

TERMS & CONDITIONS OF SUPPLY OF GOODS AND SERVICES BY GO2 TELECOM LIMITED

1. Definitions

Unless the context requires otherwise the following definitions apply

- 1.1 "Business Day" means any day other than
 - 1.1.1 a Saturday
 - 1.1.2 a Sunday or
 - 1.1.3 a public holiday in Englandwhen banks are open for business (and "Business Days" means more than one of them)
- 1.2 "Conditions" means
 - 1.2.1 the terms and conditions set out in
 - (a) the Quotation
 - (b) the Credit Application Form (if applicable) and
 - (c) this document and
 - 1.2.2 any special terms and conditions
 - (a) agreed in writing by the Supplier and
 - (b) signed by an authorised representative of the Supplier on its behalf
- 1.3 "Contract" means the contract between the Supplier and the Customer (incorporating the Conditions) for the purchase of the Goods and/or Services
- 1.4 "Credit Application Form" means the form completed by the Customer and submitted to the Supplier by which the Customer seeks the grant to it by the Supplier of a Credit Facility
- 1.5 "Credit Facility" means the right for the Customer to be able to pay 30 (thirty) days after delivery of the Goods and/or Services rather than in advance of delivery
- 1.6 "Customer" means the company who purchases the Goods and/or Services from the Supplier
- 1.7 "Customer Default" means
 - 1.7.1 any act or omission by the Customer or
 - 1.7.2 any failure by the Customer to perform any relevant obligation
- 1.8 "Delivery Address" means
 - 1.8.1 the address for delivery of the Goods as set out in the Order or
 - 1.8.2 such other address for delivery of the Goods as the Parties may agree at any time after the Supplier notifies the Customer that the Goods are ready
- 1.9 "Delivery Date" means the date specified by the Supplier for delivery of the Goods
- 1.10 "E-mail" means electronic mail and comparable means of electronic communication
- 1.11 "EU" means European Union
- 1.12 "Goods" means the goods (or any part of them) set out in the Quotation
- 1.13 "Goods Specification" means any specification for the Goods (including any related plans and drawings) agreed in writing by the Supplier and the Customer
- 1.14 "IP Rights" means all rights to intellectual property including
 - 1.14.1 letters patent
 - 1.14.2 trade marks
 - 1.14.3 designs
 - 1.14.4 utility models
 - 1.14.5 copyrights including design copyrights
 - 1.14.6 applications (and the right to apply) for any of the items at clauses 1.14.1 to 1.14.5
 - 1.14.7 discoveries creations or inventions
 - 1.14.8 improvements upon or additions to an invention
 - 1.14.9 confidential information know-how and any research effort and
 - 1.14.10 moral rights and any similar rightsin each case whether registrable or not or whether registered or unregistered or whether in the UK or in any other part of the world

- 1.15 "Order" means any order placed by the Customer with the Supplier for the supply of Goods and/or provision of Services by the Supplier (and "Orders" means more than one of them) whether
 - 1.15.1 in the Customer's
 - (a) written acceptance of the Quotation or
 - (b) purchase order form or
 - 1.15.2 by means of the Customer's payment in advance for the supply of Goods and/or provision of Services referred to in the Quotation by which the Customer accepts the Quotation
- 1.16 "Parties" means the Supplier and the Customer (and "Party" means either of them)
- 1.17 "Price" means the price of the Goods and/or Services as set out in the Quotation
- 1.18 "Quotation" means
 - 1.18.1 any written quotation provided by the Supplier to the Customer in respect of Goods and/or Services and
 - 1.18.2 (to the extent to which any such written quotation is superseded by it) any subsequent written confirmation provided by the Supplier to the Customer in respect of any Order or
 - 1.18.3 (if no such written quotation is or has been provided) any written confirmation provided by the Supplier to the Customer in respect of any Order
- 1.19 "Services" means the services supplied by the Supplier to the Customer as set out in the Service Specification including the products of such services
- 1.20 "Service Specification" means any specification for the Services agreed in writing by the Supplier and the Customer
- 1.21 "Supplier" means go2 Telecom Limited a company registered in England and Wales under company number 04811905 whose registered office is at 5 Bridgewater Court Barsbank Lane Lymm Warrington WA13 0Er.
- 1.22 "Supplier Materials" means all materials equipment documents and other property of the Supplier at the Customer's premises
- 1.23 "UK" means the United Kingdom
- 1.24 "VAT" means value added tax

2. Interpretation

Unless the context requires otherwise the following rules of interpretation apply

- 2.1 Words importing one gender include all other genders
- 2.2 Words importing the singular include the plural and vice versa
- 2.3 Any reference to a particular law
 - 2.3.1 Is a reference to it as it is in force for the time being taking account of any?
 - (a) Amendment
 - (b) Extension or
 - (c) Re-enactment and
 - 2.3.2 Includes any subordinate legislation for the time being in force made under it
- 2.4 The clause headings
 - 2.4.1 Are inserted for convenience only
 - 2.4.2 Do not form part of this document and
 - 2.4.3 Shall not be taken into account in its construction or interpretation
- 2.5 Any reference to any clause without further designation shall be construed as a reference to the clause of this document so numbered
- 2.6 Any reference to persons includes
 - 2.6.1 natural persons
 - 2.6.2 bodies corporate
 - 2.6.3 firms and
 - 2.6.4 unincorporated associations
- 2.7 The words
 - 2.7.1 "Include" "includes" "including" and "such as" are to be construed as if they were immediately followed by the words "without limitation"

