

# TERMS & CONDITIONS

Please read this carefully



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## TERMS & CONDITIONS

### IMPORTANT LEGAL NOTICE

These terms and conditions shall apply to the supply of goods and services by Photon Surgical Systems Limited (company registered number 11028176) whose registered office is at Unit B, Aquarius Centre, Edison Close, Waterwells Business Park, Quedgeley, Gloucester, GL2 2FN ("the Supplier")

#### 1. Definitions

1.1. In these Conditions, the following definitions apply:

**Business Day:** a day Monday through Friday from 9 a.m. to 5 p.m. local time and excludes Saturday and Sunday or public holiday's in England.

**Supplier:** is Photon Surgical Systems Limited (company registered number 11028176), Unit B, Aquarius Centre, Edison Close, Waterwells Business Park, Quedgeley, Gloucester, GL2 2FN.

**Commencement Date:** has the meaning set out in clause 2.2.

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

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

**Deliverables:** the deliverables (equipment and/or services) set out in the Order.

**Force Majeure Event:** an event beyond the reasonable control of the Supplier.

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

**Goods Specification:** any specification for the Goods as stated in the Supplier's catalogue, the Order or as otherwise agreed in writing by the Customer and the Supplier.

**Intellectual Property Rights:** 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.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Supplier's quotation or the Supplier's acknowledgement of the Order and acceptance of the Supplier's quotation shall be an Order by the Customer to purchase the Goods and/or the Services in accordance with the provisions of the quotation.

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

**Service Specification:** the description or specification for the Services set out in the Order or otherwise provided in writing by the Supplier to the Customer.

**Supplier Materials:** all materials, equipment, documents and other property of the Supplier.

**Supplier's Premises:** means the Supplier's premises at Unit B, Aquarius Centre, Edison Close, Waterwells Business Park, Quedgeley, Gloucester, GL2 2FN.

**Warranty Period:** the relevant warranty period applicable to the Goods or the Services as follows:

- a) new Goods (excluding perishable and consumable items) – 12 months from the date of delivery
- b) ex-demo, refurbished or ex-display Goods – (excluding perishable or consumable items) – 6 months from the date of delivery
- c) pre-owned Goods – (excluding perishable or consumable items) – 3 months from the date of delivery
- d) servicing – (excluding perishable or consumable items) – 3 months from the date of service/installation/delivery

unless otherwise stated in the Contract.

- 1.1. In these Conditions, a reference to writing or written includes e-mails.

#### 2. Basis Of Contract

- 2.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2. The Order shall only be deemed accepted when the Supplier issues written acceptance of the Order, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate or are implied by trade, custom, practice or course of dealing.
- 2.6. Any quotation given by the Supplier shall not constitute an offer and is only valid for 14 days from its date of issue unless otherwise stated on the quotation.
- 2.7. All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3. Goods

- 3.1. The Goods are described in the Supplier's catalogue as modified by any applicable Goods Specification.
- 3.2. To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses 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 Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. The Supplier reserves the right at any time to amend the specification of the Goods, including any Goods Specification supplied by the Customer, if required by any applicable statutory or regulatory requirements.

### 4. Delivery of Goods

- 4.1. The Customer shall collect the Goods from the Supplier's Premises or such other location as may be advised by the Supplier before delivery (Delivery Location) within 7 Days of the Supplier notifying the Customer that the Goods are ready. Where the Supplier has agreed to deliver the Goods it will do so Carriage Paid To (Incoterms 2010) to the destination specified in the Order and the Customer shall reimburse all the carriage and delivery costs to the Seller.
- 4.2. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.3. Any dates quoted for delivery of the Goods from the Supplier 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 caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions relevant to the Goods supply.
- 4.4. If the Customer fails to accept or take delivery of the Goods within 7 days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods, the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.5. If 7 days after 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.
- 4.6. The Supplier may deliver the Goods in instalments, which shall be invoiced and paid 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.
- 4.7. Non-delivery

- 4.7.1. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's or its carriers' negligence) unless written notice is given to the Company within 10 days of the date when the Goods would in the ordinary course of events have been received.
- 4.7.2. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time.

