

SUEZ ADVANCED SOLUTIONS UK LTD STANDARD TERMS AND CONDITIONS

PARTIES

Supplier: Suez Advanced Solutions UK Limited (company number 05687775) whose registered office is at SUEZ House, Grenfell Road, Maidenhead Berkshire, SL6 1ES.

Customer: the person or firm who purchases the Goods and/or Services from the Supplier, as detailed in the Proposal.

1. Interpretation

1.1 Definitions. In these Conditions and the Contract, the following definitions apply:

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

Charges: the charges payable by the Customer for the supply of the Goods/Services in accordance with clause 10.

Conditions: these terms and conditions, as amended from time to time in accordance with clause 17.7.

Contract: the contract between the Supplier and the Customer for the supply of Goods and/or Services, incorporating the Proposal and these Conditions.

Deliverables: any deliverables specifically set out in the Proposal.

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

Input Materials: any information, data, samples and other materials provided by the Customer to the Supplier in connection with the Contract.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Proposal: the proposal or quotation document for the supply of Goods and/or Services prepared by the Supplier for the Customer, which has been signed by the Customer.

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

Site: the location(s) set out in the Proposal or such other locations as the parties may agree in writing.

Site Office: the temporary accommodation and facilities available for the Supplier to use at the Site in connection with the performance of the Services.

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

Supplier Materials: all materials, equipment, documents and other property of the Supplier that are left with the Customer including at the Site.

1.2 **Construction.** In these Conditions, the following rules apply:

- (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 successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted, including any subordinate legislation made under it;
- (d) any phrase preceded by the term **including** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails from persons with sufficient authority to bind a party.

2. Basis of contract

- 2.1 The Proposal, duly signed by the Customer, constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
 - 2.2 The Proposal shall only be deemed to be accepted when the Supplier counter-signs the Proposal, or issues written acceptance of the Customer's offer, at which point and on which date the Contract shall come into existence. Notwithstanding the foregoing, the Supplier may commence provision of the Services and/or delivery of Goods without having provided written acceptance, in which case the Contract shall come into existence when it begins performance of the Contract.
 - 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not expressly set out in the Contract.
 - 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, brochures or other literature 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.
 - 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 trade, custom, practice or course of dealing.
 - 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for the earlier of: (i) a period of 60 Business Days from its date of issue; or (ii) until withdrawn in writing by the Supplier.
 - 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 Where the Contract requires the Supplier to operate on the Site, including to perform any installation or testing, the Customer shall ensure that and the prices set out in the Proposal are only valid if:
 - (a) the Goods/Supplier Materials will be unloaded by the Customer adjacent to where installation or performance of the Services is required and the Site will be free for access or material;
 - (b) lifting equipment (if required) shall be provided by the Customer and work shall proceed continuously during normal working hours;
 - (c) water or other liquids for testing purposes shall be provided by the Customer including facilities given for discharge as and when necessary free of all cost to the Supplier;
 - (d) where power and other services, including oil-free air, water and electricity, are required, they shall be provided free of all costs to the Supplier;
 - (e) an appropriate area shall be made available for the Site Office (if applicable) and associated facilities, such as telecoms access; and
 - (f) in the event that any civil works are required, the Customer shall undertake the same prior to the delivery of the Goods and/or commencement of the Services.
 - 2.9 Should overtime working be requested by the Customer or additional work or expenditure be incurred due to Site conditions or non-compliance with these Conditions by the Customer, the Supplier reserves the right to increase the Contract price accordingly.
- 3. Goods**
- 3.1 The Goods are described in the Specification (if applicable) or shall otherwise conform to normal industry standards.
 - 3.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier 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 reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim

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made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory, regulatory or health and safety requirements.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the relevant Customer and Supplier reference numbers, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Returns of packaging materials shall be at the Supplier's expense.

- 4.2 The Supplier shall deliver the Goods to the Site at any time after the Supplier notifies the Customer that the Goods are ready.

- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Site. Unless otherwise expressly agreed the contract is limited to supply ex-works. The Customer shall be responsible for the Site, unloading/loading, storage and transport of the Goods on their arrival at the Site.

- 4.4 Whilst the Supplier will use reasonable endeavours to deliver the Goods by any dates agreed in writing, such dates shall be approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If the Supplier 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 Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 4.6 If the Customer fails to accept or take delivery of the Goods within 10 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 11th Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.7 If 20 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.

- 4.8 The Supplier may deliver the Goods by instalments, which may 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. Quality of Goods

- 5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be fit for any purpose held out by the Supplier.

- 5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing 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 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from their description or any Goods Specification as a result of changes made to ensure they comply with applicable statutory, regulatory or health and safety standards.

- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on their arrival at the Site.

- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cleared funds) for the Goods and any other goods and/or services that the Supplier has supplied to the Customer in respect of which payment has become due.

