

TERMS OF TRADING - STANDARD CONDITIONS OF SUPPLY

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Commencement Date: the date the Contract commences, as set out in clause 2.2.

Company: Morclean Limited registered in England and Wales with company number 04605133.

Company Materials: has the meaning given in clause 9.1(h).

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Contract: the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with the Contract Details (set out in the Order Acknowledgement) and these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

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

Deliverables: the deliverables, if any, set out in the Order Acknowledgement produced by the Company for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Delivery Point: when the Goods are supplied for export from the United Kingdom, the Customer's usual trading premises or such other location as the Customer specifies on the Order Acknowledgement and which has been accepted by the Company.

Expenses: any out-of-pocket costs incurred by the Company in fulfilling an Order, including (without limitation):

- a) postage, packaging, carriage, freight, and handling charges;
- b) insurance;
- c) currency conversion and banking charges applicable to the payment method used;
- d) value added tax or any other applicable sales tax in the country in which the Company is resident; and
- e) any customs, import or other duties charged in respect of the sale and importation of Goods into the country in which the Customer is resident or the Delivery Point is located.

Force Majeure Event: has the meaning given to it in clause 16.

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

Goods Specification: any specification for the Goods, including any relevant surveys, plans or drawings, that is agreed in writing by the Customer and the Company.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, 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 trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: an order for Goods and/or Services submitted by the Customer to the Company and accepted by the Company via the Order Acknowledgment in accordance with clause 2.2.

Order Acknowledgement: an order confirmation document, sent by the Company to the Customer, agreeing to fulfil the Order to supply the Goods and/or Services as set out in the Order Acknowledgment.

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

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

Warranty Period: has the meaning given in clause 6.1.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order using the Order Acknowledgement which shall be signed by an authorised signatory of the Company at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Company shall apply a reference number to each Order received from the Customer and inform the Customer of the reference number on the Order Acknowledgement. Each party shall use the Order reference number to identify the Order.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company'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 nor 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 which are implied by law, trade custom, practice or course of dealing.
- 2.6 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

- 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.
- 2.8 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.9 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information used by the Company shall be subject to correction without any liability on the part of the Company.

3. Goods

- 3.1 The Goods are described in the Company'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 Company 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Company reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1 The Company shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order reference number, the type and quantity of the Goods, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Company. The Customer shall make any such packaging materials, pallets and/or returnable containers available for collection at such times as the Company shall reasonably request. The cost of packaging materials, pallets and/or returnable containers will be charged to the Customer, but full credit for such costs will be given to the Customer provided that the packaging materials, pallets and/or returnable containers are returned undamaged to the Company before the due payment date.
- 4.2 The Customer shall either collect the Goods from the Company's premises at Morclean Limited, Stephenson Road, Speedwell Industrial Estate, Staveley, Chesterfield, Derbyshire, S43 3JN within 3 Business Days of the Company notifying the Customer that the Goods are ready or the Company shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree in writing at any time after the Company notifies the Customer that the Goods are ready (**Delivery Location**).
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. For the avoidance of doubt, the lead time shall only start from the date stated in the Contract Details section of the Order Acknowledgement and not from the date of any purchase order submitted by the Customer to the Company. The Order

Acknowledgement shall be dated and issued by the Company upon receipt in full of any invoiced deposit, if applicable, in cleared funds from the Customer.

