DEFINITIONS AND INTERPRETATION

1.1 The following terms and phrases shall have the meanings set out in Condition 1.3 unless the context otherwise requires:

- **Acceptance Criteria** shall have the meanings ascribed in Condition 1.5;
- **Customer** means a person or firm from whom the Customer purchases the Deliverables;
- **Intellectual Property Rights** means any and all patents, industrial designs, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in know-how and trade secrets, moral rights in artistic and literary creations, rights in computer software, database rights, trade secrets, designs, models, samples, plans, drawings, specifications, software programs, samples or other material attributable to or denoting its existence from the provision of the Deliverables;
- **Standards** means all regulations and standards applicable to the type of work in the Deliverables, and any and all materials, products and goods required to comply with the Standards;
- **Specifications** means all relevant plans or drawings either produced by the Customer or produced by the Supplier prior to the Contract being made;
- **Territorial Rights** means all non-Exclusive licence, exclusive licence, all rights and all other rights emanating from any copyright or other commercial rights or rights in designs, rights in computer software, database right, moral rights in artistic and literary creations, rights in computer software, trade secrets, designs, models, samples, plans, drawings, specifications, software programs, samples or other material attributable to or denoting its existence from the provision of the Deliverables, and all other Commercial Rights including the right to use the same;
- **Territorial Rights** means all non-Exclusive licence, exclusive licence, all rights and all other rights emanating from any copyright or other commercial rights or rights in designs, rights in computer software, database right, moral rights in artistic and literary creations, rights in computer software, trade secrets, designs, models, samples, plans, drawings, specifications, software programs, samples or other material attributable to or denoting its existence from the provision of the Deliverables, and all other Commercial Rights including the right to use the same;
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such packaging material shall only be returned to the Supplier at the cost of the Supplier.

6. TITLE AND RISK

6.1 Title in the Deliverables shall pass to the Customer at the Delivery Date or on the date the Customer pays for the Deliverables in accordance with Condition 12, whichever is sooner.

6.2 Risk in the Deliverables shall pass to the Customer on acceptance in accordance with Condition 8 below.

7. DELIVERY

7.1 The Supplier shall from the Commencement Date provide the Deliverables to the Customer in accordance with Condition 12, whichever is sooner.

7.2 The Supplier shall deliver the Deliverables to the Customer at the Delivery Location on the Delivery Date or within the time period agreed in the Contract. Delivery shall be the essence of the Contract.

7.3 Delivery of the Deliverables shall be completed on the completion of unloading of the Deliverables at the Delivery Location.

7.4 If the Supplier delivers a quantity of Deliverables ordered, the Customer may reject the Deliverables and any rejected Deliverables shall be returnable at the Supplier’s risk and cost. If the Supplier delivers less than the quantity of Deliverables ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made for any invoice delivered by the Supplier.

7.5 The Supplier shall not deliver the Deliverables in instalments without the Customer’s prior written consent. If it is agreed that the Deliverables are delivered in instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment or all of Deliverables, or any defect in an instalment shall entitle the Customer to the remedies set out in Condition 9.

8. ACCEPTANCE

8.1 Acceptance of the Deliverables shall take place upon the signing of an acceptance certificate by the Customer (or its nominated representative), on satisfaction of the Acceptance Criteria.

9. CUSTOMER’S RIGHTS

9.1 If the Supplier fails to deliver or perform the Deliverables by the Delivery Date, the Customer shall have the right in evidence that:

(a) to negotiate the Contract with immediate effect by giving written notice to the Supplier;
(b) to insist to accept any subsequent performance or delivery of the Deliverables which the Supplier attempts to make;
(c) to receive from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
(d) where the Supplier has paid Advance for Deliverables that have not been provided to the Supplier, to have such sums refunded by the Supplier; and
(e) to claim any additional costs incurred by the Customer which are in any way attributable to the Supplier’s failure to meet the Delivery Date.

