

# SERIOUSLY SORTED LIMITED

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES.

version 18-02

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### 1. DEFINITIONS

<b>Seller</b>	means Seriously Sorted Limited or Seriously Sorted Ltd t/a Microlimit or Microlimit Industrial Parts or Seriously Sorted Ltd t/a De-Vice Systems.
<b>Buyer</b>	means the person, company or organisations contracting with or offering to contract with the Seller.
<b>Your Agent</b>	means a person or company specified by the Buyer to the Seller as authorised to act on behalf of the Buyer.
<b>Concession</b>	means any alteration of specification to Goods or Services.
<b>Conditions</b>	means the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Seller.
<b>Contract</b>	means the legally binding agreement between the Seller and the Buyer exclusively under the terms and conditions of this document.
<b>Due Date</b>	is the date by which payment is due from the Buyer.
<b>Estimate</b>	means a pricing guide that the Seller offers when a specific element of cost, production or service has not been quoted and is offered as a guide only with errors and exceptions excepted. It is not a fixed price nor can the estimate be used to limit the cost of the service.
<b>Failed Payment</b>	means cleared funds have not been received by the Seller by the Due Date automatically creating a managed account.
<b>Goods</b>	means the physical items which the Buyer agrees to purchase from the Seller.
<b>Intellectual Property</b>	means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

<b>Managed Account</b>	means an account attracting associated costs including but not limited to interest, debt collection, legal costs, and administration.
<b>Your Order</b>	means the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's purchase order form, e-mail or letter OR the Buyer's written acceptance of the Seller's quotation.
<b>Payment</b>	means cleared funds deposited into the Sellers nominated bank account by the due date.
<b>Price</b>	means the price for the Goods and or Services excluding any carriage, packaging and insurance costs and all government taxes including but not limited to; VAT, GST, duty, tariffs and levies.
<b>Seller Materials</b>	has the meaning set out in clause 12.1.6.
<b>Services</b>	means the services supplied by the Seller to the Buyer.
<b>Terms</b>	means this document, Contract, Terms and Conditions of business, and its amendments.
<b>Variations</b>	means any changes to any detail of the Order for Goods and or Services.
<b>Waiting Time</b>	means the time from the arrival on site by the Seller, and or its agents, to being able to commence the execution the Sellers contracted responsibilities due to any cause outside the direct control of the Seller, including but not limited to, failed payment.

## 2. Conditions

- 2.1. This Contract contains the entire agreement and understanding of the parties relating to the subject matter of this Contract and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral.
- 2.2. These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods and/or Services, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.
- 2.3. The Buyer accepts these Terms and Conditions of business as a condition of any offer by the Seller to supply Goods or Services that is prior to any debt being incurred.
- 2.4. If there is more than one party contracting with the Seller then their obligation shall be joint and several.
- 2.5. Communication to Your Agent is deemed as having been received by You, and instructions, including but not limited to variations and or concessions or amendments, from Your Agent are deemed to be Your agreement to the results of such communications including paying the Price of those results.
- 2.6. The Sellers Terms and Conditions of business, and any future amendments, apply to each and every transaction between the Seller and the Buyer and cannot be over-ridden without prior written consent from the Seller.
- 2.7. Notwithstanding any quotation which the Seller may have forwarded to the Buyer at any time the Buyers Order without the Sellers written acceptance does not bind the Seller to deliver any Goods or Services to the Buyer.
- 2.8. Acceptance of any quotation from the Seller by the Buyer, and or the Buyers successors, assignees and guarantors shall be regarded as the Buyers irrevocable acceptance of these Terms and Conditions of business.

