

Dated

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**TERMS AND CONDITIONS FOR THE SALE OF GOODS—BUSINESS TO
BUSINESS—PRO-SUPPLIER**

BLACKS
SOLICITORS

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Ref: JKM/XXXX

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

- “Affiliate”** means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
- “Business Day”** means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business **IN ENGLAND**;
- “Conditions”** means the Supplier’s terms and conditions of sale set out in this document;
- “Confidential Information”** means any commercial, financial or technical information, information relating to the Goods or Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
- “Contract”** means the agreement between the Supplier and the Customer for the sale and purchase of the Goods and Services incorporating these Conditions and the Order;
- “Control”** means the business or person who purchases the Goods from the Supplier and whose details are set out in the Order;
- “Customer”** means the person who purchases the Goods and Services from the Supplier and whose details are set out in the Order;
- “Force Majeure”** means an event or sequence of events beyond a party’s reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier’s or its suppliers’ workforce, but excluding the Customer’s inability to pay or circumstances resulting in the Customer’s inability to pay;

“Goods”	means the goods and other physical material set out in the Order and to be supplied by the Supplier to the Customer;
“Location”	means the address(es) for delivery of the Goods and Services as set out in the Order;
“Order”	means an order for the Goods and Services from the Supplier placed by the Customer in substantially the same form set out in the Supplier’s sales order form;
“Price”	has the meaning given in clause 6.1;
“Services”	design, fabrication and installation of the Goods purchased by the Customer.
“Specification”	means the description, any samples, or specification of the Goods and Services and their packaging set out or referred to in the Order;
“Supplier”	means Allied Glazing Services Limited with registration number 01803714;
“VAT”	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods and Services; and
“Warranty Period”	has the meaning given in clause 16.1.

1.2 In these Conditions, unless the context requires otherwise:

- any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- a reference to a party includes that party’s personal representatives, successors and permitted assigns;
- a reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
- a reference to a ‘company’ includes any company, corporation or other body corporate, wherever and however incorporated or established;
- a reference to a gender includes each other gender;
- words in the singular include the plural and vice versa;

- a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- a reference to legislation is a reference to that legislation as in force at the date of the Contract or amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract; and
- a reference to legislation includes all subordinate legislation made as at the date of the Contract or from time to time under that legislation.

2. APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods and Services (where applicable) subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.6 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier for 30 Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods or Services shall arise, until the earlier of:
- the Supplier's written acceptance of the Order; or
 - the Supplier dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).
- 2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.

2.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and Services (where applicable) and are incapable of being accepted by the Customer.

2.10 Marketing and other promotional material relating to the Goods and Services are illustrative only and do not form part of the Contract.

3. ORDER

3.1 The Customer will consult with the Supplier to discuss the requirements and timescale required. The Supplier will then put together a quotation that best fits the Customer requirements. Where necessary the Supplier may agree to attend preliminary project meetings to consider and agree the Goods and Services to be supplied to the timescale and most cost effective system.

3.2 Quotations do not constitute an offer and shall not bind the Supplier until an order has been placed and accepted. All acceptances of order, whether accepted in writing, by word of mouth or conduct shall be deemed to have been made subject to these conditions of sale, save only for amendments proposed or specifically accepted by a director or manager of the Supplier in writing.

3.3 Any CAD drawings or details or quantities supplied by the Supplier are an estimate and are to be treated as approximate and shall be subject to variation by the Customer.

3.4 Once the Customer is satisfied with the quotation provided a Supplier order form will be creating stipulating the Goods they wish to order and whether they require the Goods to be installed or fitted at the time of delivery or an alternative time and date agreed between the parties. The order form will set out the agreed timetable for the supply of the Goods and Services to include design, sign off and installation timescales. All of which could be subject to change given changes to the design and/or delay of sign off by the Customer which would subsequently delay fabrication and installation of the Goods.

3.5 The Supplier will acknowledge receipt and provide written acceptance of the Order. The Supplier shall then provide the Customer with an estimated delivery date for the Order.

