw is a trading division of Ruby Macaw Ltd. Registered office Aspen House, Old Mill Lane, Aylesford, ME20 7DT Registered in England & Wales No 13237564

Supplier Materials: has the meaning set out in clause 22.1(f).

Website: www.rubymacaw.co.uk

Construction. In these Conditions, the following rules apply :

- (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 successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and emails.

TERMS OF WEBSITE USE

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING OUR WEBSITE

1. INTRODUCTORY

1.1 This terms of use (together with the documents referred to in it) tells you the terms of use on which you may make use of our Website www.rubymacaw.co.uk (**our site**), whether as a guest or a registered user. Use of our Website includes accessing, browsing, or registering to use our Website.

1.2 Please read these terms of use carefully before you start to use our Website, as these will apply to your use of our Website. We recommend that you print a copy of this for future reference.

1.3 By using our Website, you confirm that you accept these terms of use and that you agree to comply with them.

1.4 If you do not agree to these terms of use, you must not use our Website.

2. OTHER APPLICABLE TERMS

2.1 These terms of use refer to the following additional terms, which also apply to your use of our Website:

- (a) Our Privacy Policy, which sets out the terms on which we process any personal data we collect from you, or that you provide to us. By using our Website, you consent to such processing and you warrant that all data provided by you is accurate.
 - (b) Our Acceptable Use Policy, which sets out the permitted uses and prohibited uses of our Website. When using our Website, you must comply with this Acceptable Use Policy.
 - (c) Our Cookie Policy, which sets out information about the cookies on our Website.
- 2.2 If you purchase goods from our Website, our Terms and Conditions of Supply as detailed below will apply to the sales.

3. CHANGES TO THESE TERMS

3.1 We may revise these terms of use at any time by amending this page. Please check this page from time to time to take notice of any changes we made, as they are binding on you.

4. CHANGES TO OUR WEBSITE

- 4.1 We may update our Website from time to time, and may change the content at any time. However, please note that any of the content on our Website may be out of date at any given time, and we are under no obligation to update it.
- 4.2 We do not guarantee that our Website, or any content on it, will be free from errors or omissions.

5. ACCESSING OUR WEBSITE

- 5.1 Our Website is made available free of charge.
- 5.2 We do not guarantee that our Website, or any content on it, will always be available or be uninterrupted. Access to our Website is permitted on a temporary basis. We may suspend, withdraw, discontinue or change all or any part of our Website without notice. We will not be liable to you if for any reason our Website is unavailable at any time or for any period.
- 5.3 You are responsible for making all arrangements necessary for you to have access to our Website.
- 5.4 You are also responsible for ensuring that all persons who access our Website through your internet connection are aware of these terms of use and other applicable terms and conditions, and that they comply with them.

6. YOUR ACCOUNT AND PASSWORD

- 6.1 If you choose, or you are provided with, a user identification code, password or any other piece of information as part of our security procedures, you must treat such information as confidential. You must not disclose it to any third party.
- 6.2 We have the right to disable any user identification code or password, whether chosen by you or allocated by us, at any time, if in our reasonable opinion you have failed to comply with any of the provisions of these terms of use.
- 6.3 If you know or suspect that anyone other than you knows your user identification code or password, you must promptly notify us at sales@rubymacaw.co.uk.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 We are the owner or the licensee of all intellectual property rights in our Website, and in the material published on it. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.
- 7.2 You may print off one copy, and may download extracts, of any page(s) from our Website for your personal use and you may draw the attention of others within your organisation to content posted on our Website.
- 7.3 You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.
- 7.4 Our status (and that of any identified contributors) as the authors of content on our Website must always be acknowledged. You must not use any part of the content on our Website for commercial purposes without obtaining a licence to do so from us or our licensors.
- 7.5 If you print off, copy or download any part of our Website in breach of these terms of use, your right to use our Website will cease immediately and you must, at our option, return or destroy any copies of the materials you have made.

8. NO RELIANCE ON INFORMATION

- 8.1 The content on our Website is provided for general information only. It is not intended to amount to advice on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on our Website.
- 8.2 Although we make reasonable efforts to update the information on our Website, we make no representations, warranties or guarantees, whether express or implied, that the content on our Website is accurate, complete or up-to-date.

