

**JOSHUA GREAVES & SONS LTD**

**TERMS AND CONDITIONS (these "Terms and Conditions")**

**1. Definitions**

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

**"Agreement"** these Terms and Conditions together with the Order Confirmation and any document referred to in these Terms and Conditions or the Order Confirmation;

**"Breach of Duty"** of the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);

**"Business Day"** any day other than: (i) a Saturday; (ii) a Sunday; or (iii) a day when the clearing banks in the City of London are not physically open for business;

**"Confidential Information"** any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it;

**"Event Force Majeure"** of has the meaning given to it in Clause 12.1;

**"Fees"** the Product Fees and the Services Fees;

**"IPR"** copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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;

**"Liability"** shall mean liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract);

**"Party"** us or you, and **"Parties"** means both of us and you;

**"Products"** any products supplied or to be supplied by us to you pursuant to this Agreement, as more particularly identified in the Order

Confirmation (and which may include industrial mixers and/or any parts of industrial mixers);

**"Product Fees"** the fees payable by you to us for the supply by us to you of the Products, as stipulated in the Order Confirmation;

**"Order"** the written document you provide to us (in response to a quotation we have provided to you attaching these Terms and Conditions) setting out specific information on the Products and the Services you would like to purchase from us;

**"Order Confirmation"** the written document we provide to you, following any purchase order or response to a quotation that you provide to us, containing specific information relating to the particular products or services supplied or to be arranged to be supplied by us to you;

**"Services"** the services we are to provide to you under this Agreement, as may be stipulated in the Order Confirmation (and which may include design, installation and/or testing services relating to the Products);

**"Services Fees"** the fees payable by you to us for the provision of the Services, as may be stipulated in the Order Confirmation;

**"Specification"** the specification of the Products you order from us, as stipulated in the Order Confirmation (and which may be as set out in our marketing materials from time to time or as otherwise stipulated by you and accepted in writing by us);

**"we", "us" or "our"** Joshua Greaves & Sons Ltd, a company registered in England and Wales under registered number 00481060 and with registered office at Atlas Engineering Works, Garden Street, Ramsbottom, Lancashire, BL0 9BG; and

**"you" or "your"** the recipient of products and/or services under this Agreement, as stipulated in the Order Confirmation;

1.2 references to "Clauses" are to clauses of these Terms and Conditions;

1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;

1.4 a **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;

1.6 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);

1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.8 any phrase introduced by the terms **"including", "include", "in particular"** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.9 a reference to **"writing"** or **"written"** includes in electronic form and similar means of communication (except under Clause 13).