4. AMENDMENTS

4.1 Any amendments made to an Order either during or after fabrication is complete may incur additional costs & lead to delays with delivery and subsequent installation of the Goods. All Orders must be amended, in writing, by the Customer prior to changes being made. The Supplier will acknowledge receipt of any amendments to an Order and advise, in writing, of any additional costs prior to the changes being made.

4.2 Should the Customer require amendments making to CAD drawings and/or the Order an updated Supplier order form will be drawn up stipulating the updated requirements and a copy sent to the Customer for their records. The Supplier will acknowledge receipt of the amendment request and provide the Customer with an updated quotation for such amendments. On receipt of written acceptance of the

updated quotation the Supplier shall commence works and any necessary fabrication for the amendments.

5. MANUFACTURING DRAWINGS

5.1 The Supplier may provide component drawings for the manufacturing process and occasionally layout drawings for Customer comment/approval. Any such drawings are produced in good faith and based upon the information the Supplier is provided with at the time the Customer produces an Order. Drawings will be provided in PDF & CAD format where requested by the Customer. The Customer shall, where instructed, provide comments/approvals of drawings by an agreed timescale agreed between the parties. Comments/approvals provided after the agreed timescale may result in delays in fabrication, delivery of and installation of Goods ordered.

6. PRICE

6.1 The price for the Goods and Services shall be as set out in the Order or, in default of such provision, shall be as advised by the Supplier and received and acknowledged by the Customer before the date the Order is made ("**Price**").

6.2 The Prices are exclusive of:

- packaging, delivery, and insurance which shall be charged in addition at the Supplier's standard rates, and
- VAT (or equivalent sales tax).

6.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice unless the transaction qualifies for the CIS Scheme or where VAT not applicable.

6.4 The Supplier reserves the right to invoice the Customer for goods should he be unable to accept delivery of them at the time when they are due and ready to be delivered.

6.5 The Supplier also reserves the right to charge the Customer for storage of goods, as referred to in clause 6.4 providing he has storage space available, and for reasonable transport and handling costs incurred.

6.6 Should it be necessary for the Supplier to store Goods for the Customer the Supplier accepts no responsibility for loss or damage to those Goods.

7. PAYMENT

7.1 The Supplier reserves the right to require a deposit for the Goods and/or Services prior to manufacture of and/or deliver of the Goods to the Customer. Such amount shall be confirmed to the Customer in the order form.

7.2 Should delivery of the Goods and Services be delayed due to the Customer not accepting delivery of the Goods and Services, the Supplier reserves the right to invoice the Customer on the original agreed delivery date of the Goods and Services for any sum outstanding.

- 7.3 The Customer shall pay all invoices:
- in full without deduction or set-off, in cleared funds within 30 days, of the date of each invoice; and
 - to the bank account nominated by the Supplier.
- 7.4 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- the Supplier may, without limiting its other rights, charge interest on such sums at 2% a year above the base rate of The Bank of England from time to time in force, and
 - interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 7.5 All invoices are to be paid by BACS/CHAPS to the following account:
- Allied Glazing Systems Limited;
 - Account Number: 43971252;
 - Sort Code: 20-76-92

8. CREDIT LIMIT

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

9. PRODUCTION SLOTS

- 9.1 Production slots are allocated at the time of approval of drawings and/or Orders being placed and accepted. Subsequent amendments to orders may result in production slots being lost to the Customer and new production slots being allocated.

10. INSTALLATION SLOTS

- 10.1 Installation slots are allocated at the time of approval of drawings and/or Orders being placed and accepted. Subsequent amendments to orders may result in installation slots being lost to the Customer and new installation slots being allocated.
- 10.2 Should the Customer want to request a later installation slot to the one allocated this should be requested at the latest two weeks prior to the agreed installation slot. The Supplier will use reasonable endeavours to accommodate requests to change installation slots but cannot guarantee a change can or will be made in accordance with any such request made.
- 10.3 Should the Customer request an installation slot later than two weeks prior to the agreed installation slot and for a date later than six weeks after the agreed installation, the Supplier reserves the right to;

10.3.1 store the Goods for the Customer and raise an invoice for up to 50% of any outstanding sum; or

10.3.2 deliver the Goods to the Customer and raise an invoice for any outstanding sum.

