

ELEMENTAL HEALTHCARE LIMITED TERMS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following definitions apply:

Affiliate: means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

Applicable Law: means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

Bribery Laws: means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010;

Business Day: means a day other than a Saturday, Sunday or bank or public holiday;

Conditions: means the Supplier's terms and conditions of sale set out in this document;

Confidential Information: means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

Contract: means the agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Order, and including all its schedules, attachments, appendices and annexes;

Control: has the meaning given to it in section 1124 of the Corporation Tax Act 2010 and **Controls, Controlled** and **under common Control** shall be construed accordingly;

Customer: means the named party in the Contract which has agreed to purchase the Goods from the Supplier and whose details are set out in the Order;

Documentation: means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Goods;

Expiry Date: means the expiry date as set out in the Quotation;

Force Majeure: means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

Goods: means the goods and related accessories, spare parts and Documentation and other physical material set out in the Order and to be supplied by the Supplier to the Customer in accordance with the Contract;

Intellectual Property Rights: means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

Location: means the address or addresses for delivery of the Goods as set out in the Order;

Modern Slavery Policy: means the Supplier's anti-slavery and human trafficking policy in force and notified to the Customer from time to time;

MSA Offence: has the meaning given in clause 11.2.1;

Order: means an order for the Goods from the Supplier placed by the Customer in substantially the same form set out in the Supplier's sales order form;

Price: has the meaning given in clause 3.1;

Quotation: means a written quotation given by the Supplier to the Customer setting out, amongst other things the quantity of the Goods and an estimate of the charges payable by the Customer in respect of the Goods;

Specification: means the description, any samples, or Documentation provided for the Goods and their packaging set out or referred to in the Contract;

Supplier: means Elemental Healthcare Ltd, a company registered in England and Wales, with company number 5538194 whose registered office is at Clayton Wood House, 6 Clayton Wood Bank, Leeds, LS16 6QZ;

Supplier's Premises: means Clayton Wood House, 6 Clayton Wood Bank, Leeds, LS16 6QZ.

VAT: means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods; and

Warranty Period: has the meaning given in clause 9.1.

1.2 In these Conditions, unless the context requires otherwise:

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- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, attachments, appendices and annexes (if any);
- 1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.3 a reference to a party includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;
- 1.2.11 a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 1.2.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2. APPLICATION OF THESE CONDITIONS

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply. Any other terms which are implied by trade, custom, practice or course of dealing are excluded.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing. No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Supplier and the Customer respectively.
- 2.3 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods subject to the Contract including these Conditions.
- 2.4 If the Supplier is unable to accept an Order, it shall notify the Customer in writing as soon as reasonably practicable.
- 2.5 The Supplier may provide the Customer with a Quotation for Goods from time to time. If the Customer wishes to submit an Order for those Goods in accordance with a Quotation, the Customer must submit the Order before the Expiry Date of the relevant Quotation, after which time that Quotation shall automatically lapse and be withdrawn.
- 2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
 - 2.6.1 the Supplier's written acceptance of the Order; or
 - 2.6.2 the Supplier dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).
- 2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Customer.
- 2.9 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.
- 2.10 The Supplier may make changes to the Specifications of the Goods where such changes are required to conform to any applicable safety and regulatory requirements or Applicable Laws in respect of the Goods.
- 2.11 Any Specification of the Goods is published for the sole purpose of giving an approximate idea of the Goods described and shall not form part of the Contract.

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3. PRICE

- 3.1 The price for the Goods shall be as set out in the Order or, where no such provision is set out, the Price shall be as set out in the Supplier's price list current, which may be communicated as at the date of the Order in force from time to time or as advised by the Supplier from time to time before the date the Order is placed (the **Price**).
- 3.2 The Prices are exclusive of:
- 3.2.1 delivery, shipping carriage, and all other related charges or taxes or describe relevant elements of the Goods which are not included in the standard price which shall be charged in addition at the Supplier's standard rates unless otherwise agreed in writing; and
- 3.2.2 VAT (or equivalent sales tax).
- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Goods.