- 2.9. Any order placed by email, verbally by the Buyer or Your Agent or any payment made to the Seller in respect to any offer or quotation is the Buyers acceptance of these Terms and Conditions of business.
- 2.10. In the event that these terms and conditions conflict with any other terms or conditions, the Sellers Terms, these terms and conditions, will take precedence.
- 2.11. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Sellers right to subsequently enforce that provision.
- 2.12. All orders for Goods and/or Services shall be deemed to be an offer by the Buyer to purchase Goods and/or Services from the Seller pursuant to these Conditions.
- 2.13. Acceptance of delivery of the Goods or commencement of the Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.14. These Conditions may not be varied except by the written agreement of [a director of] the Seller.
- 2.15. The Sellers reserve the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 2.16. These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.

### **3. Price and Currency**

- 3.1. The price, if not a quoted and accepted price, is subject to change without notice notwithstanding any estimate, quote or published price list and is payable in cash, within seven days of the invoice date by approved credit account holders.
- 3.2. Price or the formulae for calculating price are to be defined prior to service being delivered.
- 3.3. Variation of price is to be defined at time of variance and signed by the Buyer on a form supplied by the Seller. Separate pricing and payment terms for variations may apply.
- 3.4. All prices stated are the full price less any discounts agreed in writing
- 3.5. All prices are in the pound sterling, £, GBP unless specifically stated otherwise on the Sellers quotation or Acceptance of Order

### **4. Payment and Interest**

- 4.1. The Buyer agrees not to question the Sellers strict right to payment for the Goods and/or Services supplied by the Seller and the Buyer grants the Seller a purchase money security interest for payment to provide for an event of late payment. In the event of refusal to pay, non-payment or any other breach of these conditions, the Buyer will pay all of the actual costs of attempted debt collection. The Buyer agrees that legal costs incurred by the Seller will be payable by the Buyer on a full indemnity basis together with interest continuing after judgment until full payment has been received by the Seller, at a rate of 2.5% per month on all overdue amounts, including all costs. All payments shall be applied first in payment of default interest (if any). The Seller reserve the right to decline extended or additional credit.
- 4.2. Where payment on or prior to delivery has been agreed and fails to occur the Seller reserve the right to charge waiting time of GBP 60.00 per person per whole or part hour for all staff on site till Payment is made and or remove any product from the site and charge for redelivery of same and receive Payment for entire balance of the Order prior to redelivery

- 4.3. Cash sales, eg sales where formal account facilities have not been agreed or have been withdrawn, are subject to the terms of payment stated on the Sellers quotation and or Order Acceptance.
- 4.4. Payment of the Price and all applicable United Kingdom government taxes shall be due within seven days of the date of the Seller's invoice.
- 4.5. Receipt by the Seller of the Buyers cheque only constitutes Payment when the Seller can present it to the Sellers bank the following business day to provide cleared funds in the Sellers bank account by the Due Date
- 4.6. The Buyer is responsible for ensuring that any cheque forwarded is received by the Seller in time for it to be presented to the Sellers bank account the following business day to provide cleared funds in the Sellers bank account by the Due Date
- 4.7. Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of [8%] per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment until full payment is received under these terms and conditions of the contract.
- 4.8. The Buyer shall pay all accounts in full and is not entitled to set off or counter-claim against invoices submitted by the Seller or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller
- 4.9. The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 4.10. Until payment has been made to the Seller, the Buyer shall hold all goods, including materials, tools and equipment upon trust and as the Bailee of the Seller. It is the Buyers responsibility to keep all of the Sellers goods safe.
- 4.11. It shall be the Buyers sole duty to identify and keep separate all goods supplied pursuant to these conditions and to establish that the Seller has been paid for all goods and services and to pay to a separate trust fund the proceeds of any sale of the Buyers business to ensure payment to the Seller of the full value of the Sellers Goods, Services and costs and from there to pay only as directed by the Seller. Liquidated damages to the value of the total amount due to the Seller accrue upon discovery by the Seller of incorporation of the goods into any third party supplied or owned goods or property.
- 4.12. If payment for Goods and/or Services is refused by the Buyer, Your Agent, or an administrator, receiver or liquidator is appointed to the Buyer, or the Buyers customer, the Seller shall be entitled, within five days after ascertaining that funds are not lodged on separate trust for the Seller the Buyer authorises the Seller as the Buyers true and lawful attorney to create, execute and register the Sellers securities or any of them, as granted or agreed by these Conditions of Trade. For this purpose the execution of a mortgage, or General Security Agreement shall be considered to take place on the date on which the Seller receives notice of breach of these conditions by the Buyer to which the Seller has not agreed in writing.
- 4.13. The Due Date unless otherwise stated in writing is 7 days from invoice date.
- 4.14. All discounts and or refunds offered at any time expire on the Due Date.
- 4.15. Any discount that expires or fails will be added to the amount payable and will be charged out on separate invoices and become payable 7 days from the date of the new invoice regardless of any extended credit that may have been available with the original invoice.
- 4.16. Any and all charges applied after Due Date are due and payable 7 days from invoice regardless of whatever extended credit may, or may not, have been offered on the original invoice. These charges include, but are not limited to, failed discounts, expired discounts, interest, management charges, administration charges.