9. LIMITATION OF OUR LIABILITY

9.1 Nothing in these terms of use excludes or limits our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English law.

9.2 To the extent permitted by law, we exclude all conditions, warranties, representations or other terms which may apply to our Website or any content on it, whether express or implied.

9.3 We will not be liable to any user for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with:

- (a) use of, or inability to use, our Website; or
 - (b) use of or reliance on any content displayed on our Website.
- 9.4 If you are a business user, please note that in particular, we will not be liable for:
- (a) loss of profits, sales, business, or revenue;
 - (b) business interruption;
 - (c) loss of anticipated savings;
 - (d) loss of business opportunity, goodwill or reputation; or
 - (e) any indirect or consequential loss or damage.

9.5 If you are a consumer user, please note that we only provide our Website for domestic and private use. You agree not to use our Website for any commercial or business purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

9.6 We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of our Website or to your downloading of any content on it, or on any website linked to it.

9.7 We assume no responsibility for the content of websites linked on our Website. Such links should not be interpreted as endorsement by us of those linked websites. We will not be liable for any loss or damage that may arise from your use of them.

9.8 Different limitations and exclusions of liability will apply to liability arising as a result of the supply of any goods by use to you, which will be set out in our Terms and Conditions of Supply enclosed below.

10. UPLOADING CONTENT TO OUR WEBSITE

10.1 Whenever you make use of a feature that allows you to upload content to our Website, or to make contact with other users of our Website, you must comply with the content standards set out in our Acceptable Use Policy found on our website www.rubymacaw.co.uk.

10.2 You warrant that any such contribution does comply with those standards, and you will be liable to us and indemnify us for any breach of that warranty. If you are a consumer user, you will be responsible for any loss or damage we suffer as a result of your breach of warranty.

10.3 Any content you upload to our Website will be considered non-confidential and non-proprietary, and we have the right to use, copy, distribute and disclose to third parties any such content for any purpose.

10.4 We also have the right to disclose your identity to any third party who is claiming that any content posted or uploaded by you to our Website constitutes a violation of their intellectual property rights, or of their right to privacy.

10.5 We will not be responsible, or liable to any third party, for the content or accuracy of any content posted by you or any other user of our Website.

10.6 We have the right to remove any posting you make on our Website if, in our opinion, your post does not comply with the content standards set out in our Acceptable Use Policy found on our Website www.rubymacaw.co.uk.

10.7 The views expressed by other users on our Website do not represent our views.

11. VIRUSES

- 11.1 We do not guarantee that our Website will be secure or free from bugs or viruses.
- 11.2 You are responsible for configuring your information technology, computer programmes and platform in order to access our Website. You should use your own virus protection software.
- 11.3 You must not misuse our Website by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to our Website, the server on which our Website is stored or any server, computer or database connected to our Website. You must not attack our Website via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, you would commit a criminal offence under the Computer Misuse Act 1990. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use our Website will cease immediately.

12. LINKING TO OUR WEBSITE

- 12.1 You may not link to our home page unless expressly authorised in writing to do so.
- 12.2 In the event that you are provided with such express written authorisation to link to our home page then you may do so, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it.
- 12.3 You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists.
- 12.4 You must not establish a link to our Website in any website that is not owned by you. Our Website must not be framed on any other Website, nor may you create a link to any part of our Website other than the home page.
- 12.5 We reserve the right to withdraw linking permission without notice.
- 12.6 The website in which you are linking must comply in all respects with the content standards set out in our Acceptable Use Policy found on our Website www.rubymacaw.co.uk.
- 12.7 If you wish to make any use of content on our Website other than that set out above, please contact sales@rubymacaw.co.uk.

13. THIRD PARTY LINKS AND RESOURCES IN OUR WEBSITE

13.1 Where our Website contains links to other websites and resources provided by third parties, these links are provided for your information only. We have no control over the contents of those websites or resources.