4. PAYMENT

- 4.1 The Supplier, at its discretion shall invoice the Customer for the Goods, partially or in full, at any time following acceptance of the Order.
- 4.2 Unless otherwise agreed in writing, the Customer shall pay all invoices:
- 4.2.1 in full without deduction or set-off, in cleared funds within 30 Business Days of the date of each invoice; and
- 4.2.2 to the bank account nominated by the Supplier.
- 4.3 The Supplier shall be permitted to apply different payment terms to the terms set out at clause 4.2 to any Orders at its discretion.
- 4.4 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 4.4.1 the Supplier may, without limiting its other rights, charge interest on such sums at 3.5 % a year above the base rate of Bank of England from time to time in force; and
- 4.4.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.5 All payments must be made in British Pounds unless otherwise agreed in writing between the parties.

5. CREDIT LIMIT

The Supplier may set and vary credit limits for the Customer from time to time. If the Customer exceeds such credit limit, the Supplier reserves the right to (i) withhold all further supplies from the Customer; and/or (ii) reject any new Orders from the Customer.

6. DELIVERY

- 6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location on the date(s) specified in the Order or to an alternative address as agreed between the parties. If (i) the Customer does not specify a delivery address in the Order; or (ii) if the parties agree in writing, the Goods must be collected by the Customer from the Supplier's Premises.
- 6.2 The Goods shall be deemed delivered on (i) arrival of the Goods at the Location; or (ii) arrival of the Goods at the alternative address (as applicable) by the Supplier or its nominated carrier (as the case may be). Where the Customer collects the Goods from the Supplier's Premises, the Goods shall be deemed delivered on completion of loading at the Supplier's Premises.
- 6.3 The Customer must inspect the Goods on delivery to the Location (or another address as agreed between the parties) or on collection from the Supplier's Premises (as applicable). Acceptance of the Goods will be deemed to be upon inspection of the Goods by the Customer and in any event within 4 days after deemed delivery.
- 6.4 The Customer shall be entitled to reject a delivery of the Goods where (i) an incorrect volume of the Goods has been supplied and where such volume is outside the tolerances set out in the Order; or (ii) the Goods are defective.
- 6.5 The Goods may be delivered by instalments. Any delay in delivery or defect in an instalment shall entitle the Customer to cancel any other instalment.
- 6.6 Delivery of the Goods shall be accompanied by a delivery note stating:
- 6.6.1 the date of the Order;
- 6.6.2 the product numbers, type and quantity of the Goods in the consignment; and
- 6.6.3 any special handling instructions.
- 6.7 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are indicative only. The Supplier will not be held liable for any delay in delivery of the Goods.
- 6.8 Delivery may take place at any time of a Business Day and must be accepted by the Customer between 8am and 6pm.
- 6.9 The Supplier shall not be liable for any delay in or failure of delivery caused by:
- 6.9.1 the Customer's failure to make the Location, or any alternative location as agreed between the parties, available;