9.2 If the Supplier has delivered Deliverables that do not comply with the undertakings set out in Condition 10, the Customer or any other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Deliverables:

(a) to reject the Deliverables and any rejected Deliverables shall be returnable at the Supplier’s risk and cost; or
(b) to require the Supplier to repair the rejected Deliverables, or to provide a full refund of the price of the rejected Deliverables;
(c) to insist to accept any subsequent delivery of the Deliverables which the Supplier attempts to make;
(d) to insist to accept any subsequent performance of the Deliverables incurred by the Customer in obtaining substitute goods and/or services from a third party; and
(e) to claim any additional costs incurred by the Customer arising from the Supplier’s failure to supply Deliverables in accordance with the Contract.

9.3 These Conditions shall extend to any substituted or remedied services and/or repair or replacement services.

9.4 The Customer’s rights under this Contract are in addition to its rights and remedies implied by statute and common law.

10. RESTRICTIONS

10.1 The Supplier shall not, without the prior written consent of the Customer, in any time from the date of the Contract to the expiry of 9 months after the termination of the Contract, solicit or entice away from the Customer or employ or attempt to employ any person who has, or has been, engaged as an employee or sub-contractor of the Customer.

10.2 Any consent given by the Customer in accordance with Condition 10.1 shall be subject to the Supplier paying to the Customer a sum equivalent to 20% of the then current annual remuneration of the Customer’s employee or sub-contractor or, if higher, 20% of the employee’s annual remuneration.

10.3 The Customer shall not convey, sell, or otherwise seek the customer of, or have any dealings with, the relevant business of the Customer at any time during the period of 12 months immediately preceding the date of the Contract.

10.4 The Customer shall not convey, sell, or otherwise seek the benefit of, or otherwise be entitled to, the Customer.

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10.6 Each of the undertakings in this Condition 10 shall be considered fair and reasonable by the parties; (b) is a separate undertaking by the Supplier and (c) shall be enforceable separately and independently of the Customer’s right to enforce any one or more of the other undertakings contained in this Condition.

11. CUSTOMER’S OBLIGATIONS

11.1 The Customer shall:

(a) provide the Supplier with, or, where applicable use its reasonable endeavours to procure the provision of, a means of communication at reasonable times to the Delivery Location for the purpose of providing the Deliverables; and
(b) provide the Supplier with Input Materials as the Supplier may reasonably request for the provision of the Deliverables and the Customer considers reasonably necessary for the purpose of providing the Deliverables.

12. PRICE AND PAYMENT

12.1 The price for the Deliverables:

(a) shall be the price set out in the Order; and
(b) shall: be the price charged to the Customer, inclusive of delivery and insurance of the Deliverables, unless otherwise agreed in writing by the Customer; be the price charged to the Customer, inclusive of delivery and insurance of the Deliverables unless otherwise agreed in writing by the Customer; and be the price charged to the Customer directly or indirectly incurred in connection with the provision of the Deliverables; and

12.2 The price charged to the Customer shall not be changed by the Supplier except on or before the first anniversary of the Contract by mutual agreement in writing and signed by the Customer in advance or as expressly set out in the Order.

12.3 The Supplier shall not increase the charge for any reason after acceptance of the Deliverables by the Customer in accordance with Condition 8. Each invoice shall include provision of Details of the charges levied by the Supplier to the Customer.

12.4 Unless otherwise stated in the Order, all amounts payable by the Customer under the Contract are inclusive of VAT chargeable from time to time or any other sales tax which shall be charged at the rate in force at the time of providing of the Deliverables.

12.5 If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the outstanding amount at the rate of 1% per annum above the base lending rate of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This judgment does not extend the period that the Customer disputes in good faith.

12.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Deliverables, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

12.7 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding or delaying payment of any amount that the Supplier may, without limiting any other rights or remedies, set off any amount due to it against any amount payable by the Customer to the Supplier.

13. CHANGE IN LAW

13.1 No release

The Supplier shall neither be relieved of its obligations under the Contract to supply the Deliverables, nor be entitled to an increase in the rate of remuneration thereof, unless and to the extent that the Supplier believes in good faith that:

(a) a General Change in Law; or
(b) a Specific Change in Law has occurred.

