

**DATED**

**1 July 2024**

**CUSTOMER TERMS AND CONDITIONS**

**(FOR THE SUPPLY OF GOODS AND SERVICES)**



**bright.blue**

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## 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions, including any changes done in accordance with clause 17.9.

**Contract:** the contract between the Customer and the Supplier for the supply of Goods or Services or Goods and Services in accordance with these Conditions.

**control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be interpreted accordingly.

**Customer:** Bright.Blue UK Limited registered in England and Wales with company number 14225204.

**Customer Materials:** has the meaning set out in clause 5.2(i).

**Customer-Specific IPR:** has the meaning set out in clause 9.1(a).

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Delivery Date:** the date specified in the Order, or, if none is specified, within 30 days of the date of the Order.

**Delivery Location:** the address for delivery of Goods as set out in the Order.

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

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

**Guarantee Period:** has the meaning given in clause 3.1(c).

**Intellectual Property Rights (or IPR):** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade

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

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order, written acceptance of the Supplier's quotation, or overleaf, as the case may be.

**Performance Dates:** the specific dates agreed upon by the Customer and Supplier, as outlined in the Order or otherwise notified by the Customer, by which the Supplier is obligated to perform the Services under the Contract. These dates are binding, and time is of the essence, meaning that failure to meet the Performance Dates may result in the Customer exercising its rights and remedies under the Contract.

**Services:** the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by the Customer and the Supplier.

**Supplier:** the person or firm from whom the Customer purchases the Goods or Services or Goods and Services.

**Supplier Background IPR:** has the meaning given in clause 9.1(b)(i).

**Supplier Generic IPR:** has the meaning given in clause 9.1(b)(ii).

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

- (e) A reference to **best** means in relation to goods, materials, diligence, care and workmanship standards that conform to industry-leading practices.
- (f) A reference to **writing** or **written** excludes fax and email.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
  - (a) the Supplier issuing acceptance of the Order; or
  - (b) any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 The Customer has the right to reasonably inspect Supplier's processes, records, and facilities relevant to the performance of the Contract to verify compliance with these Conditions.

## 3. Supply of Goods

- 3.1 The Supplier shall ensure that the Goods shall:
  - (a) correspond with their description and any applicable Goods Specification;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect, the Customer relies on the Supplier's skill and judgement;
  - (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for twenty-four (24) months after delivery ("**Guarantee Period**"); and
  - (d) comply with all applicable statutory and regulatory requirements and industry-applicable standards relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

- (e) be accompanied by all necessary instructions, technical information, and warnings relating to the safe and proper use, handling, and maintenance of the Goods;
  - (f) be free from any encumbrance, lien, or third-party rights at the time of delivery, ensuring the Customer receives full and unencumbered title; and
  - (g) ensure that any components or materials used in the Goods comply with practices and processes aimed at minimising environmental impact, including reducing carbon emissions, using renewable materials, and promoting recycling and the Supplier Code of Conduct.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

#### **4. Delivery of Goods**

- 4.1 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (c) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such

packaging material shall only be returned to the Supplier at the cost of the Supplier;

- (d) if applicable, the Supplier shall also provide a spreadsheet stating the serial numbers of the delivered Goods.

4.2 The Supplier shall deliver the Goods:

- (a) on the Delivery Date (or earlier if agreed with the Customer), whereas time is of the essence unless otherwise agreed in writing;
- (b) at the Delivery Location; and
- (c) during Business Hours or as agreed by the parties.

4.3 Delivery of the Goods shall be completed upon the unloading of the Goods at the Delivery Location confirmed by the Customer's representative.

4.4 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.

4.5 Title and risk in the Goods shall pass to the Customer on completion of delivery.

## **5. Supply of Services**

5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

5.2 In providing the Services, the Supplier shall:

- (a) meet any Performance Dates for the Services.
- (b) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- (c) perform the Services with the best care, skill and diligence and use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

- (e) ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
- (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;
- (k) comply with any additional obligations as set out in the Service Specification.

## **6. Customer remedies**

6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, the Customer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided or Goods that it has not delivered; and



- (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
  
- 6.2 If the Goods are not delivered by the applicable date, the Customer may, at its sole discretion, claim or deduct 5% of the price of the Goods for each week's delay in delivery of the Goods, by way of liquidated damages, until the earlier of delivery of the Goods or termination or abandonment of the Contract by the Customer, up to a maximum of 50% of the total price of the Goods. If the Customer exercises its rights in respect of late delivery under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the late delivery of the Goods.
  
- 6.3 If the Services are not performed by the applicable date, the Customer may, at its sole discretion, claim or deduct 5% of the price of the Services for each week's delay in performance of the Services, by way of liquidated damages, until the earlier of performance of the Services or termination or abandonment of the Contract by the Customer, up to a maximum of 50% of the total price of the Services. If the Customer exercises its rights in respect of late performance under this clause 6.3 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the late performance of the Services.
  
- 6.4 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
  - (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
  - (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.5 If the Supplier has supplied Services that do not comply with the requirements of clause 5.2(e) then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with clause 5.2(e).

6.6 **Guarantee Period:** Within the Guarantee Period the Customer may notify the Supplier, and the Supplier shall, at the Customer's option and at no additional cost:

- (a) Repair or replace the defective Goods within 10 Business Days of notification; or
- (b) Refund the price paid for the defective Goods within 10 Business Days of notification.

If the defect or failure renders the Goods critical (a situation where the defect or failure significantly impairs the Customer's ability to operate its business, fulfill contractual obligations, or use the Goods for their intended purpose, and where no reasonable workaround is available to the Customer's operations), the Supplier shall, at the Customer's request, provide temporary replacement Goods of equivalent specification within 5 Business Days to minimise disruption until repairs or replacements are completed.