### 5. Returns

- 5.1. Goods are not supplied on a sale or return basis. Goods must be unused and in original packaging fit for re-sale. No order can be cancelled or accepted for credit without the prior agreement of the Supplier. The Customer is responsible for returning any Goods, covering costs and ensuring adequate insurance coverage. All Goods accepted for return by the Supplier will be subject to a restocking fee of 25% on the net invoice value and all delivery charges. If you wish to exchange the goods for another item(s) of the same or greater value, the restocking charge will be waived, provided our supplier has not charged us a restocking fee. All delivery charges will remain the Customer's expense. Special orders or bespoke items cannot be accepted for return – please check with us before ordering.
- 5.2. Before making a return, please ask for a "RETURNS NUMBER" by speaking with one of our customer service team on 01452 347101. We will then provide you with the correct address to return the item to. (Failure to do so will delay your return and may attract a handling fee.)

### 6. Loans

- 6.1. Any agreement made with the Supplier to have equipment on loan is subject to the following additional terms and conditions alongside the Suppliers Loan Agreement T&Cs which will be signed by the Customer for every loan.
- 6.2. The Customer will be responsible for keeping the equipment and all accessories safe and retaining the original packaging. If the equipment is returned to the Supplier, the Customer is responsible for the safe return of the equipment in its original packaging. Any loss or damage will be charged to the Customer.
- 6.3. The Supplier does not loan the Equipment to you with any implied guarantee or warranty, or condition regarding the Equipment.
- 6.4. The Customer must ensure they have any licences or similar authority required before using the Equipment and will provide evidence of such to the Supplier upon request.
- 6.5. The Customer must always keep the Equipment in their possession and control and not allow anyone else to use or obtain any interest in the Equipment at any time.
- 6.6. The Customer will bear the entire risk of loss, damage, destruction, theft or seizure of the Equipment from the actual delivery of the Equipment to you until the Supplier receives the returned Equipment in accordance with the Agreement. The Customer must ensure that the Equipment is always comprehensively insured for its replacement value and that the insurance covers all purposes the Equipment is used

for. The Customer must provide the Supplier with proof of insurance upon request.

- 6.7. The Supplier will arrange collection and delivery of all loan/trial equipment from the Customer at a standard charge of £35 (excluding VAT) for a single parcel less than 15kg. Please ensure that it is packaged correctly and ready to return to the owner in the same condition as when it was delivered. If the packaging is inadequate and there is any damage to the unit, or any accessories are missing then we will not be able to claim on our insurance and we will request full compensation of the RRP of the equipment from you. The Customer will be responsible for any damage caused whilst in your possession and bear all charges. Pallets and multiple parcels will be at an additional cost.
- 6.8. The Customer will use the Equipment for the period specified in the Agreement and ensure that it is ready for collection at the request of the Supplier. Please inform us within 24 hours if your Equipment is not collected on the specified date. Any missed collections at the fault of the Customer will be charged at cost. The Customer will incur daily rental charges if the Equipment is not received back by the return date. Daily charges range from £50 - £120 + VAT at the discretion of the Supplier depending on the item in question.
- 6.9. All items must be cleaned and sterilised before return. Otherwise, a cleaning charge of £45 + VAT will automatically be added to the Customer's account and invoiced.
- 6.10. All/any applicable charges and fees must be paid within 14 days of invoice.

#### 7. Site Visits, Installations, Breakdown and Service

- 7.1. Site visits, installations, servicing and breakdown cancellations given less than 48 hours Business Days' notice before the agreed day and time by the Customer will incur a 100% charge at the current costs. The Customer shall also be liable for travel and accommodation expenses that cannot be cancelled.
- 7.2. Customers requesting servicing on units deemed to be faulty will be charged a full breakdown call-out fee and additional labour charges at the current rate. The Supplier also reserves the right to carry out the requested service post-repair which may be a different day, and charge the full amount.
- 7.3. When the Customer authorises the Supplier to fit or retrofit any additional or upgrades to a machine not under the care of the Supplier. The Supplier accepts not liability for breach of contract between the Customer and the provider.
- 7.4. The installation of certain Goods should only be carried out by a qualified engineer, the Supplier cannot be held responsible in any way for any problems or damage even within the warranty period unless installed by a Supplier's engineer.
- 7.5. PPM servicing is subject to additional PPM Servicing terms and conditions which can be requested from the Supplier.