- 4.5 The Company 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 Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 The cost of delivery (including carriage, packaging, insurance and offloading of the Goods) shall be payable by the Customer in addition to the price for the Goods and set out in the Order Acknowledgement (or subsequently agreed in writing) at the same time as the Customer shall be liable to pay for the Goods.
- 4.7 If the Company 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 Company 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 Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.8 Where the Customer is to collect the Goods from the Company's premises, if the Customer fails to take delivery of the Goods within 3 Business Days of the Company 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 Company's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Company notified the Customer that the Goods were ready; and
 - (b) the Company shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.9 Where the Customer is to collect the Goods from the Company's premises, if 10 Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, the Company 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.
- 4.10 If the Company delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Company shall make good the shortage at its own cost within such times as may be reasonable for the Company having regard to its commitments or make a pro rata adjustment to the invoice for the Goods.
- 4.11 The Company 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. Export Sales

- 5.1 When the Goods are supplied for export from the United Kingdom these Conditions shall apply. Delivery of the Goods shall take place at the Delivery Point. Acceptance of any change to the Delivery Point requested by the Customer shall be at the Company's sole discretion and the Customer shall be liable for any additional Expenses incurred by the Company as a result of such change. The Company shall arrange for suitable transport to the Delivery Point. On delivery, the Company (or its appointed carrier) shall provide the Customer with such export documents as are necessary and which the Customer is unable to prepare together with a delivery note.

- 5.2 Delivery or performance dates in relation to the supply by the Company of Goods are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery of the Goods. For the avoidance of doubt, the lead time shall only start from the date stated in the Contract Details section of the Order Acknowledgement and not from the date of any purchase order submitted by the Customer to the Company. The Order Acknowledgement shall be dated and issued by the Company upon receipt in full of any invoiced deposit, if applicable, in cleared funds from the Customer.
- 5.3 The Company may effect delivery in one or more instalments.
- 5.4 The Customer shall, within 5 days of the arrival of each delivery of the Goods at the Delivery Point, give written notice of rejection to the Company on account of any defect by reason of which the Customer alleges that the Goods delivered do not comply with the Warranty and which was apparent on reasonable inspection.
- 5.5 If the Customer fails to give notice as specified in clause 5.4 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Warranty and, accordingly, the Customer shall be deemed to have accepted the delivery of the Goods in question and the Company shall have no liability to the Customer with respect to that delivery (except in relation to liability for any latent defects).
- 5.6 If the Customer alleges that any Goods are defective, it shall, if so requested by the Company, return the relevant Goods (unaltered and unrepaired) to the Company for inspection as soon as possible and at its own risk and expense.
- 5.7 If the Customer rejects any delivery of the Goods which do not comply with the Warranty, the Company shall, within 7 days of the Company accepting that the Goods do not comply with the Warranty:
- (a) supply replacement Goods which comply with the Warranty, in which event the Company shall be deemed not to be in breach of this agreement or have any liability to the Customer for the rejected Goods; or
 - (b) notify the Customer that it is unable to supply replacement Goods, in which case the Company shall grant to the Customer a credit equal to the value of the Goods which the Company agrees do not comply with the Warranty (**Credit**).
- 5.8 The Company's reasonable decision as to whether the Goods comply with the Goods Specification shall be final.
- 5.9 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Company, the Customer shall make those licences and consents available to the Company prior to the relevant shipment.
- 5.10 For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this agreement. The International Chamber of Commerce's (ICC) Incoterms® Rules shall apply but where they conflict with these Conditions, these Conditions shall prevail.

6. Quality of Goods

- 6.1 The Company warrants (**Warranty**) that on delivery, and for the period stated in the warranty document (and repeated in the Order Acknowledgement) (**Warranty Period**), the Goods shall:
- (a) conform with their description and any applicable Goods Specification; and
 - (b) be free from material defects in design, material and workmanship.
- 6.2 Subject to clause 6.3, if:
- (a) the Customer gives notice in writing to the Company 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 6.1;
 - (b) the Company is given a reasonable opportunity of examining such Goods; and

- (c) the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost,

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

6.3 The Company shall not be liable for the Goods' failure to comply with the Warranty set out in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Company'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 regarding the same;
- (c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Company;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the defect arises as a result of the Goods being installed incorrectly by a third party;
- (g) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
- (h) the Customer fails to comply with its obligations as set out in clause 9 of these Conditions.