13.2 Notification

Notification of a Specific Change in Law occurs or will occur during the term of the Contract, the Supplier shall notify the Customer of the likely effects of that change, including:

(a) whether any change is required on one or more of the Deliverables, or the price;
(b) whether any relief from compliance with the Supplier’s obligations is required, including any obligation to achieve any milestones or to meet any of its obligations at any time.

13.3 Mitigation

As soon as practically after any notification in accordance with Condition 13.2, the parties shall discuss and agree on any action that the Customer in which the Supplier can mitigate the effect of the Specific Change of Law, including:

(a) costs incurred by the Customer or its suppliers in connection with the management of the change, or in connection with the management or provision of any services included in the Deliverables;
(b) any claim made against the Customer or its suppliers in connection with the management or provision of any services included in the Deliverables; and
(c) any other matter on which the parties agree.

14. INDEMNITY AND LIABILITY

14.1 The Supplier shall indemnify the Customer from and against all losses, expenses, damages and losses (whether direct or indirect), including any interests, fines, legal and other professional fees and expenses, together with all costs and expenses, together with all costs and expenses incurred by the Customer as a result of or in connection with:

(a) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, deliveries of Deliverables to any third party; or (b) any claim made against the Customer by a third party arising out of, or in connection with, the supply of Deliverables, to the extent that such claim arises as a result of, or in connection with, the manufacture, supply, receipt or use of the Deliverables.

14.2 The Supplier shall pay all costs incurred by the Customer arising from the Supplier’s failure to supply Deliverables in accordance with the Contract.

14.3 Nothing in these Conditions shall limit a party’s liability for death or personal injury caused by the Supplier’s negligence.

14.4 Nothing in these Conditions shall limit a party’s liability for death or personal injury caused by the Supplier’s negligence, nor shall it limit the Supplier’s liability for any other reason.

14.5 The Supplier shall have no liability in respect of any:

(a) loss of profits;
(b) loss of use of, or damage to, any equipment or machinery or any other loss;
(c) loss of agreements or contracts.

14.6 The Supplier shall be liable to the Customer for any loss or damage to the Deliverables, so far as covered by insurance maintained by the Supplier.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 The Supplier acknowledges that the Customer is the owner or licensee of all the Intellectual Property Rights in the Input Materials. Under no circumstances shall any of the Intellectual Property Rights in the Input Materials be assigned, licensed or transferred to the Supplier.

15.2 The Supplier warrants that it has clear and unencumbered title to all the Deliverables and that at the date of delivery of each item to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.

15.3 The Supplier assigns to the Customer, with full title guarantees and free from all third party rights, all Intellectual Property Rights in the Deliverables.

15.4 The Supplier shall, at all reasonable times and on any reasonable request by the Customer, disclose to the Customer all documentation and information relating to the Intellectual Property Rights.

15.5 All Input Materials are the exclusive property of the Customer (or its licensor as applicable).

16. PROTECTION OF CONFIDENTIAL INFORMATION

16.1 The Supplier (acting on behalf of the Customer) shall keep the Confidential Information of the other party (‘Supplying Party’) confidential and secret, the Supplying Party shall only disclose the Confidential Information of the Supplying Party as necessary to supply the Deliverables (in the case of the Supplier) or as necessary for the purposes of performing the Supplier’s obligations (in the case of the Customer) and for performing the Supplier’s obligations under the Contract.