The Supplier will then use reasonable endeavours to agree installation at a later date convenient to the parties.

11. DELIVERY

11.1 An Order shall specify whether the Goods are to be:

- delivered by the Supplier, or by a carrier appointed by the Supplier, to the Location on the date(s) specified in the Order; or
- made available for collection by the Customer at the Supplier's, or carrier's, premises set out in the Order (as the case may be). The Customer shall collect the Goods within the period specified in the Order.

11.2 An Order should specify an estimation of when the Goods are to be delivered and if applicable when the Services can be carried out and installation/fitting of the Goods be carried out.

11.3 The Goods shall be deemed delivered:

- if delivered by the Supplier under clause 7, on completion of unloading of the Goods at the Location;
- if delivered by a carrier under clause 7, on delivery of the Goods by the Supplier to the carrier; or
- if collected by the Customer under clause 7, when the Supplier makes the Goods available for collection at the Supplier's, or carrier's, premises (as the case may be).

11.4 The Goods may be delivered by instalments if specified in the Order. Each delivery consignment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

11.5 The form of transport which shall be used for delivery of the goods shall be at the discretion of the Supplier.

11.6 Delivery of the Goods shall be accompanied by a delivery note stating:

- the date of the Order;
- the product numbers, type and quantity of the Goods in the consignment; and
- any special handling instructions.

11.7 The Customer shall be responsible for providing labour at the delivery point for the unloading of vehicles, and such unloading shall be the entire responsibility of the Customer. Unless agreed otherwise with the Supplier in writing all deliveries will

be made on articulated curtain sider vehicles. It is the responsibility of the Customer to ensure that goods are offloaded safely.

- 11.8 All goods shall be at the Customers risk from the time when the goods are delivered as per the Customer's instructions except in cases where clause 6.4 and 6.5 of these conditions apply when the goods shall be at the Supplier's risk from the time of commencement of storage by the Supplier.
- 11.9 The Supplier will replace free of charge goods damaged in transit, providing the carriers and the Supplier are notified in writing within three days (otherwise than upon the Supplier or carriers delivery documents). For the avoidance of doubt, the Supplier accepts no liability for damage during unloading of delivery vehicles.
- 11.10 The Supplier will replace free of charge any goods which are defective or not as ordered provided the Customer shall have given the Supplier written notification (otherwise than upon the Supplier and carriers documents) that the goods are not as ordered within three working days of delivery and returned the same to the Supplier within 14 working days of delivery, and accepted by the Supplier, defects in quality or dimensions in any delivery shall not be ground for cancellation of the order or contract.
- 11.11 Should the Customer notify the Supplier, in writing, of damage to material or goods in transit within the time limits referred to in clause 11.9 then the Supplier should be afforded a reasonable opportunity to inspect those goods. Should damage be ascertained and be found to be the fault of the Customer, a replacement will be at the discretion of the Supplier.
- 11.12 Goods alleged by the Customer to be defective or not as ordered shall not form the subject of any claim for injury, loss, damage, work done or any expense however incurred unless or until inspected by the Supplier and the cause of the defect established and if applicable the Supplier provided with an opportunity to rectify the issue by offering a replacement of the defective goods.
- 11.13 Non delivery must be notified in writing to the carrier and to the Allied Glazing Sales Office within three working days of date of dispatch, otherwise the Customer will be assumed to have received the goods in good condition.
- 11.14 The Supplier shall not be liable for any delay in or failure of delivery of the Goods or Services caused by:
- the Customer's failure to: (i) make the Location available, (ii) prepare the Location in accordance with the Supplier's instructions and as required for delivery and for installation/fitting of the Goods or (iii) provide the Supplier with adequate instructions for delivery and installation/fitting of the Goods;
 - the Customer's failure to collect the Goods from the Supplier's premises; or
 - Force Majeure.

