

ACC Silicones Limited – Terms and Conditions for the Supply of Goods and Services

1 Interpretation

1.1 The definitions and rules of interpretation in this clause apply to these Terms:

“Business Day” means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;

“Commencement Date” means has the meaning set out in clause 2.2;

“Company” means ACC Silicones Limited, a company incorporated and registered in England and Wales with company number 460261 and registered address Amber House, Showground Road, Bridgwater, Somerset, TA6 6AJ;

“Contract” means the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Terms;

“Customer” means the person or firm who purchases the Goods and/or Services from the Company;

“Deliverables” means any deliverables set out in the Specification;

“Delivery Location” means has the meaning set out in clause 3.2;

“Force Majeure Event” means has the meaning given to it in clause 16.1.1;

“Goods” means the goods (or any part of them) set out in the Order;

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral 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 for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“Order” means the Customer’s order for the supply of Goods and/or Services, as set out in the Customer’s purchase order form, or further to the Customer’s written or verbal acceptance of the Company’s quotation as the case may be, in all cases as acknowledged further to clause 2.2 below;

“Services” means any services, including the Deliverables, supplied by the Company to the Customer as set out in the Specification;

“Specification” means in relation to Goods, any specification for the Goods (including any relevant plans or drawings) that is provided by the Company to the

Customer, and in relation to Services, the description or specification for Services provided by the Company to the Customer; and

“**Terms**” means these terms and conditions as amended from time to time in accordance with clause 16.8;

1.2 In these Terms, the following rules apply :

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

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 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;

1.2.4 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

1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2 Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Company in accordance with these Terms.

2.2 In the event that there are no discrepancies with the Order, the Order shall be deemed to be accepted when the Company issues written acceptance of the Order by means of an acknowledgment.

2.3 In the event that discrepancies exist with the Order:

2.3.1 the Company shall note these on the acknowledgment, and the acknowledgment shall constitute a counter-offer; and

2.3.2 when the Company receives an amended acknowledgment countersigned by the Customer, this shall constitute acceptance.

2.4 The date on which date the Contract shall come into existence shall be known as the “**Commencement Date**”.

2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services

and/or Goods described in them. They shall not form part of the Contract or any other contract between the Company and the Customer for the supply of the Goods and/or Services.

- 2.6 These Terms 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.
- 2.7 Any quotation given by the Company shall not constitute an offer.
- 2.8 Any quotation given by the Company shall be valid for such a period as agreed between the Company and the Customer, or if such a period has not been agreed or stated on any correspondence provided by the Company to the Customer, then it shall be valid for a period of 30 days from its date of issue.
- 2.9 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 Delivery of Goods

- 3.1 The Company shall ensure that:
 - 3.1.1 each delivery of the Goods is accompanied by a delivery note which shows all relevant Customer and Company codes and reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 3.1.2 if the Company requires the Customer to return any packaging material or pallets to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials or pallets available for collection at such times as the Company shall reasonably request. Returns of packaging materials and pallets shall be at the Company's expense.
- 3.2 Where agreed with the Customer, the Company shall use all reasonable endeavours to deliver the Goods to the location set out in the Order or such other location as the parties may agree (the "**Delivery Location**").
- 3.3 Delivery of the Goods shall be completed:
 - 3.3.1 in the case of Goods to be collected by the Customer or the Customer's agent when the Goods are loaded on the vehicles collecting them;
 - 3.3.2 in the case of Goods delivered within the UK by the Company or the Company's agents - when the Goods are unloaded from the vehicles delivering them at the address nominated by the Customer or the Customer's agent for delivery;
 - 3.3.3 in the case of Goods to be exported by the Company - when the Goods pass over the ships rail as follows:-

- (a) Goods shipped FOB – at the port of loading:
 - (b) Goods shipped C and F – at the port of loading: or
 - (c) Goods shipped CIF – at the port of destination.
- 3.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 3.6 If in circumstances where the Company notifies the Customer that the Goods are ready (for example where Goods are ex works) and the Customer is obliged to accept or take delivery of the Goods, the Customer fails to do so within 14 Business Days of notification, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:
 - 3.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3rd Business Day following the day on which the Company notified the Customer that the Goods were ready; and
 - 3.6.2 the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.7 If under the terms of the contract the Customer is obligated to collect the Goods, and 14 Business Days after the Company notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, then the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 3.8 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 10 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 3.9 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in

delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4 Quality of Goods

4.1 The Company warrants that on delivery, and for a period from the date of delivery reflecting the lifespan of the Goods as notified by the Company to the Customer (the "**Warranty Period**"), the Goods shall:

4.1.1 conform in all material respects with their description and any applicable Specification; and

4.1.2 be free from material defects in design, material and workmanship.