6.7 The remedies under this clause 6 are in addition to any other rights or remedies available to the Customer under the Contract or at law. These Conditions shall extend to any substituted or remedial services or repaired or replacement goods supplied by the Supplier.

6.8 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **7. Customer's obligations**

7.1 The Customer shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **8. Charges and payment**

8.1 The price for the Goods:

- (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery unless agreed otherwise. In respect of Services, the Supplier shall invoice the Customer on completion of the Services unless agreed otherwise. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 45 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier. The Customer reserves the right to withhold payment for disputed amounts without incurring penalties. Any undisputed portions shall be paid promptly.

8.5 All amounts payable by the Customer under the Contract are exclusive of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice, pay such additional amounts as are chargeable in respect of VAT.

## 9. Intellectual property rights

9.1 Unless otherwise explicitly agreed in writing between the parties in the Order or otherwise:

- (a) The Customer shall own all Intellectual Property Rights in or arising out of any Deliverables, work, or materials specifically created, developed, or produced by the Supplier as part of the Services, where such work is created to meet the Customer's specific requirements or specifications ("**Customer-Specific IPR**").
- (b) The Supplier shall retain ownership of all Intellectual Property Rights:
  - (i) in its pre-existing materials, tools, processes, methodologies, or know-how ("**Supplier Background IPR**"); and
  - (ii) in any generic or non-customer-specific elements developed during the provision of the Services that are not derived from or dependent on the Customer's specifications or requirements ("**Supplier Generic IPR**").
- (c) To the extent that Supplier Background IPR or Supplier Generic IPR is included in or necessary for the use of any Customer-Specific IPR, the Supplier grants the Customer a perpetual, irrevocable, fully paid-up, non-exclusive, transferable and royalty-free licence to use, copy, modify, and distribute such Supplier IPR as required for the Customer's intended use of the Services and Deliverables.

9.2 Where the Goods purchased by the Customer are based on designs, specifications, or materials provided by the Customer, all Intellectual Property Rights in or arising out of or in connection with such Goods shall vest exclusively in the Customer. The Supplier shall be granted a fully paid-up, non-exclusive, non-transferable licence to use such Intellectual Property Rights solely for the purpose of manufacturing or assembling the Goods for the Customer.

9.3 Where the Goods purchased by the Customer are wholly designed, developed, or proprietary to the Supplier, the Supplier shall retain ownership of all Intellectual Property Rights in such Goods. The Supplier grants the Customer a perpetual, irrevocable, fully paid-up, non-exclusive, transferable, and royalty-free licence to use, sell, or otherwise exploit such Goods for their intended purpose.

9.4 **Protection of Customer Intellectual Property Rights:** the Supplier shall take all reasonable measures to protect the Customer's Intellectual Property Rights, including but not limited to:

- (a) Ensuring that Customer's IPR are used solely for the purposes of fulfilling the Supplier's obligations under the Contract.

- (b) Preventing unauthorized access, use, disclosure, or duplication of the Customer's IPR by its employees, agents, subcontractors, or third parties.
- (c) Promptly notifying the Customer of any suspected or actual breach or unauthorized use of the Customer's IPR and cooperating fully with the Customer to mitigate any potential harm.
- (d) Returning or securely destroying all Customer's IPR in its possession upon the termination or expiry of the Contract unless otherwise agreed in writing."

9.5 The Supplier acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of the Customer. Neither party shall use any residual knowledge, ideas, or concepts derived from the other party's confidential information or Intellectual Property Rights for any purpose outside the scope of the Contract, except with prior written consent.

9.6 The Supplier warrants that no third-party Intellectual Property Rights will be incorporated into the Deliverables without obtaining all necessary licenses, consents, or rights for the Customer to use, modify, and distribute the Deliverables without additional costs or liabilities.

## **10. Indemnity**

10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

- (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);
- (b) 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, defects in the Goods, as delivered, or the Deliverables, to the extent that the defects in the Goods or Deliverables are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services, to the extent that such claim arises out of the breach, negligent

performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

10.2 This clause 10 shall survive termination of the Contract.

## **11. Insurance**

During the term of the Contract and for a period of ten (10) years afterwards, the Supplier shall maintain in force, with a reputable insurance company, reasonable professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall produce to the Customer on demand both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **12. Compliance with relevant laws and policies**

12.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable laws, statutes, regulations and codes; and
- (b) comply with the Supplier Code of Conduct that is available upon request and on the Customer's website (*Supplier Code of Conduct*),

while the Supplier is obliged to promptly notify the Customer once it is aware of any breach of the above.

## **13. Termination**

13.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 12.1.

13.2 Each party may terminate the Contract for convenience by giving the other party three (3) months' written notice.

13.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of fifteen (15) days after being notified to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring),

obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

#### **14. Consequences of termination**

- 14.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, 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.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

#### **15. Confidentiality**

- 15.1 In case the parties entered into a separate non-disclosure agreement, such agreement shall apply to these Conditions analogically and shall have priority before the provisions of these Conditions.
- 15.2 Neither party shall at any time during the Contract and for a period of three (3) years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.3.
- 15.3 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.4 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **16. Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate the Contract by giving seven (7) days' written notice to the affected party.

## **17. General**

### **17.1 Assignment and other dealings.**

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

17.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

### **17.3 Notices.**



- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the addresses stated for this purpose by the parties (or an address substituted in writing by the party to be served):
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 17.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.5 **Waiver.**

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

17.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or

enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**17.7 Entire agreement.**

- (a) The Contract (and eventual non-disclosure agreement as per clause 15.1) constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

**17.8 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**17.9 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

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

**17.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.