- 11.15 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are approximate only.
- 11.16 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all reasonable storage and insurance charges or storage and insurance charges at the Supplier's then-applicable rates or costs and expenses incurred by the Supplier in doing so.
- 11.17 If six weeks following the due date for delivery or collection of the Goods, the Customer has not taken delivery of or collected them, the Supplier may dispose of the Goods. The Supplier shall:
- deduct all reasonable storage charges at the Supplier's then-applicable rates; and
 - where applicable invoice the Customer the remaining proportion of the Goods yet to be paid for.

12. CANCELLATION

- 12.1 If for any reason the Customer cancels an Order for Goods which the Supplier has specially obtained from a third party or has specially manufactured or fabricated for the Customer, then the Customer will be liable for payment for those Goods notwithstanding that he has not taken delivery of them.
- 12.2 If the Customer cancels their Order all or parts thereof the following charges will apply:
- On receipt of order acknowledgement and prior to commencement of CAD drawings: NIL.
 - On receipt of CAD drawings and prior to order of materials: 20% of the order value.
 - Materials ordered: 50% of order value.
 - materials ordered or fabricated and awaiting delivery: 100% of the order value.
 - Disposal costs: Finished Goods that have been cancelled will be disposed of 28 days after the cancellation date and the incurred charges will be invoiced to the Customer.

13. INSTALLATION

- 13.1 At the time of written acceptance of an Order the Supplier will provide an estimated installation date.
- 13.2 The Supplier will arrange a mutually convenient time and date with the Customer to attend at the property where the Goods will be installed and measure the area where the Goods will be installed to fulfil the Services.
- 13.3 Measuring the area where the Goods will be installed will usually take place prior to the Supplier's order form being completed, unless otherwise agreed between the

parties, where the Goods are to be installed. At the time of installation there may be uneven surfaces on ceilings/walls/floors in the direct area where the Goods are to be installed. In such instances the Supplier will use all reasonable endeavours to try and mitigate the effect of uneven surfaces, on ceilings/walls/floors that are not level, when completing installation of the Goods.

- 13.4 If the Customer wishes the Supplier to design and manufacture to agreed sizes of openings, this will be at the Customer's risk. Specifically, if the openings are not in line with the specified agreed sizes, the Customer will be liable for any additional costs incurred by the Supplier, including delay costs.
- 13.5 The Customer should report any damage caused to a property by the Supplier, employee or contractor of the Supplier during the course of installation to the Supplier within 48 hours of any delivery or installation taking place.
- 13.6 The Supplier reserves the right to instruct Sub-Contractors to install any or all of the Goods forming the Order submitted by the Customer.
- 13.7 The Supplier will provide confirmation by email or other agreed means confirming the installation of Goods on a regular basis. Once installation of all Goods has been completed the Supplier shall provide a completed check list of the Order, to evidence completion of the Order, to the Customer. Where possible such evidence shall be signed off by both parties on the last day of installation and sent to the Customer by the same means.
- 13.8 The parties acknowledge that the Supplier cannot be held accountable should the finish of the Goods be compromised and/or quality of installation and overall aesthetics be diminished due to uneven surfaces on ceilings/walls/floors, that the Supplier cannot rectify, where Goods are to be installed.
- 13.9 Once installation has taken place and over time atmospheric conditions such as moisture and altering temperatures in the direct vicinity of the Goods can alter the aesthetics, look and feel of the Goods. The parties acknowledge that the Supplier cannot be held accountable for alterations and variations to Goods for such reasons.

14. RISK

Risk in the Goods shall pass to the Customer on delivery.