- 6.3 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 Supplier'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 Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(d); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2(b) to clause 15.2(d), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Supply of Services**
- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Proposal and Specification (if applicable) in all material respects.
- 7.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 If the Supplier fails to deliver Services in accordance with any performance dates agreed in writing, the Supplier is entitled to remedy such failure by delivering such Services as soon as is reasonably possible. If such delivery is completed within a reasonable amount of time from the original agreed delivery date, the Supplier will incur no liability to the Customer. If such delivery is not completed within a reasonable amount of time from the original agreed delivery date, the Customer's remedy will be to terminate the Contract in accordance with clause 15.2(a).
- 7.4 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law, regulation or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. Customer's obligations**
- 8.1 The Customer shall:
- (a) ensure that the terms of the Proposal and the Specification are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services and comply with any requirements set out in the Proposal;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Site and any other Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to deliver the Goods and/or provide the Services;
 - (d) provide the Supplier with such Input Materials as the Supplier may reasonably require to supply the Services, and ensure that such Input Materials are complete and accurate in all material respects;
 - (e) prepare the Site or other Customer premises for the supply of the Goods and/or 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; and
 - (g) keep and maintain any Supplier Materials at the Customer's premises in safe custody at its own risk and maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 8.2 If the Supplier's performance of any of its obligations in respect of 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) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 9. Project management**
- 9.1 Where any part of the Services include project management, the Supplier shall:
- (a) use reasonable endeavours to co-ordinate the services of its employees and such other organisations or individuals connected with the Services as shall be notified to it by the Customer;
 - (b) use reasonable endeavours to schedule the activities of the organisations and individuals so as to achieve timely delivery, in the absence of any unanticipated events, of the Deliverables; and
 - (c) give written notice to the Customer as soon as reasonably practicable of any matter arising out of the performance of the Services which might materially affect the interest of the Customer regarding the Services.
- 9.2 The Supplier shall if agreed within the scope of the Services attend meetings and site visits, either with or without the Customer at such times and frequency as shall be necessary and convenient to the parties.
- 10. Charges and payment**
- 10.1 The price for Goods shall be the price set out in the Proposal or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.
- 10.2 The charges for Services shall be the price set out in the Proposal, which may be on a fixed price or time and materials basis. Any charges for additional services, or where the price is on a time and materials basis, shall be calculated as follows:
- (a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates;
 - (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day between 8.00 am to 5.00 pm worked on Business Days; and
 - (c) the Supplier shall be entitled to charge an overtime rate notified to the Customer in advance 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 10.2(b).
- 10.3 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 10.4 The Supplier reserves the right to:
- (a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 2 months before the proposed date of the increase;
 - (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 Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (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

Supplier adequate or accurate information or instructions in respect of the Goods.

- 10.5 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer as set out in the Proposal, or monthly in arrears if nothing is detailed in the Proposal.
- 10.6 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice;
 - (b) in GBP unless otherwise agreed; and
 - (c) in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 10.7 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 Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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.
- 10.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

11. Intellectual property rights

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 11.3 All Supplier Materials are the exclusive property of the Supplier.

12. Non-solicitation

- 12.1 The Customer shall not (except with the prior written consent of the Supplier) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the Supplier any person employed or engaged by it in the provision of the Services at any time during the continuation of the Contract or for a further period of 12 months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the Supplier.
- 12.2 If the Customer commits any breach of clause 12.1 the Customer shall, on demand, pay to the Supplier a sum equal to twelve month's basic salary that was payable by the Supplier to that employee, worker or independent contractor.

13. Confidentiality

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any

governmental or regulatory authority or by a court of competent jurisdiction. This clause 13 shall survive termination of the Contract.

14. Limitation of liability

- 14.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be excluded by law.
- 14.2 Subject to clause 14.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
 - (b) the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the Contract relating to property damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £1 million; and
 - (c) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount payable by the Customer under the Contract in the year in which any such liability occurs.
- 14.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.4 This clause 14 shall survive termination of the Contract.

15. Termination

- 15.1 The Supplier may terminate the Contract on providing the Customer with at least 3 months' notice in writing.
- 15.2 Without limiting its other rights or remedies, 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 this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
 - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction;
 - (c) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 15.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this

Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2(b) to clause 15.1(k), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15.5 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt, the Supplier may also invoice the Customer for all Goods and Services scheduled to be performed/delivered within 1 week following termination;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. Force majeure

- 16.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. If a Force Majeure Event prevents or delays the Supplier's performance of the Contract for more than 30 days, it shall be entitled to terminate the Contract with immediate effect by giving written notice to the Customer.
- 16.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 16.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 5 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

17. General

17.1 **Assignment and other dealings.**

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

17.2 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2(a); if sent by pre-paid first class post or

other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 17.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 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 any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 17.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 17.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

- 17.8 **Governing law & Jurisdiction.** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and any dispute or claim arising out of or in connection with it shall be subject to the exclusive jurisdiction of the English courts.

- 17.9 **Precedence.** In the event of any conflict between these Conditions and the Proposal, the Proposal shall take precedence.