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- 6.9.2 the Customer's failure to prepare the Location, or any alternative location as agreed between the parties, as required for delivery of the Goods;
- 6.9.3 the Customer's failure to provide the Supplier with adequate instructions for delivery and installation or otherwise relating to the Goods;
- 6.9.4 Force Majeure.
- 6.10 If the Customer fails to (i) accept delivery of the Goods; or (ii) collect the Goods, the Supplier may at its discretion and without prejudice to any other rights:
 - 6.10.1 store and insure the Goods pending delivery, and the Customer shall pay all costs and expenses incurred by the Supplier in doing so including, but not limited to transportation, storage and insurance.; and/or
 - 6.10.2 make arrangements for the redelivery of the Goods and will charge the Customer for any associated costs of such redelivery; and /or
 - 6.10.3 If the Customer has not taken delivery of or collected the Goods within 10 Business Days after the due date for delivery or collection of the Goods, the Supplier may resell or otherwise dispose of the Goods by providing to the Customer prior written notice of its intention to do so and without any further obligation or liability to the Customer, except as provided for in clauses 6.11.1 and 6.11.2.
- 6.11 Where clause 6.10 applies, the Supplier shall:
 - 6.11.1 Deduct all storage charges at the Supplier's then-applicable rates and reasonable costs of resale; and
 - 6.11.2 account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.
- 6.12 Other than by agreement between the parties in writing, the Supplier will only accept returned Goods, if the Supplier is satisfied that the Goods are defective. The Customer will bear the risk and cost of returning the Goods unless the Goods are returned in accordance with clause 9.3.
- 7. RISK**
Risk in the Goods shall pass to the Customer on delivery, or if the Goods are to be collected; on completion of loading at the Supplier's Premises.
- 8. TITLE**
8.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
8.2 Until title to the Goods has passed to the Customer, the Customer shall:
 - 8.2.1 hold the Goods as bailee for the Supplier;
- 8.2.2 store the Goods separately from all other material in the Customer's possession;
- 8.2.3 take all reasonable care of the Goods and keep them in a satisfactory condition in which they were delivered;
- 8.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price; and (iv) noting the Supplier's interest on the policy;
- 8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
- 8.2.6 not remove or alter any identifying mark on or packaging of the Goods;
- 8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 17.1.1 to 17.1.4 or 17.2.1 to 17.2.14; and
- 8.2.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 8.3 The Customer must not re-sell the Goods or use the Goods in the ordinary course of the Customer's business until the Supplier has received full payment for the Goods, or as otherwise set out under the terms of any credit agreement that the parties have agreed in writing.
- 8.4 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 17.1.1 to 17.1.4 or 17.2.1 to 17.2.14, the Supplier may:
 - 8.4.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
 - 8.4.2 if the Customer fails to re-deliver in accordance with clause 8.4.1 promptly, enter any premises where the Goods are stored and repossess them.
- 8.5 Before the title to the Goods has passed to the Customer (excluding where the Goods have been irreversibly incorporated into a person or another product) and without limiting any other right or remedy the Supplier may have, the Supplier at any time may require the Customer to deliver up the Goods in the Customer's possession, custody or control.
- 9. WARRANTY**
9.1 To the extent that the Goods are provided to the Supplier with a manufacturer's warranty, the Supplier will give the Customer an equivalent warranty for the Goods, for the same amount of

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- time as provided by the manufacturer (the **Warranty Period**):
- 9.2 The Customer warrants that it has provided the Supplier in writing with all relevant, full and accurate information as to the Customer's business and needs.
- 9.3 As the Customer's sole and exclusive remedy where a warranty is provided in accordance with clause 9.1, if the Goods are within the Warranty Period, the Supplier shall, at its option, repair, replace, or refund the Price of any of the Goods that do not comply with a warranty provided that the Customer:
- 9.3.1 serves a written notice on Supplier:
- 9.3.1.1 within 2 days of deemed delivery of the Goods, in the case of defects discoverable by a physical inspection; or
- 9.3.1.2 in the case of latent defects, within one month from the date on which the Customer became aware (or should reasonably have become aware) of the defect;
- 9.3.2 provides the Supplier with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
- 9.3.3 gives the Supplier a reasonable opportunity to examine the defective Goods; and
- 9.3.4 where possible, returns the defective Goods to the Supplier at the Supplier's expense.
- 9.4 The provisions of these Conditions, including the warranty set out in clause 9.1 (where applicable), shall apply to any of the Goods that are repaired or replaced with effect from the date of delivery of the repaired or replaced Goods.
- 9.5 The Supplier shall not be liable for any failure of the Goods to comply with clause 9.1:
- 9.5.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
- 9.5.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions for use in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
- 9.5.3 to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Goods;
- 9.5.4 where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or
- 9.5.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 9.1.
- 9.6 The Customer bears the risk and cost of returning the Goods unless the Goods are returned in accordance with clause 9.3.
- 9.7 Except as set out in this clause 9:
- 9.7.1 the Supplier gives no warranties and makes no representations in relation to the Goods; and
- 9.7.2 shall have no liability for its failure to comply with the warranty in clause 9.1; and all warranties and conditions (including the conditions implied by ss 13-15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- ## 10. ANTI-BRIBERY
- 10.1 For the purposes of this clause 10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 10.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 10.2.1 all of its personnel;
- 10.2.2 all others associated with it; and
- 10.2.3 all of its subcontractors;
- involved in performing the Contract so comply.
- 10.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere and shall implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 10.4 The Customer shall immediately notify the Supplier as soon as it becomes aware of a breach or possible breach by the Customer of any of the requirements in this clause 10.
- 10.5 Any breach of this clause 10 by the Customer shall be deemed a material breach of the Contract that is not remediable and shall entitle the Supplier to immediately terminate the Contract by notice under clause 17.1.1.