15. TITLE

- 15.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 15.2 Until title to the Goods has passed to the Customer, the Customer shall:
- hold the Goods as bailee for the Supplier;
 - store the Goods separately from all other material in the Customer's possession;

- take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
 - ensure that the Goods are clearly identifiable as belonging to the Supplier;
 - not remove or alter any mark on or packaging of the Goods; and
 - inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 7 to 9 or 10 to 12.
- 15.3 If the Customer has not paid the full purchase price by the due date set out in the invoice, the Supplier considers the Customer is or is likely to be unable to pay the full price on the due date. Should full payment not be received by the due date, the Supplier may exercise their right to give notice to the Customer of the Supplier's election to retain or retake possession of the Goods and thereupon the Customer will permit the Supplier to enter any premises where the Goods may be to repossess.
- 15.4 Upon the Supplier retaining or completing repossession of Goods as referred to in clause 15.3 the contracts relating to such Goods shall be deemed to be cancelled by mutual consent
- 15.5 Notwithstanding clause 15.2, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 7 to 9 or 10 to 12 has occurred or is likely to occur.
- 15.6 If the Customer resells the Goods in accordance with clause 15.5, title to the Goods shall pass to the Customer immediately prior to the resale.
- 15.7 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 7 to 9 or 10 to 12, the Supplier may:
- require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
 - if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

16. WARRANTY

- 16.1 The Supplier warrants that the Goods and Services shall, for a period of 12 years from delivery (the "**Warranty Period**"):
- conform in all material respects to the Order and the Specification;
 - be free from material defects in design, material and workmanship;

- be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - If Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982 , Part II, s 13; and
 - be fit for purpose and any purpose held out by the Supplier and set out in the Order and as otherwise required to meet the Customer's needs.
- 16.2 The Customer warrants that it has provided the Supplier in writing with all relevant, full and accurate information as to the Customer's business and needs.
- 16.3 The Supplier shall, at its option, repair, replace, or at their discretion provide recompense for any of the Goods that do not comply with clause 16.1, provided that the Customer:
- serves a written notice on Supplier:
 - 16.3..1 not later than 5 Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
 - 16.3..2 such notice specifies that some or all of the Goods and Services do not comply with clause 16.1 and identifying in sufficient detail the nature and extent of the defects; and
 - 16.3..3 in the case of latent defects, within One month from the date on which the Customer became aware (or should reasonably have become aware) of the defect;
 - provides the Supplier with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
 - gives the Supplier a reasonable opportunity to examine the defective Goods; and
 - returns the defective Goods to the Supplier at the Supplier's expense where the Goods are under warrant and at the Customer's expense thereafter.
- 16.4 The provisions of these Conditions, including the warranties set out in clause 16.1, shall apply to any of the Goods and Services that are repaired or replaced with effect from the date of delivery of the repaired or replaced Goods and Services.
- 16.5 The Supplier shall not be liable for any failure of the Goods to comply with clause 16.1:
- where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;

- to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
- to the extent caused by the Supplier following any specification or requirement of the Customer in relation to the Goods;
- where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or
- where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 16.1.

16.6 Except as set out in this clause 16:

- the Supplier gives no warranties and makes no representations in relation to the Goods and Services; and
- shall have no liability for their failure to comply with the warranty in clause 16.1.

and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

17. INDEMNITY AND INSURANCE

17.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.

17.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

18. LIMITATION OF LIABILITY

18.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 18.

18.2 Subject to clauses 18.5 and 18.6, the Supplier's total liability shall not exceed the sum of 100% of the Price.

18.3 Subject to clauses 18.5 and 18.6, the Supplier shall not be liable for consequential, indirect or special losses.

18.4 Subject to clauses 18.5 and 18.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

- loss of profit;
- loss of data;
- loss of use;
- loss of production;
- loss of contract;
- loss of opportunity;
- loss of savings, discount or rebate (whether actual or anticipated);
- harm to reputation or loss of goodwill.

18.5 The limitations of liability set out in clauses 18.2 to 18.4 shall not apply in respect of any indemnities given by either party under the Contract.

18.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

- death or personal injury caused by negligence;
- fraud or fraudulent misrepresentation;
- any other losses which cannot be excluded or limited by applicable law;
- any losses caused by wilful misconduct.