**2. Agreement**

- 2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. These Terms and Conditions apply to all Products and Services.
- 2.2 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.4 Any Order provided by you to us must be in the form we require from time to time. This Agreement shall be legally formed and the Parties shall be legally bound when we have received an Order from you (which shall be deemed to be an offer by you to obtain Products and Services (as specified in that order) from us, subject to these Terms and Conditions), and pursuant to your Order we have submitted to you an Order Confirmation (which shall be considered our acceptance of your Order), but the requirements for us to perform any of our obligations under this Agreement shall be conditional upon our receipt from you of any advance payment of Fees as required under this Agreement.
- 2.5 If you provide to us a purchase order for your receipt of Products and/or Services other than as set out in Clause 2.4, that purchase order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.
- 2.6 In the event of a conflict between these Terms and Conditions and the Order Confirmation, then the Order Confirmation shall prevail over these Terms and Conditions.
- 3. Services**
- 3.1 We warrant that:
- 3.1.1 we shall use our reasonable skill and care in providing the Services;
- 3.1.2 our employees, agents and subcontractors have the necessary skill to provide any Services;
- 3.1.3 any Services will be provided in a professional, competent and workmanlike manner;
- 3.1.4 we have all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement;
- 3.1.5 we shall ensure that our employees, agents and subcontractors co-operate with, and make themselves available at all reasonable times for, discussion and meetings with, you and your employees, agents or subcontractors;
- 3.1.6 where necessary, we shall provide the Services at your premises as set out in the Order Confirmation;
- 3.1.7 we shall use our reasonable endeavours to ensure that whilst our employees, agents and subcontractors are on your premises they conform to your normal codes of staff and security practice as are advised to them in advance by you; and
- 3.1.8 we shall comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of our rights and performance of our obligations under this Agreement.
- 3.2 We do not warrant that the Services will meet your individual requirements. We are not responsible for any people, equipment, deliverables or services that we are not expressly stipulated to provide in this Agreement. You are responsible for any people, equipment, deliverables and services that you need to obtain from someone other than us. Except for any matter in relation to which we specifically agree in writing to advise or do, we shall not be responsible, or have any Liability (subject to Clause 10.2) for advising on, or failing to advise on, or doing, or failing to do, anything else.
- 3.3 Subject to us performing the Services within any timeframe agreed as being necessary for the performance of the Services, we may select our own working times and location provided that the nature of particular services does not require those particular services to be undertaken during particular working times or at a particular location (in which situation you shall be entitled to request that we perform the Services at such working times and location as are reasonable in the circumstances).
- 3.4 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement. However, subject to Clause 10.2, we shall not have any Liability for any delays or failures to accurately perform our obligations:
- 3.4.1 if we have used those endeavours; or
- 3.4.2 if caused by any failure or delay on your part or on the part of your employees, agents or subcontractors or by any breach by you of this Agreement or any other agreement.
- If there is any slippage in time, we shall use our reasonable endeavours to reschedule delayed tasks to a mutually convenient time. For the avoidance of doubt, time shall not be of the essence in respect of the performance of our obligations under this Agreement.
- 3.5 If we are delayed or hindered in providing any Services as a result of any breach, delay or failure by you to perform any of your obligations under this Agreement or of any other agreement between us and you, then we may charge you at our time and materials rates from time to time for:
- 3.5.1 any time reasonably incurred as a result of the hindrance or breach (including any wasted time for which we had anticipated that our personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of your act or omission); and
- 3.5.2 any time that we were going to spend in providing the Services, in addition to the time we actually do spend in providing the Services.
- 3.6 Except as specifically stipulated in this Agreement, we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time.
- 3.7 Except where expressly stated in this Agreement, we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Products and the Services.
- 4. Warranty**
- 4.1 We warrant that:
- 4.1.1 in respect of Products that are provided new (rather than used or refurbished), as at delivery and for 12 months following delivery, such Products shall be free from material defects in design, workmanship and materials and materially conform to the Specification; and
- 4.1.2 we shall deliver the Products to you undamaged and in the quantities agreed in the Order Confirmation.
- If any Products do not conform with the warranty given in this Clause 4.1, we shall, at our option, replace or repair, or repay an appropriate portion of the Product Fees in respect of, or provide a credit note in respect of a reasonable part of, the relevant Products.
- 4.2 You will check the Products for obvious defects and/or damage on delivery. We shall, at our option, replace repair or provide a refund for Products that are lost or damaged in transit to the place of delivery. Subject to Clause 10.2, we shall not have any Liability for loss of, or damage to, Products in transit or on delivery to the point of delivery unless you inform us (and the carrier, if applicable) in writing within seven days:

- 4.2.1 after the expected date of delivery or receipt that you have not received the correct Products at all or in full; or
- 4.2.2 after receipt that the Products have any damage as would be obvious from such inspection as we would reasonably expect;
- and also unless you provide us with our delivery note number and such other information or documentation as we may reasonably require at the same time as the notice.
- 4.3 Subject to Clause 10.2, we shall not have any Liability for providing Products to the extent caused by our compliance with and reliance on your specifications, instructions or requirements in respect of the Products (whether or not included in the Specification). You shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's IPR arising out of or in connection with our compliance with your specifications, instructions or requirements (whether or not included in the Specification). This Clause 4.3 shall survive termination of this Agreement for any reason.
- 4.4 Our Liability for defective or damaged Products is subject to Clause 10.2 and:
- 4.4.1 you informing us in writing of any claim within three Business Days of discovery of the defect or damage together with reasonable details of the way in which such defect or damage was caused and how the Products do not conform with this Agreement;
- 4.4.2 you providing us with our delivery note number and such other information as we may reasonably require;
- 4.4.3 you showing to us to our reasonable satisfaction that there is a defect or damage and that the defect or damage is solely attributable to our (or our supplier's) defective design, materials or workmanship in respect of the Products and not:
- (a) wear or tear from normal use; or
- (b) the combination, incompatibility, attachment, affixation or incorporation of the Products with any other goods, products, materials or substances;
- 4.4.4 the Products having not been:
- (a) misused or subjected to neglect, improper or inadequate care or carelessness; or
- (b) involved in any accident or attempt at repair, replacement, alteration, change or modification except by us or on our behalf or as approved by us; or
- (c) dealt with or used or stored contrary to good trade practice or any oral or written instructions, advice or recommendation of us;
- 4.4.5 you having paid for the Products in full;
- 4.4.6 you holding the Products safely and securely in good conditions; and
- 4.4.7 you allowing and procuring for us the opportunity to have access to and inspect the Products and, on our reasonable request, having the Products returned to us.
- 4.5 If you are of the opinion that the Products are defective or damaged, you shall not install the Products without our prior approval, and you shall store the Products in accordance with our instructions until we have dealt with your claim. In the event that you proceed with installation or otherwise deal with the Products in such circumstances without our consent, we shall not have any Liability (subject to Clause 10.2) for such defect or damage.
- 4.6 The warranty set out in this Clause 4 is restricted to you, and no warranty is made to any other person, whether subsequent buyer or user or customer, or to any bailee, licensee, assignee, employee, agent or otherwise.
- 4.7 If you make an invalid claim under the warranty set out in this Clause 4, we may charge you for our fees and costs of dealing