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11. ANTI-SLAVERY

11.1 Each party shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy.

11.2 Each party undertakes, warrants and represents that:

11.2.1 neither party nor any of its officers, employees, agents or subcontractors has:

11.2.1.1 committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**); or

11.2.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

11.2.1.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

11.2.2 Each party shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy; and

11.2.3 Each party has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and the Modern Slavery Policy in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to either party on request at any time throughout the Contract;

11.3 Each party shall notify the other immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the its obligations under clause 11.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the party's obligations.

11.4 Any breach of clause 11.2 by the either party shall be deemed a material breach of the Contract and shall entitle the other party to terminate the Contract with immediate effect.

12. INDEMNITY AND INSURANCE

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

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

13. LIMITATION OF LIABILITY

13.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 13.

13.2 Subject to clauses 13.5 and 13.6, the Supplier's total liability shall not exceed the sum equal to the Price paid or payable by the Customer for the Goods.

13.3 Subject to clauses 13.5 and 13.6, the Supplier shall not be liable for consequential, indirect or special losses.

13.4 Subject to clauses 13.5 and 13.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

13.4.1 loss of profit;

13.4.2 loss of revenue;

13.4.3 loss or corruption of data;

13.4.4 loss or corruption of software or systems;

13.4.5 loss or damage to equipment;

13.4.6 loss of use;

13.4.7 loss of production;

13.4.8 loss of contract;

13.4.9 loss of commercial opportunity;

13.4.10 loss of savings, discount or rebate (whether actual or anticipated);

13.4.11 harm to reputation or loss of goodwill; and/or

13.4.12 wasted expenditure.

13.5 The limitations of liability set out in clauses 13.2 to 13.4 shall not apply in respect of any indemnities given by the Customer under the Contract.

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

13.6.1 death or personal injury caused by negligence;

13.6.2 fraud or fraudulent misrepresentation;

13.6.3 any other losses which cannot be excluded or limited by Applicable Law;

13.6.4 any losses caused by wilful misconduct.

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14. INTELLECTUAL PROPERTY RIGHTS

14.1 All the Intellectual Property Rights existing in the Goods are shall remain with the Supplier and its licensors.

15. CONFIDENTIALITY AND ANNOUNCEMENTS

15.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

- 15.1.1 any information which was in the public domain at the date of the Contract;
- 15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
- 15.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
- 15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

15.2 This clause 15 shall remain in force in perpetuity.

15.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

16. FORCE MAJEURE

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure (however, inability to pay shall not be a Force Majeure event). The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 8 weeks, either party may terminate the Contract by written notice to the other party.