19. FORCE MAJEURE

19.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

- promptly notifies the other party of the Force Majeure event and its expected duration; and
- uses its best endeavours to minimise the effects of that event.

19.2 If, due to Force Majeure, a party:

- is or shall be unable to perform a material obligation; or
- is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days,
the other party may, within 30 days, terminate the Contract on immediate notice.

20. TERMINATION

20.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

- the Customer commits a material breach of the Contract and such breach is not remediable;

- the Customer commits a material breach of the Contract which is not remedied within 14 Business Days of receiving written notice of such breach;
- the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the Supplier has given notification to the Customer that the payment is overdue; or
- any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

20.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

- stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
- becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- has a resolution passed for its winding up;
- has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within Seven days of that procedure being commenced;
- has a freezing order made against it;
- is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- is subject to any events or circumstances analogous to those in clauses 7 to 10 in any jurisdiction;
- takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 7 to 10 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for

repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

- 20.3 The Supplier may terminate the Contract any time by giving not less than Four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within Two months.
- 20.4 The right of the Supplier to terminate the Contract pursuant to clause 20.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) of the Customer where the amalgamated, reconstructed or merged entity agrees to adhere to the Contract.
- 20.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 20, it shall immediately notify the Supplier in writing.
- 20.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

21. DISPUTE RESOLUTION

- 21.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 21.
- 21.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 21.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- Within Seven Business Days of service of the notice, the Contract Managers of the parties shall meet to discuss the dispute and attempt to resolve it;
 - if the dispute has not been resolved within Seven Business Days of the first meeting of the Contract Managers, then the matter shall be referred to the Chief Executives (or persons of equivalent seniority). The Chief Executives (or equivalent) shall meet within Seven Business Days of such referral to discuss the dispute and attempt to resolve it.
- 21.4 The specific format for the resolution of the dispute under clause 21 and, if necessary, clause 21 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 21.5 If the dispute has not been resolved within 14 Business Days of the first meeting of the Chief Executives (or equivalent) under clause 21 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules on the application of either party.

21.6 Until the parties have completed the steps referred to in clauses 21.3 and 21.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

22. NOTICES

22.1 Any notice or other communication given by a party under these Conditions shall:

- be in writing and in English;
- be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- be sent to the relevant party at the address set out in the Contract.

22.2 Notices may be given, and are deemed received:

- by hand: on receipt of a signature at the time of delivery;
- by **ROYAL MAIL RECORDED SIGNED FOR** post: at 9.00 am on the Second Business Day after posting;
- by **ROYAL MAIL INTERNATIONAL TRACKED & SIGNED OR ROYAL MAIL INTERNATIONAL SIGNED** post: at 9.00 am on the fourth Business Day after posting;
- by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
- by email provided confirmation is sent by first class post on receipt of a delivery email from the correct address.

22.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 22.1 and shall be effective:

- on the date specified in the notice as being the date of such change; or
- if no date is so specified, Ten Business Days after the notice is deemed to be received.

22.4 This clause 22 does not apply to notices given in legal proceedings or arbitration.

22.5 A notice given under these Conditions is not validly served if sent by email.

23. CUMULATIVE REMEDIES

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

24. TIME

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

25. FURTHER ASSURANCE

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

26. ENTIRE AGREEMENT

26.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

26.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

26.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

27. VARIATION

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, the Supplier.

28. ASSIGNMENT

28.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed.

28.2 Notwithstanding clause 28.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

29. SET-OFF

29.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

29.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

30. NO PARTNERSHIP OR AGENCY

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

31. EQUITABLE RELIEF

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

32. SEVERANCE

32.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

32.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

33. WAIVER

33.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

33.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

33.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

34. CONFLICTS WITHIN CONTRACT

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.

35. COSTS AND EXPENSES

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

36. THIRD PARTY RIGHTS

36.1 Except as expressly provided for in clause 36.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

36.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

37. GOVERNING LAW

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

38. JURISDICTION

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).