4.17. In respect of Failed Payment the Seller reserves the right to:

4.17.1. apply additional costs to the payable balance;

4.17.2. pass any unpaid invoice of part thereof to a debt collection agency whose costs are added to the amount owed plus an administration cost to load unpaid account for debt collection of GBP 50.00 + 10% of balance owing;

4.17.3. add security over property with the costs added to client account.

4.18. Fees and charges for Managed Accounts are:

4.18.1. One-Off Account management of GBP 50.00 plus 10% of the balance;

4.18.2. Weekly account management fee 1% of balance per Week minimum GBP 20.00;

4.18.3. Each Follow up letter GBP 20.00;

4.18.4. Each follow up call GBP 20.00 plus GBP 1.50 per minute.

## **5. Concessions**

5.1. For the purposes of this Contract, concession means any alteration of specification to Goods or Services including but not limited to; material, dimension, delivery, finish, KPIs, date(s).

5.2. The Goods are those offered by the Seller as described in the Sellers quotation and or Order Acknowledgment. It is the Buyers responsibility to ensure that such Goods meet the Buyers requirements.

5.3. The Seller reserves the right to request a Concession for any Goods without reason. Any Concession requested by the Seller will be in writing and require a written response from the Buyer.

5.4. The Seller reserves the right to amend or change the specification of the Goods if required by any applicable statutory or regulatory requirements.

## **6. Warranties**

6.1. The Seller warrants that for a period of three months commencing on the earlier of either the date of delivery of the Goods, or the commencement of the Services (Warranty Period), the Goods and/or Services shall:

6.1.1. conform with their description and;

6.1.2. be of satisfactory quality with the meaning of the Sale of Goods Act 1979;

6.1.3. be fit for any purpose held out by the Seller; and

6.1.4. be carried out in accordance with the Supply of Goods and Services Act 1982.

## **7. Delivery of Goods**

7.1. In the absence of a specified delivery address delivery of the Goods shall be made to the Buyers address documented on the Buyer's Order.

7.2. The Buyer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Seller for delivery.

7.3. The Seller undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so.

7.4. Time of delivery shall not be of the essence of the contract.

7.5. The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods.

7.6. If short delivery does take place, the Buyer may not reject the Goods but shall accept the Goods delivered as part performance of the contract. At the Sellers discretion the Seller shall either issue a credit note for the shortfall or make up the shortfall.

7.7. If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing.

## **8. Acceptance of Goods**

8.1. The Buyer shall be deemed to have accepted the Goods five days after delivery to the Buyer.

8.2. The Buyer shall carry out a thorough inspection of the Goods within five days and give notice in writing to the Seller should the Buyer discover that some or all of the goods do not comply with any applicable description, specification or Warranty.

8.3. On receipt of such advice the Seller will initiate the Defects and Disputes process – see 21 below.

8.4. Where the Buyer has accepted, or has been deemed to have accepted, the Goods the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

## **9. Title & Risk**

9.1. Risk shall pass on delivery of the Goods to the Buyer's address.

9.2. Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice for them (including interest and costs) has been paid in full.