6.4 Except as provided in this clause 6, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the Warranty set out in clause 6.1.

6.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

7. Title and risk

7.1 The risk in the Goods shall pass to the Customer at the time when the Company notifies the Customer that the Goods are available for collection or on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
- (d) notify the Company immediately if it becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d); and
- (e) give the Company such information as the Company may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

8. Supply of Services

- 8.1 The Company shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 8.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. For the avoidance of doubt, the lead time shall only start from the date stated in the Contract Details section of the Order Acknowledgement and not from the date of any purchase order submitted by the Customer to the Company. The Order Acknowledgement shall be dated and issued by the Company upon receipt in full of any invoiced deposit, if applicable, in cleared funds from the Customer.
- 8.3 The Company reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 8.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8.5 For Services which include installation and commissioning work, the Customer shall ensure that, prior to the anticipated delivery date of the Goods or any part thereof, the location where the Goods are to be delivered (and all access routes thereto) is clear, can be used without danger or difficulty by vehicles transporting the Goods and has full facilities for offloading the Goods and storing the same (pending completion of installation and commissioning) in a safe and suitable environment. Unless otherwise expressly stated on the Order Acknowledgement, the Customer shall also ensure that, prior to the intended date of any commissioning or installation works (and throughout the period of such works) there is available to the Company suitable lifting equipment, fuel, power and compressed air supplies, labour and test facilities as required by the Company to install test and commission the Goods.
- 8.6 If the Customer shall be in breach of clause 8.5, the Company may at its option either defer carrying out any installation and commissioning work until the Customer shall have fully complied with the provisions of clause 8.5 or obtain itself such additional equipment facilities and other items as are required to complete the installation and commissioning. In either case the Customer shall pay to the Company the full amount of all costs and expenses (and any other losses) incurred by the Company as a result of the Customer's breach. If there shall be any dispute as to the amount of the Company's costs, losses and expenses the same shall be certified by the Company's auditors whose certificate shall be final.
- 8.7 When the Company considers that it has completed its works of installation and commissioning it shall carry out such tests as it considers reasonably necessary to demonstrate that the Goods are functioning in accordance with the Company's specifications therefor. The Company shall notify the Customer of the time and place of such tests so that the Customer may nominate one of its employees to be present. If such tests show that the Goods are functioning as aforesaid, the Company shall issue a statement to that effect. If not, the Company shall carry out such further works and additional and further tests until the same demonstrate that the Goods are functioning as aforesaid, at which point the Company shall issue a written statement to that effect.
- 8.8 If the Company shall fail to carry out any works of commissioning testing or installation or fail to carry out the same totally and/or with due care, the Company's sole liability shall be to carry out such further works of commissioning testing and installation as are required in order for the Company to issue a statement in accordance with clause 8.7.

9. Customer's obligations

- 9.1 The Customer shall:
- (a) ensure that the terms of the Order, the Order Acknowledgement and any information it provides for the Service Specification and the Goods Specification are complete and accurate;

- (b) co-operate with the Company in all matters relating to the Services;
- (c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;
- (d) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) 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;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
- (i) comply with the requirements, instructions and recommendations of the Company (and of the manufacturers of any engine, alternator and radiator comprised in the Goods) relating to the fitting and/or installation servicing inspection testing and use of the Goods (and the engines and alternators and radiators comprised therein) must be strictly adhered to;
- (j) ensure that the Goods are regularly run and tested (so as to check and record that the same continue to perform according to specification);
- (k) only use the sealant (and any other parts such as fixings) supplied by the Company; and
- (l) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

9.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Company shall 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 in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

10. Charges and payment

10.1 The price for Goods:

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

10.2 Where the Goods are supplied for export from the United Kingdom the Company's published export price list (if any) shall apply.

