

THESE TERMS AND CONDITIONS APPLY IN THE EVENT THAT THE CONTRACT RELATES TO THE SUPPLY OF GOODS TO THE EXCLUSION OF ANY OTHER TERMS THE CUSTOMER SEEKS TO IMPOSE OR INCORPORATE

1. INTERPRETATION

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

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

Conditions: the terms and conditions set out in this document.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

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

Force Majeure Event: has the meaning given in clause 10.

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

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Supplier's confirmation of the Customer's request for the Goods, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: James Lister & Sons Limited (registered in England and Wales with company number 00591148).

2. BASIS OF CONTRACT

2.1 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.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or the Supplier acts to fulfil the Order, at which point the Contract shall come into existence.

2.4 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.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue unless otherwise stated in such quotation.

2.7 In the event that the Goods are covered by the Consumer Protection (Distance Selling) Regulations 2000 (**Regulations**), by entering the Contract the Customer consents for the Supplier to supply and deliver the Goods immediately and waives its right to cancel the Goods in accordance with the Regulations

3. GOODS

3.1 The Goods are described in the Supplier's catalogue or website (or any relevant manufacturer's catalogue or website) as modified by any applicable Specification. The Supplier reserves the right to amend the Goods if required by any applicable statutory or regulatory requirements.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

4. DELIVERY

4.1 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.

4.2 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**). Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.3 Any dates quoted for delivery 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.

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

4.5 If the Customer fails to take delivery of the Goods within three 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 the Supplier's failure to comply with its obligations under the Contract; (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after 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).

4.6 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken 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.

4.7 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

4.8 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.

5. QUALITY

5.1 The Supplier warrants that on delivery, and for a period of 3 months from the date of delivery (**warranty period**), any of the Goods which have been manufactured by the Supplier or amended by the Supplier in accordance with the specification shall; (a) conform in all material respects with their description and the Specification, (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).

5.2 Subject to clause 5.3, if; (a) the Customer gives notice in writing to the Supplier 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 5.1, (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.

5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events; (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2, (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same, (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer, (d) the Customer alters or repairs such Goods without the written consent of the Supplier, (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions, or (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

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

6.2 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 or services that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 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 from the date of delivery, (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2 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.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that 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.

7. PRICE AND PAYMENT

7.1 The price of the 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 in force as at the date of delivery, or in the event that no price is set out in the Order or the Supplier's published price list such price as the Supplier may reasonably determine.

7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to; (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs), (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification, or (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods, unless otherwise specified in the Order.

7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.6 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated unless otherwise agreed by the Supplier in writing. Time of payment is of the essence.

7.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 2% per annum above HSBC Bank Plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.8 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 at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. CUSTOMER'S INSOLVENCY OR INCAPACITY

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are; (a) the Customer 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, (b) the Customer 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, (c) (being a company) 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 Customer, (d) (being an individual) the Customer is the subject of a bankruptcy petition or order, (e) (being a company) 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 Customer, (f) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive), (g) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business, (h) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy and (i) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1 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 (as applicable), (b) fraud or fraudulent misrepresentation, (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979, (d) defective products under the Consumer Protection Act 1987, or (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1; (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 the price of the Goods.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. GENERAL

11.1 Assignment and subcontracting.

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; 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 or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- (a) If any court or 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

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

restrict the further exercise of that or any other right or remedy. 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.

- 11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 11.7 **Governing law and jurisdiction.** The 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.

THESE TERMS AND CONDITIONS APPLY IN THE EVENT THAT THE CONTRACT RELATES TO THE SUPPLY OF SERVICES TO THE EXCLUSION OF ANY OTHER TERMS THE CUSTOMER SEEKS TO IMPOSE OR INCORPORATE

1. INTERPRETATION

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

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.6.

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

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

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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).

Order: the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or the Customer's written acceptance of a quotation by the Supplier, or overleaf, as the case may be.

Services: the services supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer in the Order.

Supplier: James Lister & Sons Limited registered in England and Wales with company number 00591148.

Supplier Materials: has the meaning set out in clause 4.1.

2. BASIS OF CONTRACT

2.1 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.

2.2 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or the Supplier acts to fulfil the Order, at which point the Contract shall come into existence.

2.4 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.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Services described in them.

2.6 A quotation for the Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7 In the event that the Services are covered by the Consumer Protection (Distance Selling) Regulations 2000 (**Regulations**), by entering the Contract the Customer consents for the Supplier to supply the Services immediately and waives its right to cancel the Services in accordance with the Regulations

3. SUPPLY OF SERVICES

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

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

3.3 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.