- with that claim, including examining (and travelling in order to examine), storing, repairing or replacing the Products.
- 5. Delivery of the Products**
- 5.1 We shall ensure that:
- 5.1.1 each delivery of the Products is accompanied by a delivery note which shows the date of the Order Confirmation, all relevant reference numbers, the Specification, special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
- 5.1.2 if we require you to return any packaging materials to us, that fact is clearly stated on the delivery note. You shall make any such packaging materials available for collection at such times as we shall reasonably request. Returns of packaging materials shall be at our expense.
- 5.2 Unless we and you agree otherwise in writing, we shall deliver the Products to you at the address set out in the Order Confirmation ("**Delivery Location**") within the timeframe set out in the Order Confirmation.
- 5.3 It is your responsibility to ensure that our delivery vehicle is able to access the Delivery Location to deliver the Products, including assuring that the access routes are of a sufficient size for the delivery vehicle and that there is space for the delivery vehicle to stop at the kerb-side outside the Delivery Location or otherwise within the Delivery Location. If you have any concerns in this respect, you should contact us as soon as possible.
- 5.4 We will deliver the Products to the kerb-side at the nearest access point for our delivery vehicle to the Delivery Location or otherwise within the Delivery Location. If applicable, it is your responsibility to transport the Products from the kerb-side once the Products have been unloaded from the delivery vehicle.
- 5.5 We cannot leave Products at the Delivery Location if you, or someone you have authorised to accept delivery, is not present to accept delivery. Anyone at the delivery address will be deemed to be authorised to accept delivery.
- 5.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Subject to Clause 10.2, we shall not have any Liability for any delay in delivery of the Products that is caused by an Event of Force Majeure or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.7 If you are not available to take delivery of the Products, we may leave instructions to arrange redelivery. We may also pass on to you any costs incurred by us as a consequence of no-one being available to take delivery.
- 5.8 If delivery of the Products is delayed by your unreasonable refusal to accept delivery, if you are not at the Delivery Location on the delivery date that we agree with you, if you refuse to sign for the delivery of the Products on delivery or if you do not (within one week of our first attempt to deliver the Products to you) accept delivery, then we may (without prejudice to any other right or remedy available to us) charge you for our reasonable storage fee and other costs reasonably incurred by us, including redelivery costs.
- 5.9 We may deliver the Products by instalments, which we may invoice and require payment for separately. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.
- 5.10 Risk in the Products shall pass to you on completion of delivery.
- 6. Title**
- 6.1 Notwithstanding delivery, title to and ownership of the Products shall not pass to you until we have received in full (in cash or in cleared funds) all sums due to us in respect of:
- 6.1.1 the Products; and
- 6.1.2 all other sums which are or which become due to us from you on any account;
- ("Payment").
- 6.2 Until Payment, you shall:

- 6.2.1 hold the Products on a fiduciary basis as our bailee;
- 6.2.2 hold the Products in good, saleable conditions and keep them insured against all risks for their full price from the date of delivery;
- 6.2.3 keep an up-to-date list of the location of our property and present this to us on request;
- 6.2.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- 6.2.5 store the Products separately from other goods or in any way so that they remain readily identifiable as our property.
- 6.3 If the Products are attached to or incorporated into any other materials or goods, the property in the new material or good shall vest in us until Payment in the proportion of the value of the Products to the other constituent elements.
- 6.4 We may at any time until title passes under this Clause 6 without notice recover possession of the Products which are our property. You hereby grant, or procure the grant, to us and our employees, agents and subcontractors, an irrevocable licence to enter for that purpose any premises then occupied by or in the ownership or possession of you or your direct or indirect customer. You shall indemnify us against all claims, losses, damages, liabilities, costs and expenses so arising.
- 6.5 We shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from us.
- 6.6 On termination of this Agreement for any reason, our rights contained in this Clause 6 shall remain in full force and effect.
- 7. Your obligations**
- 7.1 You shall:
  - 7.1.1 ensure that the terms of any Order you submit to us, the Order Confirmation, and any specification or instructions you provide to us for the Services and/or for the Products (including the Specification), are complete and accurate;
  - 7.1.2 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if we undertake any work at your premises;
  - 7.1.3 inform us in writing a reasonable time before the commencement of any Services of any regulations relevant to us when working at any premises under your control;
  - 7.1.4 be present and available at your premises at the required times to enable us to perform our obligations at the times we reasonably require under this Agreement;
  - 7.1.5 sign a confirmatory note upon any of the Services (in whole or in part) having taken place, or any of the Products having been delivered, if we reasonably require you to do so;
  - 7.1.6 ensure that your employees, agents and subcontractors fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, us and our employees, agents and subcontractors and to enable us to promptly perform our obligations under this Agreement;
  - 7.1.7 promptly provide to us such data, information and assistance that will enable us to carry out fully, accurately and promptly our obligations under this Agreement to the best of our ability;
  - 7.1.8 promptly comply with all of our reasonable requests in connection with this Agreement;
  - 7.1.9 have all rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and
  - 7.1.10 comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.
- 7.2 It is your responsibility to ensure that the Services and the Products are sufficient and suitable for your purposes and meet your individual requirements.

- 7.3 You are responsible for ensuring that you provide us with the information required to enable us to properly provide the Services. We shall not be responsible or, subject to Clause 10.2, have any Liability for any failure to provide the Services to the extent caused by your failure to properly ensure the provision of the relevant information.

## **8. Fees**

- 8.1 In consideration of obtaining the relevant Products and Services we provide pursuant to this Agreement, you shall pay to us the relevant Fees.
- 8.2 The Fees shall be as set out in the Order Confirmation.
- 8.3 You shall pay the Fees to us at such times and in such instalments as we may direct from time to time. Unless set out otherwise in this Agreement, we may issue invoices to you for the Fees at such intervals as we may, in our absolute discretion, consider appropriate.
- 8.4 Unless otherwise set out in the Order Confirmation, all sums due under this Agreement are exclusive of VAT or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due.
- 8.5 We will not deliver any Products until we have received payment of the Fees in full.
- 8.6 You shall pay us by any payment method that we may stipulate from time to time. No payment shall be considered paid until we have received it in cleared funds in full.
- 8.7 Payment shall be in the currency in force in England from time to time or such other currency as we may stipulate from time to time for the Fees.
- 8.8 We reserve the right to increase the Fees in respect of any Services or Products not included in the Order Confirmation which we may agree, in our absolute discretion, to provide to you in addition to those Services and Products set out in the Order Confirmation.
- 8.9 We reserve the right to increase the Fees in respect of any Products, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Products to us that is due to:
  - 8.9.1 any request by you to change the delivery date(s) or specification of Products ordered;
  - 8.9.2 any delay caused by your instructions in respect of the Products or your failure to give us adequate or accurate information or instructions in respect of the Products.
- 8.10 All amounts due under this Agreement shall be paid by you to us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.11 If you are late in paying any part of any monies due to us under this Agreement and such payment remains outstanding for seven days following us providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:
  - 8.11.1 charge interest and other costs on the overdue amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
  - 8.11.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment;
  - 8.11.3 sell or otherwise dispose of any Products which are the subject of the relevant Order Confirmation and apply the proceeds of sale to the overdue payment; and
  - 8.11.4 suspend performance of this Agreement until payment in full has been made.