9.3. Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall store or mark them so that they can at all times be identified as the property of the Seller.

9.4. The Seller may at any time before title passes and without any liability to the Buyer:

9.5. repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them; and

9.6. for that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.

9.7. The Seller may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer.

## **10. Supply of Services**

10.1. The Seller shall provide the Services to the Buyer documented in the Scope of Services attached to the Order Acceptance.

10.2. The Seller 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.

10.3. The Seller 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 Seller shall notify the Buyer in any such event.

## **11. Defects & Disputes**

- 11.1. Where the Buyer wishes to report a defect or raise a dispute with the Seller the Buyer must complete the Sellers Non-Conformance Advice form supplied on request by the Seller. The completed form must be returned to the Seller within the inspection period stated in the contract or within five business days if no inspection period stated in the contract.
- 11.2. Any dispute not raised with the Seller with a completed Non-Conformance Advice form within the inspection period will be deemed a warranty claim and cannot be used to delay payment of invoices by their due date(s)
- 11.3. The Buyer must return the Goods to the Seller at the Buyer's cost and the Seller shall, at its option, repair or replace any Goods that are defective, or refund the price of such defective Goods.
- 11.4. Unless an agreed arbiter is assigned and agreed by both the Buyer and the Seller prior to acceptance of the contract then the Buyer accepts that the Seller acts as the arbiter to quantify the value of the disputed portion in response to the Buyer lodging a claim of dispute.
- 11.5. The Seller shall quantify and define the disputed amount and forward a credit note for the disputed amount to be applied only to the original invoice.
- 11.6. The Buyer agrees to pay the undisputed portion of the amount payable by the Due Date. The undisputed portion being the original invoice less the credit note issued against it
- 11.7. When the Seller has resolved the disputed issues or fees the Seller will issue an invoice for the resolved amount payable 7 days from dispute resolution.
- 11.8. Any dispute not raised by submission to the Seller using the Sellers completed Non-Conformance Advice form prior to due date, that the Seller later agrees to compensate for, shall not affect timely settlement of the original invoice and its value shall only apply from the date for the credit note issued by the Seller. And interest or other costs applicable to the original invoice remain payable.
- 11.9. No dispute between the parties shall be subject to arbitration but shall be subject to the laws of England and Wales and if not settled within 20 working shall be tried in a court in England. Before litigation the Seller may appoint a mediator if the Seller considers settlement by good faith negotiation is possible.

## **12. Buyers Obligations**

- 12.1. The Buyer shall:
  - 12.1.1. ensure that the terms of the Order are complete and accurate;
  - 12.1.2. co-operate with the Seller in all matters relating to the Services;
  - 12.1.3. provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises as reasonably required by the Seller to provide the Services;
  - 12.1.4. provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - 12.1.5. 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
  - 12.1.6. keep and maintain all materials, equipment, documents and other property of the Seller (Seller Materials) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation.

12.1.7. The Buyer is responsible for supplying full contact detail to the Seller, plus any changes as they occur including names, phones numbers, mobile numbers, email addresses.

12.2. If the Seller's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (Buyer Default):

12.2.1. the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;

12.2.2. the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 12.2; and

12.2.3. the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

### **13. Intellectual Property Rights**

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

13.2. The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.

13.3. All Seller Materials are the exclusive property of the Seller

### **14. Liability**

14.1. The Seller shall be entitled to deliver and invoice by instalment and to withhold delivery of any instalment until all money due to the Seller has been paid.

14.2. If the Buyer makes any default or commits any act of bankruptcy or becomes insolvent, the Seller may cancel any order to the extent that it is unfulfilled but without prejudice to the Seller's right to payment or otherwise in respect of goods and/or services already delivered.