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

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall (a) ensure that the terms of the Order and any information it provides in the 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, (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects and (e) 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.

4.2 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) 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 4.2 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.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be on a time and materials basis, and the Charges shall be as (a) set out in the Supplier's quote, or if no quote has been provided, calculated in accordance with the Supplier's standard daily fee rates and (b) 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.

5.2 The Supplier shall invoice the Customer on completion of the Services.

- 5.3 The Customer shall pay each invoice submitted by the Supplier by the end of the month following the month which the invoice was dated unless otherwise agreed, in full and in cleared funds. Time for payment shall be of the essence of the Contract.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.5 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 2% per cent per annum above HSBC Bank'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.
- 5.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 6.2 All Supplier Materials are the exclusive property of the Supplier.

7. 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 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

- 8.1 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; or (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.2 Subject to clause 8.1, 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 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 the price paid or to be paid for the Services.
- 8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 If the Customer becomes subject to any of the events listed in clause 8.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend the supply of Services under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Services already supplied to the Customer shall become immediately due.

- 9.2 For the purposes of clause 8.1, the relevant events are; (a) the Customer 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, (b) the Customer 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, (c) (being a company) 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 Customer, (d) (being an individual) the Customer is the subject of a bankruptcy petition or order, (e) (being a company) 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 Customer, (f) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(f) (inclusive), (g) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business, (h) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy and (i) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

- 9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.5 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 1 months' written notice.

10. 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 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. 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, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. GENERAL

11.1 Assignment and subcontracting.

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; 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 or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- (a) If any court or 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

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

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

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

11.7 **Governing law and jurisdiction.** The 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.

THESE TERMS AND CONDITIONS APPLY IN THE EVENT THAT THE CONTRACT RELATES TO THE HIRE OF EQUIPMENT TO THE EXCLUSION OF ANY OTHER TERMS THE CUSTOMER SEEKS TO IMPOSE OR INCORPORATE

1. INTERPRETATION

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

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

Commencement Date: the date that the Customer takes delivery of the Equipment.

Conditions: the terms and conditions set out in this document.

Contract: the contract between the Supplier and the Customer for the hire of the Equipment in accordance with these Conditions.

Customer: the person or firm who hires the Equipment from the Supplier.

Deposit: any security deposit specified in the Order.

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

Order: the Customer's order for the Equipment, as set out in the Customer's hire order form, the Supplier's confirmation of the Customer's request for the Equipment, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Payment Schedule: the course of payments by the Customer in consideration for the hire of Equipment as specified in the Order.

Rental Payments: the payments made by or on behalf of Customer for the hire of the Equipment as set out in the Order.

Rental Period: the period of hire as set out in the Order.

Site: the Customer's premises as set out in the Order.

Supplier: James Lister & Sons Limited (registered in England and Wales with company number 00591148).

Total Loss: the Equipment is, in the Supplier's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated

2. BASIS OF CONTRACT

2.1 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.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or the Supplier acts to fulfil the Order, at which point the Contract shall come into existence.

2.4 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.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7 In the event that the Equipment is covered by the Consumer Protection (Distance Selling) Regulations 2000 (**Regulations**), by entering the Contract the Customer consents for the Supplier to supply and deliver the Equipment immediately and waives its right to cancel the Equipment in accordance with the Regulations

3. EQUIPMENT HIRE

3.1 The Supplier shall hire the Equipment to the Customer for the Rental Period (unless the Contract is terminated earlier in accordance with its terms) subject to the terms and conditions of this agreement.

3.2 The Supplier shall not, other than in the exercise of its rights under this agreement or applicable law, interfere with the Customer's quiet possession of the Equipment.

4. RENT PAYMENTS AND DEPOSIT

4.1 The Customer shall pay the Rental Payments to the Supplier in accordance with the Payment Schedule. The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Customer at the rate and in the manner from time to time prescribed by law.

4.2 All payments to be made by either party under this agreement shall be made without withholding or set-off on account of disputes, counterclaims or for any other reason whatsoever.

4.3 If the Customer fails to pay any Rental Payments or any other sums payable under this agreement by the due date for payment under this agreement then, without limiting the Supplier's rights under clause 10.1, the Customer shall pay interest on such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be paid at the rate of 2% per annum above the base rate from time to time of HSBC Bank plc.

4.4 Any Deposit is a deposit against default by the Customer of payment of any Rental Payments or any loss of or damage caused to the Equipment. If the Customer fails to make any Rental Payments in accordance with the Payment Schedule, or causes any loss or damage to the Equipment (in whole or in part), the Supplier shall be entitled to apply any Deposit against such default, loss or damage. The Customer shall pay to the Supplier any sums deducted from any Deposit within 10 Business Days of a demand for the same. Any Deposit (or balance thereof) shall be refundable within 5 Business Days of the end of the Rental Period.