14. CONTACT US

14.1 To contact us, please email sales@rubymacaw.co.uk. Thank you for visiting our site.

SUPPLY OF GOODS AND SERVICES

15. BASIS OF CONTRACT

- 15.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 15.2 Any and all quotations for the Goods and/or Services are made subject to these Terms and Conditions, with no additions, amendments or alterations to any Orders rendered as applicable or enforceable unless agreed to by the Supplier. Any such amendments to Orders made will attract an additional variation fee, payable by the Customer.
- 15.3 The Order shall be deemed to be accepted on the date that it is placed, unless otherwise notified by the Supplier at which point and on which date the Contract shall come into existence. Written acceptance confirmation shall be received for all orders placed on the Website of the Supplier at which point and on which date the Contract shall come into existence (**Commencement Date** respectively).
- 15.4 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.
- 15.5 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 (whether physical or online) 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.
- 15.6 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.
- 15.7 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.
- 15.8 Once placed, an Order may not be cancelled, amended or otherwise varied by the Customer, except without the written authorisation to the requested amendment from the Supplier. In the cases of such variation or cancellation request in writing from the Customer, the Supplier is entitled to render an invoice to the Customer for all reasonable charges incurred in accepting, preparing and fulfilling the Order as may have taken place prior and up to the communication of an intention to cancel or vary the Order by the Customer, as well as other applicable charges as may be payable by the Customer in accordance with clause 15.2 of these Conditions.
- 15.9 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

16. GOODS

- 16.1 The Goods are described in the Supplier's catalogue both in physical format and online.
- 16.2 The Supplier reserves the right to amend the Goods if required by any applicable statutory or regulatory requirements.

17. CREDIT ACCOUNTS

17.1 Customers wishing to open a credit account with the Supplier are required to complete a Credit Application Form, available from the Supplier upon written request for such documentation from the Customer.

17.2 Such Credit Application Form requires the specification of two trade references and a bank reference accordingly. The Supplier reserves the right to alter or terminate credit facilities at any time upon written notice of this termination to the Customer.

17.3 Where credit account facilities are available, the Supplier's Terms and Conditions herein require payment for all Goods and/or Services within 30 days from the date of invoice.

17.4 In the event that payment for Goods and/or Services is not received in accordance with clause 17.3, the credit account(s) will be suspended until such time as cleared funds have been received by the Supplier from the Customer.

18. DELIVERY OF GOODS

18.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and special storage instructions (if any).

18.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

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

18.4 Marking of the Goods as 'unexamined', 'unchecked' or other connotations of such wording shall have no legal significance and the Goods will be deemed as accepted by the Customer irrespective of such labels.

18.5 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.

18.6 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 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.

18.7 If the Customer fails to accept or take delivery of the Goods within 20 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 second 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).

The rights within this clause are without prejudice to any other right, which the Supplier may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the Contract.

18.8 If 20 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

18.9 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered.

18.10 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.

18.11 Upon delivery of the Goods, no immediate returns will be acceptable unless the Supplier is contacted at the time of delivery and notified of the reasoning of the return of the Goods, such communication to be formalised in writing no later than three days thereafter, and in any event, will not be permitted without the requisite returns number and reference, obtainable from the Supplier directly.

18.12 If, for any reason, the Customer purports to accept only a proportion of the Goods supplied, irrespective of such partial-acceptance, the Customer shall be deemed to have nonetheless accepted the entirety of the Goods. The Customer will thereafter not be entitled to reject the remainder of the Goods as a direct result.

18.13 Any merchandises are supplied on loan (subject to the minimum order requirements) for the specific purpose of displaying the Supplier's products. If other products are displayed on the merchandiser, the loan will be deemed to be terminated, and the full price will be charged.

19. QUALITY OF GOODS

19.1 Goods advertised and marketed by the Supplier, which are subject to any 'manufacturers' guarantees' are advertised in accordance with said manufacturers' listed terms.

19.2 As a result, the Supplier undertakes to use reasonable endeavours to assist the Customer in obtaining from the manufacturer the benefit of any warranty which may be given by the manufacturer to the Supplier directly in respect of the Goods. Such undertaking to assist is given by the Supplier and accepted by the Customer instead of and expressly excluding any other guarantee, conditions or warranty as to quality of fitness for any purpose whether statutory or otherwise, other than those contained within these Conditions.