#### 8. Quality of Goods

- 8.1. The Supplier warrants that on delivery and for the applicable Warranty Period, the Goods shall:
  - 8.1.1. conform in all material respects with their description and any applicable Goods Specification;
  - 8.1.2. be free from material defects in design, material and workmanship.
- 8.2. the Supplier is given a reasonable opportunity to examine such Goods; and
- 8.3. 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.
- 8.4. The Supplier shall not be liable for the Goods' failure to comply with the warranty if:
  - 8.4.1. the Customer makes any further use of such Goods after giving a notice;
  - 8.4.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 8.4.3. the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
  - 8.4.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 8.4.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - 8.4.6. the Goods differ from their description or any applicable Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 8.5. The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier, the Warranty Period for any repaired item shall be 3 months from the date of repair for the same fault. A Warranty Period as stated for new Goods is given for replacement Goods.
- 8.6. Warranty on autoclaves, x-ray processors/generators/DR/CR and dental carts is only valid provided the Supplier has carried out the installation.

#### 9. Title and Risk

- 9.1. The risk in the Goods shall pass to the Customer at the time of delivery at the Delivery Location.
- 9.2. Title and ownership of the Goods shall not pass to the Customer until the Supplier receives payment in full (cleared funds) for the Goods.
- 9.3. Until the title to the Goods has passed to the Customer, the Customer shall:
  - 9.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - 9.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- 9.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 9.3.4. give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 9.3.5. the Customer may not resell the Goods until the title has passed without the Supplier's prior written consent.

## 10. Supply of Services

- 10.1. The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 10.2. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification 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 Supplier shall have the right to make any changes to the Services 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.
- 10.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 11. Customer Obligations

- 11.1. The Customer shall:
  - 11.1.1. ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
  - 11.1.2. co-operate with the Supplier in all matters relating to the Services;
  - 11.1.3. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
  - 11.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - 11.1.5. prepare the Customer's premises for the supply of the Services;
  - 11.1.6. 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;
  - 11.1.7. 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.
  - 11.1.8. if the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the

Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 11.1.9. 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;
- 11.1.10. 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.

## 12. Charges and Payment

- 12.1. The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as of the date of delivery. The price of the Goods is Ex Works (Incoterms, 2000) and exclusive of all costs and charges of packaging, insurance, and transport of the Goods, which shall be paid by the Customer when it pays for the Goods. Some orders may be subject to a minimum order charge, which will be set out in the Supplier's quotation or the Supplier's acceptance of the Order.
- 12.2. Unless otherwise specified in the Supplier's quotation or the Supplier's written acceptance of the Order the charges for Services shall be on a time and materials basis calculated in accordance with the Supplier's standard daily rates from time to time.
- 12.3. Any discounts agreed by the Supplier and the Customer are only valid provided the relevant invoice is paid in full within 14 days of the invoice date.
- 12.4. The Supplier reserves the right to:
  - 12.4.1. increase the price of the Goods and the Services by giving notice to the Customer at any time before delivery or performance (as applicable) to reflect any increase in the cost of the Goods to the Supplier that is due to:
    - 12.4.2. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
    - 12.4.3. any request by the Customer to change the delivery/service/installation date(s), quantities or types of Goods or performance of the Services ordered, or the Goods Specification or the Services Specification; or
    - 12.4.4. any delay caused by any instructions of the Customer in respect of the Goods or the Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods or the Services.
- 12.5. In respect of Goods and unless otherwise stated in the Contract, the Supplier shall invoice the Customer on or at any time after the date of the Order. In respect of Services and unless otherwise stated in the Contract, the Supplier shall invoice the Customer monthly in arrears and on completion.
- 12.6. Payments are requirements prior to orders being processed for:
  - 12.6.1. all orders leaving the United Kingdom or being paid for from abroad will require payment in full

via a Pro Forma invoice, it is the Customer's responsibility to cover bank charges for all parties and any foreign transaction conversion charges, including additional fees.