4.2 Subject to clause 4.3, if:

4.2.1 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 4.1;

4.2.2 the Company is given a reasonable opportunity of examining such Goods; and

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

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

4.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:

4.3.1 in the case of damage in transit or shortage of delivery, notification of the particulars is made to the carrier concerned and to the Company within 24 hours of the receipt of the Goods and this is followed by a complete claim in writing to the carrier;

4.3.2 (save in circumstances of a latent defect) the Customer, upon delivery of the Goods, signs any documentation provided by the company to the effect that it has had an opportunity to inspect the Goods and is satisfied with their composition and condition;

4.3.3 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;

4.3.4 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

- 4.3.5 the defect arises as a result of the Company following any drawing, design or specification supplied and/or detailed by the Customer, including, where the context permits, verbally;
 - 4.3.6 the Customer alters or repairs such Goods without the written consent of the Company; or
 - 4.3.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 4.4 Except as provided in this clause 4, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.5 The terms of these Terms shall apply to any repaired or replacement Goods supplied by the Company under clause 4.2.

5 Title and risk

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 3.3.
- 5.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- 5.2.1 the Goods; and
 - 5.2.2 any other goods that the Company has supplied to the Customer in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
 - 5.3.5 notify the Company immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12; and
 - 5.3.6 give the Company such information relating to the Goods as the Company may require from time to time,
- but the Customer may resell or use the Goods in the ordinary course of its business.

- 5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, 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.

6 Supply of Services

- 6.1 The Company shall provide the Services to the Customer in accordance with the Specification in all material respects.
- 6.2 The Company shall use all reasonable endeavours to meet any performance dates specified for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 6.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

7 Customer's obligations

- 7.1 The Customer shall:
- 7.1.1 ensure that the terms of the Order and the information it provides in the Specification are complete and accurate;
 - 7.1.2 co-operate with the Company in all matters relating to the Services;
 - 7.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;
 - 7.1.4 provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 7.1.5 if applicable, prepare the Customer's premises for the supply of the Services;
 - 7.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

- 7.2 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 7.2.1 the Company shall, without limiting its other rights or remedies, have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
 - 7.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 7.2; and
 - 7.2.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

8 Charges and payment

- 8.1 The price for Goods shall be the price set out in the Order. Minimum order values apply of £100 where the delivery destination is within the UK and €250 where the delivery destination is outside of the UK.
- 8.2 The price of the Goods is:
- 8.2.1 inclusive of all costs of packaging;
 - 8.2.2 exclusive of all costs and charges of insurance;
 - 8.2.3 inclusive of all costs of delivery where Goods are being dispatched within the UK.
- 8.3 The charges for Services shall be on a time and materials basis. The charges shall be calculated in accordance with the Company's standard daily fee rates as may be varied from time to time on notice to the Customer and provided to the Customer (alongside the Company's expenses policy) in circumstances where Services are to be provided.
- 8.4 The Company reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:
- 8.4.1 any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 8.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification in respect of the Goods; or

- 8.4.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
- 8.5 In respect of Goods, the Company shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Customer in arrears as agreed by the parties.
- 8.6 The Customer shall pay each invoice submitted by the Company:
- 8.6.1 in accordance with payment terms agreed between the parties, or if no such agreement is in place, within 30 days of the date of the invoice; and
- 8.6.2 in full and in cleared funds to a bank account nominated in writing by the Company, and
- 8.6.3 time for payment shall be of the essence of the Contract.
- 8.7 In respect of Goods returned by the Customer in accordance with the cancellation policy identified in clause 13, the Company reserves the right to invoke a re-stocking charge amounting to 20% of the total value of the Goods returned.
- 8.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 8.9 Without limiting any other right or remedy of the Company, if the Customer fails to make any payment due to the Company under the Contract by the due date for payment (the "**Due Date**"), the Company shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the then current base lending rate of the Bank of England accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 8.10 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

9 Equipment

- 9.1 All tools, jigs, dies, moulds or other equipment (the "**Equipment**"), whether or not the cost thereof or any part of the cost thereof be quoted or otherwise included with the

price of Goods, shall remain the property of the Company unless otherwise agreed in writing by the Company.