17. TERMINATION

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

- 17.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
- 17.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 Business Days of receiving written notice of such breach;
- 17.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the

Supplier has given notification to the Customer that the payment is overdue; or

17.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

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

- 17.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
- 17.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
- 17.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
- 17.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
- 17.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
- 17.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
- 17.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- 17.2.8 has a resolution passed for its winding up;
- 17.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
- 17.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- 17.2.11 has a freezing order made against it;
- 17.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 17.2.13 is subject to any events or circumstances analogous to those in clauses 17.2.1 to 17.2.12 in any jurisdiction;
- 17.2.14 takes any steps in anticipation of, or has no realistic prospect of avoiding,

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- any of the events or procedures described in clauses 17.2.1 to 17.2.13 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 17.3 If the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months, the Supplier may (i) terminate the Contract at any time by giving not less than 14 days' notice in writing; or (ii) amend its payment terms with the Customer in respect of the Contract and any Orders.
- 17.4 The right of the Supplier to terminate the Contract pursuant to clause 17.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) of the Customer where the amalgamated, reconstructed or merged entity agrees to adhere to the Contract.
- 17.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 17, it shall immediately notify the Supplier in writing.
- 17.6 The Supplier may suspend all further deliveries of Goods under the Contract or any other contract between the parties if the Customer fails to pay any amount due under this contract on the due date for payment, or becomes subject to any of the events listed in clauses 16.1.1 or 16.2.1 to 16.2.14 inclusive.
- 17.7 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier any outstanding unpaid invoices and interest and, in respect of Goods 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.
- 17.8 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.
- 18. NOTICES**
- 18.1 Any notice or other communication given by a party under these Conditions shall:
- 18.1.1 be in writing and in English;
- 18.1.2 be signed by, or on behalf of, the party giving it; and
- 18.1.3 be sent to the relevant party at the address set out in the Contract.
- 18.2 Notices may be given, and are deemed received:
- 18.2.1 by hand: on receipt of a signature at the time of delivery;
- 18.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- 18.2.3 by Royal Mail International Tracked & Signed post: at 9.00 am on the fifth Business Day after posting;
- 18.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
- 18.2.5 by email provided confirmation is sent by first class post on receipt of a read receipt email from the correct address.
- 18.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 18.1 and shall be effective:
- 18.3.1 on the date specified in the notice as being the date of such change; or
- 18.3.2 if no date is so specified, ten Business Days after the notice is deemed to be received.
- 18.4 This clause 18 does not apply to notices given in legal proceedings or arbitration.
- 19. CUMULATIVE REMEDIES**
- The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.
- 20. TIME**
- Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.
- 21. FURTHER ASSURANCE**
- The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.
- 22. ENTIRE AGREEMENT**
- 22.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 22.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 22.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

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23. VARIATION

The Supplier may vary these terms upon reasonable notice.

24. ASSIGNMENT

24.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion. Notwithstanding clause 24.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

25. SET-OFF

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

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

26. NO PARTNERSHIP OR AGENCY

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

27. EQUITABLE RELIEF

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

28. SEVERANCE

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

28.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question

shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

29. WAIVER

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

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

30. COMPLIANCE WITH LAW

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

31. CONFLICTS WITHIN CONTRACT

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

32. COSTS AND EXPENSES

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

33. THIRD PARTY RIGHTS

33.1 Except as expressly provided for in clause 33.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

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

34. DISPUTE RESOLUTION

34.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 34.

34.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

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34.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:

34.3.1 Within five Business Days of service of the notice, the contract managers of each of the parties shall meet to discuss the dispute and attempt to resolve it.

34.3.2 If the dispute has not been resolved within five Business Days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority) of each of the parties. The chief executives (or equivalent) shall meet within five Business Day to discuss the dispute and attempt to resolve it.

34.4 Either party may issue formal legal proceedings at any time whether or not the steps referred to in clause 34.3 have been completed.

35. GOVERNING LAW

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

36. JURISDICTION

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