12.6.2. all new Customers opening an account with the Supplier require payment in full for their first 5 orders.

12.6.3. any order value of >£5,000 including VAT, the Customer is required to pay a 50% deposit, with the balance paid within 14 days of the invoice date.

12.7. The Customer shall pay each invoice submitted by the Supplier:

12.7.1. within 14 days of the date of the invoice; and

12.7.2. in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

12.8. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value-added tax chargeable from time to time (VAT).

12.9. If the Customer fails to make payment of any sum due to the Supplier:

12.9.1. the Supplier understands and will exercise its statutory right to interest under the Late Payment of Commercial Debts (Interest) Act 1998 if we are not paid according to agreed credit terms. The Supplier will charge interest on late payments of up to 8% plus the Bank of England base rate from the date the amount became overdue until the date payment is received. We will also charge a business a fixed sum for the cost of recovering a late commercial payment on top of claiming interest from it. The amount we will charge depends on the amount of debt, this ranges from £40-£100 and will only be charged once for each payment. These amounts are set by late payment legislation. Such interest shall accrue on a daily basis from the due date until the actual payment of the overdue amount, whether before or after judgment.

12.9.2. While any payments by the Customer to the Supplier are outstanding, the Supplier reserves the right to suspend the supply of further Goods or provision of any services until all outstanding amounts have been paid in full. The Customer shall not be released from obligations to the Supplier under the Contract or any other contract.

12.9.3. The Supplier reserves the right to revert to ProForma invoicing for any Customer who disregards the Supplier's credit terms.

12.10. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law.

12.11. The cost of cancellation of any order or service by the Customer will be equal to 50% of the total contract or quotation value.

12.12. Storage charges are applied at a weekly fee of £30 + VAT per pallet to Customers.

### 13. Intellectual Property Rights

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

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

### 14. Confidentiality

14.1. 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 (the disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority, or a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

### 15. Limitation of Liability

15.1. Nothing in these Conditions shall limit or exclude the Supplier'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 12.1:

15.2.1. 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

15.2.2. 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 value of the Contract.

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

15.4. This clause 15 shall survive termination of the Contract.

### 16. Termination

16.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 16.1.1. 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 30 days after receipt of notice in writing to do so;
  - 16.1.2. 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;
  - 16.1.3. the other party commences negotiations with all or any class of its creditors intending to reschedule 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;
  - 16.1.4. 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;
  - 16.1.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
  - 16.1.6. 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 14 days;
  - 16.1.7. 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);
  - 16.1.8. 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;
  - 16.1.9. 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;
  - 16.1.10. 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 13.1 (b) to clause 13.1 (i) (inclusive);
  - 16.1.11. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
  - 16.1.12. the other party's financial position deteriorates to such an extent that in the Supplier's opinion, the Customer's capability to fulfil its obligations under the Contract adequately has been placed in jeopardy; or
  - 16.1.13. 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.
- 16.2. 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.
  - 16.3. Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 13.1 (b) to clause 13.1 (m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
  - 16.4. On termination of the Contract for any reason:
    - 16.4.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest, and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
    - 16.4.2. the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, 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 safekeeping and will not use them for any purpose not connected with this Contract;
    - 16.4.3. 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
    - 16.4.4. 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 Supplier, including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- 17.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract due to a Force Majeure Event.
- 17.3. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## 18. General

### 18.1. Assignment and other dealings.

- 18.1.1. The Supplier may assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate any or all of its obligations under the Contract to any third party.
- 18.1.2. The Customer shall not, without the Supplier's prior written consent, assign, transfer, charge, subcontract, or declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

### 18.2. Notices.

- 18.2.1. 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.
- 18.2.2. A notice or other communication shall be deemed to have been received if delivered personally when left at the Suppliers address; if sent by pre-paid first class post or other next working day delivery service 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.
- 18.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 18.3. Severance.

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

so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 18.4. 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.
- 18.5. 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 the authority to act as an agent for, or to bind, the other party in any way.
- 18.6. Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.7. 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 Supplier.
- 18.8. 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.
- 18.9. 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).