16.2 The obligations of Condition 16.1 shall not apply to any information which:

(a) was in the Supplier’s or the Customer’s possession or is provided to the Supplier by the Supplying Party;
(b) is, or becomes, publicly available through no fault of the Supplier;
is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure; and (b) the Supplier shall immediately return all Input Materials to the Customer at its own cost. If the Supplier fails to do so, then the Customer may, without limiting its other rights or remedies, enter the Supplier's premises and take possession of them. Unless they have been returned the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; (c) the Supplier shall immediately deliver to the Customer all Deliverables which are capable of delivery. If the Supplier fails to do so, then the Customer may, without limiting its other rights or remedies, enter the Supplier's premises and take possession of them. If they have been delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract. Where the Supplier has not yet invoiced the Customer for any Deliverables, any such invoice shall be due according to Condition 12; (b) in the event of a dispute or discontinuance on the Work and shall within 1 month following termination submit any claim for monies due from the Receiving Party under the Conditions for the period of time from the date of termination to the date of such submission; and (c) the Receiving Party shall be entitled to use any Deliverables which are not ready for delivery or are otherwise incomplete. The Supplier shall be solely responsible for any costs or expenses incurred by the Receiving Party in connection with such costs or expenses or as a result of the specification, not to be reasonably refused by the Supplier. For the avoidance of doubt, the Customer shall not be obliged to pay compensation under Condition 17.3 in respect of any Deliverables which it chooses not to use; (c) each party shall return, delete or destroy all Confidential Information and all other information which has been provided to it by the other party belonging to that other party in whatever medium in accordance with the instructions of that other party; (f) any licence granted by these Conditions shall terminate, in particular those granted by Condition 17.5; (g) the accrued rights and remedies of the parties as at termination shall not be affected by any payment made after termination; and (h) no waiver by either party of any right or remedy, nor any variation or omission to imply effect after termination shall continue in full force and effect.

19. FORCE MAJEURE

20.1 The Customer shall not be liable to the Supplier or be deemed to be in breach of this Contract by reason of any delay in performance of, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Customer’s reasonable control (such cause being referred to as “Force Majeure”); (a) lock-out or other form of industrial action, failure of a utility service or transport network, act of God, war, governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or default of suppliers; and (b) such party is capable of delivery. If the Supplier fails to so deliver, then the Supplier shall be solely responsible for the safe keeping and will not use them for any purpose not connected with this Contract.

21. NOTICES

21.1 Any notice or required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may be notified pursuant to this provision to the party giving the notice; (a) sent by first class post where the notice is sent and received within the United Kingdom, or 7 days’ notice by means of telexing post where the notice is sent and received within the United Kingdom, or 7 Working Days’ notice by means of telexing post where the notice is sent and received outside the United Kingdom; (b) delivered personally shall be deemed served at the time of delivery, provided the same occurs on a Working Day; and (c) sent by email shall be deemed served at the time of transmission provided that the transmission occurs on a Working Day and a confirmatory copy of the email is sent to post within 24 hours of transmission of the email.

22. FURTHER ASSURANCE

22.1 Each party shall make such further and/or new appointment, grant such further and/or new consents, and/or do such further and/or new things, and/or take such further and/or new actions as may be required by any applicable law or as is reasonably required for the proper performance of the obligations under this Contract; (b) the obligations of the Receiving Party in respect of an Input Material which was developed by the Receiving Party (or on its behalf) without direct access to any Confidential Information supplied by the Supplier or the Customer; (c) the obligations of the Supplier in respect of an Input Material which was developed by the Supplier (or on its behalf) without direct access to any Confidential Information supplied by the Supplier or the Customer; and (d) the obligations of the Receiving Party and the Supplier in respect of any Input Material which was developed jointly by the Receiving Party and the Supplier without direct access to any Confidential Information supplied by the Supplier or the Customer.

23. SEVERANCE

23.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part in the validity of the other provisions of these Conditions shall not be affected thereby.

24. WAIVER

24.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure by the Customer to exercise any right or remedy or delay or omission in exercising any right or remedy or failing to exercise a right or remedy shall constitute a waiver of that right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

25. CUMULATIVE REMEDIES

25.1 Any remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise of either of the parties of any such right or remedy or claim shall preclude or restrict the further exercise of that or any other right or remedy granted by the Contract or otherwise available to that party.
31. GOVERNING LAW AND JURISDICTION
31.1 The 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 non-exclusive jurisdiction of the courts of England.