- 10.3 The Company reserves the right to require the Customer to make payments on account of the cost of components or materials supplied to the Company in connection with the production and supply of the Goods and, where payment is so requested, the Customer shall make payment to the Company within 14 days of the date of such request.
- 10.4 The charges for Services shall be calculated on a time and materials basis:
- (a) the charges shall be calculated in accordance with the Company's daily fee rates, as set out in its current price list at the date of the Contract set out in the Order Acknowledgement;
 - (b) the Company's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - (c) the Company shall be entitled to charge an overtime rate as stated in the Contract Details section of the Order Acknowledgement on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.4(b); and
 - (d) the Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.
- 10.5 The Company reserves the right to:
- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
 - (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:
 - (i) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
- 10.6 In respect of Goods and all related Expenses (but less any Credits due to the Customer), the Company shall invoice the Customer and each invoice shall be payable by the Customer when the Goods are ready for collection or on completion of delivery.
- 10.7 In respect of Services, the Company shall invoice the Customer and each invoice shall be payable by the Customer on completion of the Services.
- 10.8 The Customer shall pay each invoice submitted by the Company in full and in cleared funds to a bank account nominated in writing by the Company and time for payment shall be of the essence of the Contract.
- 10.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.10 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 14, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.10 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.11 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. Intellectual property rights

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Company.

11.2 The Company grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.

11.4 The Customer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the Contract for the purpose of providing the Services to the Customer.

12. Confidentiality

12.1 Each party undertakes that it shall not at any time, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

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

13.1 The Company has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Company has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

13.2 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.

13.4 Subject to clause 13.3, the Company's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the total charges.

13.5 In clause 13.4:

- (a) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
- (b) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of the Goods and/or Services actually supplied by the Company, whether or not invoiced to the Customer.

13.6 This clause 13.6 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 13.3, clause 13.6(c) identifies the kinds of loss that are not excluded. Subject to that, clause 13.6(b) excludes specified types of loss.
- (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
- (c) The following types of loss and specific loss are not excluded:
 - (i) sums paid by the Customer to the Company pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;
 - (ii) wasted expenditure;
 - (iii) additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials; and
 - (iv) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Company. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, the Company's personnel, regulators and customers of the Customer.

13.7 The Company has given commitments as to compliance of the Goods and Services with relevant specifications in clause 6 and clause 8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and

sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.8 This clause 13 shall survive termination of the Contract.

13.9 The Company shall not be liable for any claim unless the Customer has given the Company notice of such claim, specifying (in reasonable detail) the nature of the claim and the amount claimed within 28 days of the date of the invoice.

14. Termination

14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 7 days' written notice. For the avoidance of doubt, on termination of the Contract, the Customer shall immediately indemnify the Company all of the Company's incurred costs, expenses, damages, losses, unpaid invoices and interest (calculated on a full indemnity basis) up to the point when the Customer gave such written notice to the Company to terminate the Contract.

14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

14.3 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

14.4 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d), or the Company reasonably believes that the Customer is about to become subject to any of them.

15. Consequences of termination

15.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

- (b) the Customer shall return all of the Company Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company 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.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

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

16. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

17. General

17.1 Assignment and other dealings

- (a) The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Company reserves the right to perform all and any of its obligations under the Contract by one or more subcontractors of its choice. All these Conditions apply notwithstanding that the work is performed by subcontractors.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

17.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the email addresses set out in the Order Acknowledgement.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) 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; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action.

17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 17.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

- 17.4 **Waiver.**
- (a) A waiver of any right or remedy is only effective if given in writing.
 - (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.6 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 17.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 17.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 17.11 **Language.**
- (a) These Conditions are drafted in the English language. If these Conditions are translated into any other language, the English language version shall prevail.
 - (b) Any notice given under or in connection with these Conditions shall be in the English language. All other documents provided under or in connection with these Conditions shall be in the English language, or accompanied by a certified English translation.
 - (c) The English language version of these Conditions and any notice or other document relating to these Conditions shall prevail if there is a conflict except where the document is a constitutional, statutory or other official document.