19.3 All Goods manufactured by the Supplier are supplied by the Supplier in good faith as suitable for the purposes indicated on the Supplier's labels and within the Supplier's literature. However, the Customer expressly acknowledges that the Supplier is unable to exercise control outside the course of manufacture over the storage, handling, mixing of other products with or use of the Goods, which may affect the performance of the Goods, with all conditions and warranties as contained within these Conditions and attributable to such circumstances, being excluded by the Supplier to the fullest extent as permitted by law as a direct result.

19.4 Upon delivery, the Customer shall have three days in which to examine the Goods and notify the Supplier in writing of any defects or damages therein in accordance with the provisions of this clause 19.

19.5 Subject to clause 19.8, if:

(a) the Customer gives notice in writing at any point within the three days after the Delivery Date, that some or all of the Goods are defective or damaged as set out in clause 19.1;

(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, the Supplier shall, at its option, repair or replace the defective Goods. A full refund may be offered at the sole option and discretion of the Supplier

19.6 Thereafter, the Supplier warrants that for a period of six months after Delivery of the Goods (**Warranty Period**), the Goods shall:

(a) conform with their description;

(b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

19.7 Subject to clause 19.8, 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 19.1;

(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, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

19.8 The Supplier shall not be liable for the Goods' failure to comply with the provision of clause 19.1 or the warranty in clause 19.6 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 19.5;

(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 Customer alters or repairs such Goods 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;

(e) the defect arises as a result of defective materials provided and/or supplied by a third party, in which case, the Customer's right of recourse shall be against the third party supplier directly and the Supplier shall have no further liability whatsoever;

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

19.9 Except as provided in this clause 19, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the provisions of clause 19.1 and the warranty set out with clause 19.6.

19.10 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under the terms of this clause 19.5.

19.11 Credit notes for the return of non-faulty goods will be issued subject to a 15% handling and administration charge, subject to a minimum of £20. Only complete, sealed trade units will be so credited, but the carriage to the Supplier's premises will be at the Customer's expense.

20. TITLE AND RISK

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

20.2 Subject to clause (b), 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; and

(b) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.

20.3 For the avoidance of doubt and for the purposes of clause 20.2(b), it is assumed Goods will be sold in strict stock rotation. Even where all previously-delivered or currently delivered Goods have been paid for respectively, or in the event that any open credit account for the Customer has been zeroed as a result (as applicable), the Supplier shall nonetheless, in the event of the Customer having not paid for any delivery of any of the Goods, still have a claim against the Customer in accordance with clause 23.10 for non-payment of any outstanding Goods, even if any Goods in the possession of the Customer are those not yet paid for by the Customer.

20.4 Furthermore, all Goods and/or Services ordered by the Customer pursuant to credit facilities or accounts opened in accordance with clause 17 of these Conditions, which remains in arrears for more than 30 days, title in the Goods shall not pass to the Customer until the satisfaction of any outstanding credit accounts is facilitated in full. In such circumstances, title in the Goods vests in the Supplier and it shall be lawfully entitled to any of the recovery provisions as set out within these Conditions.

20.5 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 27.1(b) to clause 27.1(i); and

(f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

20.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 27.1(b) to clause 27.1(i), or 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.

21. SUPPLY OF SERVICES

21.1 The Supplier shall provide the Services to the Customer in accordance with the Order in all material respects.

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

21.3 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.

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

22. CUSTOMER'S OBLIGATIONS

22.1 The Customer shall:

(a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification 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 to provide the Services;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

(e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

(f) 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.

22.2 If the Supplier's performance of any of its obligations in respect of the Services 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) 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;

(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 22.2; and

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

23. CHARGES AND PAYMENT

23.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery

23.2 In particular, Goods to be delivered to UK mainland addresses which are not in excess of £150 in total are subject to a carriage charge, unless otherwise advised by the Supplier in writing accordingly. For the avoidance of doubt, all orders over £150 in total qualify for free delivery to any UK mainland address. Deliveries to overseas addresses will attract a higher carriage charge, confirmation of which shall be provided to the Customer by the Supplier in writing upon receipt of the Order and prior to its acceptance by the Supplier. The Customer acknowledges that such delivery charges and qualifications are subject to change at any time, without further notice by the Supplier.