14.3. In the case of force majeure either party may cancel any undelivered portion if delay in delivery exceeds 60 days.

14.4. The Seller will not be liable for faults or defects that occur for reasons beyond the Seller's control.

14.5. The Seller's liability is limited to the value of the goods and/or services supplied within the thirty days preceding any claim by the Buyer.

14.6. Dates for delivery are given in good faith and are not a condition of sale or purchase. Time shall in no case be of the essence.

14.7. The Seller shall not be held responsible for any delay in delivery and the Buyer will not be entitled to cancel orders because of any such delay.

14.8. All claims for loss of or damage repair to, return or miss-delivery or replacement of goods must be made on the carrier within 15 working days from the date of delivery



- 14.9. The Seller shall not be liable for any consequential loss, damages, or other claims arising from the use to which the goods are put or intended to be put.
- 14.10. Manufacturers guarantees remain in force and the Buyer agrees to claim for these directly with the manufacturer.
- 14.11. The Buyer will not require the Seller to undertake remedial work before all outstanding monies due have been received and agreements have been met.
- 14.12. No time or other indulgence granted by the Seller or to the Buyer will affect the Sellers strict rights pursuant to these conditions in any case where these conditions conflict with any other conditions.
- 14.13. The Buyer, and its directors or shareholders or partners (where applicable), signing the account application or accepting the Sellers quotation agree to stand personally as surety and guarantor jointly and severally as principal debtor for all debts arising under this agreement in the event of non-payment by the Buyer

## **15. Limitation of Liability**

- 15.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 15.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 15.1.2. fraud or fraudulent misrepresentation;
  - 15.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - 15.1.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);  
or
  - 15.1.5. defective products under the Consumer Protection Act 1987.
- 15.2. Subject to clause 14.1:
- 15.2.1. The Seller shall under no circumstances whatever be liable to the Buyer, 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
  - 15.2.2. the Seller's total liability to the Buyer 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 and or Services of the contract.
- 15.3. After the Warranty Period, 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.
- 15.4. This clause 15 shall survive termination of the Contract.

## **16. Termination**

- 16.1. Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than sixty days written notice.

16.2. 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:

- 16.2.1. 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 twenty one days after receipt of notice in writing to do so;
- 16.2.2. 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 or limited liability partnership) 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];
- 16.2.3. 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];
- 16.2.4. 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;
- 16.2.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
- 16.2.6. 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 seven days;
- 16.2.7. 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);
- 16.2.8. the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 16.2.9. 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;
- 16.2.10. 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 15.2.2 to clause 15.2.9 (inclusive);
- 16.2.11. The other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 16.2.12. the other party's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 16.2.13. 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.

- 16.3. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 16.4. Without limiting its other rights or remedies, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 16.2.2 to clause 16.2.13, or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 16.5. On termination of the Contract for any reason:
  - 16.5.1. the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
  - 16.5.2. the Buyer shall return all of the Seller Materials and any Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 16.5.3. 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
  - 16.5.4. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **17. Force Majeure**

- 17.1. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, drought, epidemic or similar events, or default of suppliers or subcontractors.
- 17.2. The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 17.3. If the Force Majeure Event prevents the Seller from providing any of the Services and/or Goods for more than eight weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

## **18. General**

- 18.1. **Notices.**
  - 18.1.1. Dispatch of any notice to the contact details supplied to the Seller by the Buyer is accepted as delivery of that notice
  - 18.1.2. The Buyer is responsible for any cost associated with the Seller finding details which the Buyer fails to disclose in timely manner

- 18.1.3. Any notice or other communication given to a party under or in connection with this 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 or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- 18.2. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 18.3. **Waiver.** A waiver of any right under the Contract or law 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 prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.4. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Sellers right to subsequently enforce that provision.
- 18.5. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.6. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.7. **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.8. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Seller.
- 18.9. **Quotations.** Unless stated otherwise Quotations are valid for 30 days from the date a signed quotation is sent to the Buyer.
- 18.10. **Governing law.** This agreement 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 the law of England and Wales.
- 18.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

**END**