5. DELIVERY

5.1 Delivery of the Equipment shall be made by the Supplier. The Supplier shall use all reasonable endeavours to effect delivery by the date and time agreed between the parties but dates and times quoted for delivery are approximate only, and the time of delivery is not of the essence.

5.2 The Customer shall procure that a duly authorised representative of the Customer shall be present at delivery and acceptance of delivery by such representative shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Supplier, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

5.3 To facilitate Delivery, the Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery to be carried out safely and expeditiously.

6. TITLE, RISK AND INSURANCE

- 6.1 The Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this agreement).
- 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Delivery. The Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Equipment is redelivered to the Supplier. During the Rental Period and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances: (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing; (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Customer.
- 6.3 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Customer's possession or use of the Equipment.
- 6.4 If the Customer fails to effect or maintain any of the insurances required under this agreement, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer. The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

7. CUSTOMER'S RESPONSIBILITIES

- 7.1 The Customer shall during the term of this agreement: (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions ;(b) take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work; (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment; (d) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Supplier immediately upon delivery; (e) keep the Supplier fully informed of all material matters relating to the Equipment; (f) permit the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection; (g) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it; (h) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Equipment; (i) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation; (j) not use the Equipment for any unlawful purpose; (k) ensure that at all times the Equipment remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment; (l) deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and (m) not do or permit to be done anything which could invalidate the insurances referred to in *clause 6.2*.
- 7.2 The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify the Supplier on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this agreement.

8. WARRANTY

- 8.1 The Supplier warrants that the Equipment shall substantially conform to its specification (as made available by the Supplier), be of satisfactory quality and fit for any purpose held out by the Supplier. The Supplier shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within 3 months from delivery, provided that: (a) the Customer notifies the Supplier of any defect in writing within 5 Business Days of the defect occurring; (b) the Supplier is permitted to make a full examination of the alleged defect; (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel; (d) the defect is directly attributable to defective material, workmanship or design.
- 8.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Supplier, the Customer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer.
- 8.3 If the Supplier fails to remedy any material defect in the Equipment in accordance with clause 8.1, the Supplier shall, at the Customer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).

9. LIMITATION OF LIABILITY

- 9.1 Without prejudice to clause 9.2, the Supplier's maximum aggregate liability for breach of this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the aggregate Rental Payments due under the Contract.

- 9.2 Nothing in this agreement shall exclude or in any way limit: (a) either party's liability for death or personal injury caused by its own negligence; (b) either party's liability for fraud or fraudulent misrepresentation; or (c) any other liability which cannot be excluded by law.
- 9.3 This agreement sets forth the full extent of the Supplier's obligations and liabilities in respect of the Equipment and its hiring to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in this agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.
- 9.4 Without prejudice to clause 9.2, the Supplier shall not be liable under this agreement for any: (a) loss of profit; (b) loss of revenue (c) loss of business; or (d) indirect or consequential loss or damage, in each case, however caused, even if foreseeable.

10. TERMINATION

- 10.1 The Supplier may, without prejudice to any other right or remedy which may be available to it, terminate this agreement immediately by written notice to the Customer if (a) the Customer defaults in any of its payment obligations, or (b) the Customer commits a material breach of this agreement which breach is irremediable, or which breach (if remediable) is not remedied within 5 Business Days after the service of written notice from the Supplier requiring it to do so, or (c) the Customer 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (d) 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 Customer, or (e) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned, or (f) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.2 This agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 10.3 Upon termination of this agreement, however caused, the Supplier's consent to the Customer's possession of the Equipment shall terminate and the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located and without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Supplier on demand (a) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to this agreement and (b) any costs and expenses incurred by the Supplier in recovering the Equipment and/or in collecting any sums due under this agreement (including any storage, insurance, repair, transport, legal and remarketing costs)
- 10.4 Upon termination of this agreement pursuant to clause 10.1, any other repudiation of this agreement by the Customer which is accepted by the Supplier or pursuant to clause 10.2, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period. The sums payable under this clause 10.4 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to clause 10.3. Such sums may be partly or wholly recovered from any Deposit.
- 10.5 Termination of this agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

11. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. GENERAL

12.1 Assignment and subcontracting.

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; 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 or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance.

- (a) If any court or 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 to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- 12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 12.7 **Governing law and jurisdiction.** The 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.

November 2012