23.3 Any and all (retail) prices listed within the Supplier's catalogues (whether physical or online) are 'recommended' retail prices and are subject to alterations without notice. For the purposes of these Conditions, the provisions of clause 23.1 override any and all retail prices listed within the Supplier's catalogues.

23.4 The charges for any Services required by the Customer as part of any Order shall be on a time and materials basis:

(a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, details of which shall be provided by the Supplier to the Customer open receipt of the Order and prior to its acceptance by the Supplier;

(b) the Supplier's standard 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 20% (twenty per cent) of the standard 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 23.4(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, 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.

23.5 The Supplier reserves the right to:

(a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks 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 one month's written notice to the Customer;

(b) increase the price of the Goods, without notice, to reflect any increase in the cost of the Goods to the Supplier that is due to:

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

(ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or

(iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

23.6 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer monthly in arrears.

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

(a) on the 20th day of each month in which the invoice is rendered by the Supplier to the Customer; 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.

23.8 In the event that any invoice remains due past the 20th day of each month in which the invoice was rendered as set out within clause 23.7, all invoices rendered and outstanding, past this 20th day of the month date for payment or otherwise, will be deemed as automatically and immediately due to the Supplier, with the Supplier subsequently entitled to seek any of the remedies contained within clauses 27 and/or 28 of these Conditions without limitation.

23.9 In the event of the circumstances as contained with clause 23.8 of these Conditions, the Supplier shall be lawfully entitled to withhold the Delivery and fulfilment of any outstanding Orders until payment of all invoices rendered is paid in full, or the Supplier indicates otherwise in its sole discretion.

23.10 Furthermore, in the event of non-payment of any invoice rendered by the Supplier as set out within clause 23.8, the Supplier shall be lawfully entitled to enter on to the Customer's premises and uplift any of the Goods held by the Customer as delivered by the Supplier, regardless of whether such items are attributable to previously-satisfied invoices or otherwise.

23.11 All amounts payable by the Customer under the Contract are inclusive 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 Services or Goods at the same time as payment is due for the supply of the Services or Goods.

23.12 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% (four 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.

23.13 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.

24. INTELLECTUAL PROPERTY RIGHTS

24.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

24.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, 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.

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

25. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 25 shall survive termination of the Contract.

26. LIMITATION OF LIABILITY:

26.1 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.

26.2 Subject to clause 26.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) 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, shall in no circumstances exceed £2,500 or the price of the Order(s) whichever is the least.

26.3 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.

26.4 This clause 26 shall survive termination of the Contract.

27. TERMINATION

27.1 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 its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice 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 the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the 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 the 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 27.1(b) to clause 27.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) 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.

27.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:

- (a) by giving the Customer two months' written notice;
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

27.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 27.1(b) to clause 27.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

28. CONSEQUENCES OF TERMINATION

On termination 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 Services supplied but for which no invoice has yet 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 and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at 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.

29. HEALTH AND SAFETY

29.1 The Customer shall comply with any and all information or any revised information in relation to health and safety attributable to the Goods, Services and other ancillary services, as and whenever supplied by the Supplier and/or the manufacturer. Such health and safety advice will be in respect of, but not limited to, the use for which the Goods and/or Services are designed and have been tested, or concerning conditions necessary to ensure that said Goods and/or Services will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person or representative of the Customer, either at work or when they are being dismantled or disposed of.

29.2 The Customer undertakes to take such steps and measures as may be specified and required by the information contained provided by the Customer in accordance with clause 29.1, to ensure that as far as reasonably practicable the Goods and/or Services will be safe and without risk to health at all times. For these purposes the Customer is deemed to have given a reasonable opportunity to test and examine the Goods before delivery.

30. FORCE MAJEURE

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

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

30.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than four 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.

31. GENERAL

31.1 **Assignment and subcontracting.** 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. 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.

31.2 **Notices.** Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission. This clause 31.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

31.3 **Waiver.** 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.

31.4 **Severance.** 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. 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.

31.5 **No partnership or agency.** 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.

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

31.7 **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 and signed by the Supplier.

31.8 **Governing law and jurisdiction.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.