- 9.2 Wherever appropriate, Equipment will be stored by the Company for a reasonable period of time and in anticipation of further Orders, but the Company will not accept any liability for any loss or damage (howsoever arising) thereto from whatever cause.
- 9.3 The Customer shall keep and maintain any Equipment, documents and other property of the Company ("**Company Materials**") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation
- 9.4 In the event of a Customer ordering a smaller number of Goods than that specified in the quotation or failing to take delivery of such full quantity within the period stated in the quotation the Company reserves the right to charge to the Customer the whole, or a proportionate part as may be appropriate, of the cost of manufacturing the Equipment, taking into account the part of such cost stated in the quotation. The quotation is based on the assumption that where the Equipment (or any part thereof) is to be provided by the Customer, the same will be suitable for the Company's machines and methods of manufacture without the Company incurring any cost or expenses.

10 Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 10.2 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 Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- 10.3 All Company Materials are the exclusive property of the Company.

11 Confidentiality

A party (the "**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the "**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12 Limitation of liability and Indemnity

- 12.1 Nothing in these Terms shall limit or exclude the Company's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 12.1.2 fraud or fraudulent misrepresentation;
 - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 12.1.5 defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1:
- 12.2.1 the Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract; and
 - 12.2.2 the Company'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 not exceed the amount paid by the Customer under the Contract in the twelve month period immediately preceding notification of the cause of action.
- 12.3 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.4 The Customer shall indemnify and keep the Company its affiliates harmless and indemnified against all damages, losses, claims liabilities, costs (including legal costs) and expenses which the Company or its affiliates may suffer or incur arising out of or in connection with work done in accordance with the Customer's specifications or instructions howsoever arising or performance of Company's obligations under a Contract.
- 12.5 This clause 12 shall survive termination of the Contract.

13 Cancellation or Reduction

- 13.1 Orders placed cannot be cancelled except with the Company's consent and on terms which will indemnify the Company against all loss, cost and expenses.
- 13.2 No Goods (or any part thereof) may be returned by the Customer without the Company's consent. No Goods (or any part thereof) may be returned if custom made to the Customer's specification, instructions or other directions.

- 13.3 If the Customer wishes to request return Goods it shall promptly notify in writing the Company within two Business Days of delivery of the relevant Goods, it shall ensure that the Goods are stored in a safe location and will not open, use or partially use the Goods and it shall ensure that any packaging, seals and other containers are unbroken. It is at the Company total discretion to accept a return and credit the relevant price against a new Order of the Customer or refuse to do so.

14 Termination

- 14.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.1.1 the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
 - 14.1.2 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 14.1.3 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 14.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company);
 - 14.1.5 the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - 14.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (being a company);
 - 14.1.8 a floating charge holder over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;

- 14.1.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - 14.1.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive);
 - 14.1.11 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - 14.1.12 the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.2 Without limiting its other rights or remedies, the Company 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.
- 14.3 Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if:
- 14.3.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or
 - 14.3.2 the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.12, or the Company reasonably believes that the Customer is about to become subject to any of them.

15 Consequences of termination

On termination of the Contract for any reason:

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

16 General

16.1 Force majeure:

16.1.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party 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.

16.1.2 The Company 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.

16.1.3 If the Force Majeure Event prevents the Company from providing any of the Services and/or Goods for more than eight weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

16.2 Assignment and subcontracting:

16.2.1 The Company may at any time assign, transfer, 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.

16.2.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.3 Notices:

16.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

16.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid 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, or if sent by fax, on the next Business Day after transmission.

- 16.3.3 This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails and for the avoidance of doubt notice given under this Contract shall be validly served if sent by e-mail.
- 16.4 Waiver and cumulative remedies:
- 16.4.1 A waiver of any right under the Contract 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 preclude or restrict its further exercise. 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.
- 16.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 16.5 Severance:
- 16.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.5.2 If any invalid, unenforceable or illegal provision of the Contract 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.
- 16.6 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8 Any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Company.
- 16.9 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.