## **9. Confidentiality**

- 9.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 9.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
- 9.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 9.
- Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.
- 9.2 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:
- 9.2.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and
- 9.2.2 it does so subject to obligations equivalent to those set out in this Clause 9.
- 9.3 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 9.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 9.4 The obligations of confidentiality in this Clause 9 shall not extend to any matter which either Party can show:
- 9.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or
- 9.4.2 was independently developed by it; or
- 9.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
- 9.4.4 was in its written records prior to receipt.
- 9.5 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.
- 9.6 We may identify you as our client and the type of Products and Services provided by us to you, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).
- 9.7 On termination of this Agreement, each Party shall:
- 9.7.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
- 9.7.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
- 9.7.3 certify in writing to the other Party that it has complied with the requirements of this Clause 9.7.3, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 9.8 The provisions of this Clause 9 shall continue to apply after termination of this Agreement.
- 10. Limitation of Liability**
- 10.1 This Clause 10 prevails over all of this Agreement and sets forth the entire Liability of either Party, and the sole and exclusive remedies of the other Party, in respect of:
- 10.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any goods, services or deliverables in connection with this Agreement; or
- 10.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 10.2 Neither Party excludes or limits its Liability for:
- 10.2.1 its fraud; or
- 10.2.2 death or personal injury caused by its Breach of Duty; or
- 10.2.3 any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
- 10.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 10.3 Subject to Clause 10.2, neither Party accepts and hereby excludes any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.
- 10.4 Subject to Clause 10.2, neither Party shall have any Liability in respect of any:
- 10.4.1 indirect or consequential losses, damages, costs or expenses;
- 10.4.2 loss of actual or anticipated profits;
- 10.4.3 loss of contracts;
- 10.4.4 loss of use of money;
- 10.4.5 loss of anticipated savings;
- 10.4.6 loss of revenue;
- 10.4.7 loss of goodwill;
- 10.4.8 loss of reputation;
- 10.4.9 loss of business;
- 10.4.10 ex gratia payments;
- 10.4.11 loss of operation time;
- 10.4.12 loss of opportunity;
- 10.4.13 loss caused by the diminution in value of any asset; or
- 10.4.14 loss of, damage to, or corruption of, data;
- whether or not such losses were reasonably foreseeable or the Party's agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 10.4.2 to 10.4.14 (inclusive) of this Clause 10.4 apply whether such losses are direct, indirect, consequential or otherwise.
- 10.5 Subject to Clause 10.2, the total aggregate Liability of each Party arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to the greater of:
- 10.5.1 110% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the claim first arose; or
- 10.5.2 £400,000.
- 10.6 You shall not limit your Liability
- 10.6.1 for failure to pay the Fees;
- 10.6.2 under the indemnity in Clause 4.3;
- 10.6.3 and/or the indemnity in Clause 6.4.
- 10.7 The limitation of Liability under Clause 10.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 10.8 You acknowledge and accept that we only provide the Products and Services to you on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 10.2) directly or indirectly for any act or omission of, you, or your employees, agents or subcontractors, or any third party.
- 11. Termination**
- 11.1 This Agreement shall commence on the date on which this Agreement is entered into and, unless terminated earlier in accordance with the termination provisions under this Agreement, shall continue in full force and effect until the latest of:

- 11.1.1 the completion of the provision of the Services, and the supply of any Products, as specified in the Order Confirmation, in accordance with this Agreement; or
- 11.1.2 the conclusion of payment of all sums due under this Agreement.
- 11.2 Without prejudice to any of our rights or remedies, we may terminate this Agreement with immediate effect (or such other notice period as we see fit in our absolute direction) by giving notice to you if you fail to pay any amount due under this Agreement on the due date for payment and such amount remains in default not less than seven days after being notified to make such payment.
- 11.3 Either Party may terminate this Agreement immediately by notice in writing to the other Party if:
- 11.3.1 the other Party is in material breach of any of its obligations under this Agreement, and, where such material breach is capable of remedy, the other Party fails to remedy such breach within a period of 10 Business Days of being notified of such breach by the Party; and/or
- 11.3.2 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order, or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 11.4 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 11.5 Termination of this Agreement shall not affect the coming into force, or continuance in force, of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 11.6 On termination of this Agreement for any reason, we shall cease to provide the Products and Services under this Agreement.
- 11.7 Clauses 1, 4.3, 6, 8, 9, 10, 11.4, 11.5, 11.6, 11.7, 12.1, 12.6, 13, 14, 15, 16, 17, 19 and 20 shall survive any termination of this Agreement for any reason.
- 12. Force Majeure**
- 12.1 Subject to Clause 10.2, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An "**Event of Force Majeure**" means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.
- 12.2 Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 12.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 12.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 12.5 If the performance of any obligations is delayed under this Clause 12, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 12.6 If the Event of Force Majeure continues without a break for more than one month, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall have any Liability (subject to Clause 10.2) to the other Party by reason of such termination.
- 12.7 If we have contracted to provide identical or similar services to more than one customer and we are prevented from fully meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.
- 13. Notices**
- 13.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant 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, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.
- 13.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 13.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 13.3 The provisions of this Clause 13 shall not apply to the service of any proceedings or other documents in any legal action.
- 14. Assignment**
- You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).
- 15. Severance.**
- 15.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 15.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16. Waiver**
- A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17. Third party rights**
- A person who is not a Party shall not have any rights under or in connection with this Agreement.

**18. Variation**

This Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.

**19. No partnership**

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

**20. Governing law and jurisdiction**

20.1 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 laws of England.

20.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.