- 2.7.2 "Other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them or succeeding them and
- 2.7.3 "Pay" "paid" and "payable" or any similar expression shall be construed as if followed by the words "in cleared funds"
- 2.8 A reference to "writing" or "written" includes E-mail
- 2.9 Any obligation not to do something includes an obligation not
 - 2.9.1 To agree to
 - 2.9.2 To allow
 - 2.9.3 To permit or
 - 2.9.4 To acquiesce in that thing's being done
- 2.10 A number of days shall be reckoned
 - 2.10.1 Exclusively of the first day and
 - 2.10.2 inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day shall be the next succeeding day which is a Business Day
- 2.11 Any reference to an English legal term for any
 - 2.11.1 Action
 - 2.11.2 Remedy
 - 2.11.3 Method of judicial proceeding
 - 2.11.4 Legal document
 - 2.11.5 Legal status
 - 2.11.6 Court official or
 - 2.11.7 Legal concept or thing
 shall in respect of any jurisdiction other than England be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction

3. **Basis of Contract**

- 3.1 The Conditions apply to the Contract to the exclusion of any other terms which
 - 3.1.1 The Customer seeks to impose or incorporate or
 - 3.1.2 Which are implied by trade custom practice or course of dealing
- 3.2 The Quotation constitutes an offer by the Supplier to provide the Goods and/or Services in accordance with the Conditions
- 3.3 The Customer is responsible for ensuring that the terms of
 - 3.3.1 The Order and
 - 3.3.2 Any applicable Goods Specification and/or Service Specification are complete and accurate
- 3.4 The Contract shall come into existence upon placement of the Order
- 3.5 The Supplier shall have absolute discretion whether to accept or decline
 - 3.5.1 Orders and/or
 - 3.5.2 Amendments to Orders
- 3.6 The Supplier may cancel the Contract at any time before the Goods are delivered and/or the Services are commenced by giving written notice to that effect and on giving such notice the Supplier
 - 3.6.1 (if applicable) shall promptly repay to the Customer any sums paid in respect of the Price for such Goods and/or Services and
 - 3.6.2 Shall not be liable for any loss or damage whatever arising from such cancellation
- 3.7 The Customer
 - 3.7.1 May not cancel the Contract at any time in respect of any Goods which are tagged but otherwise
 - 3.7.2 May not cancel the Contract at any time except with the Supplier's consent in writing signed by an authorised representative of the Supplier on its behalf
- 3.8 If the Customer requests cancellation pursuant to clause 3.7.2 the Supplier shall (without obligation) make reasonable enquiries of any relevant manufacturer to see whether it is willing

- 3.8.1 to accept cancellation of the relevant order and
 - 3.8.2 to refund any payment received for them
- and if so and if the Supplier exercises its discretion to permit the Customer to cancel the Contract then this will be on condition of payment of
- (a) Such charges as the Supplier incurs as a result of the cancellation and
 - (b) The Supplier's own handling charge in respect of the Supplier's wasted time and resources

4. Goods

- 4.1 The Goods are described in
 - 4.1.1 The Supplier's
 - (a) website
 - (b) catalogues or
 - (c) Brochures and/or
 - 4.1.2 The Goods Specification
- 4.2 The Customer shall indemnify the Supplier against all liabilities costs expenses damages and losses including
 - 4.2.1 Direct indirect or unforeseeable losses (that is not obvious or contemplated by the Parties at the time they entered into the Contract)
 - 4.2.2 Loss of profit or business
 - 4.2.3 Damage to reputation or goodwill
 - 4.2.4 Interest and penalties and
 - 4.2.5 Professional costs and expenses including legal costs suffered or incurred by the Supplier in connection with any claim made (whether during the course of the Contract or after its termination) against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification
- 4.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements
- 4.4 The Customer
 - 4.4.1 Acknowledges that the Goods are supplied for the Customer's own use in its business and
 - 4.4.2 Agrees not to use them for any commercial or resale purpose

5. Delivery charges and duties

- 5.1 The charges for delivery of the Goods shall be as set out in the Quotation and will vary according to
 - 5.1.1 Size of consignment and
 - 5.1.2 Location of the Delivery Address
- 5.2 Where the Delivery Address is outside the UK (whether in the EU or otherwise) the Supplier has no responsibility to give the Customer any advice in respect of any additional charges which may be imposed by the carrier's agent and any such additional charges shall be entirely the Customer's responsibility and liability (including if Goods are held by such agent until such charges are paid)
- 5.3 The Supplier has no responsibility to give the Customer any advice in respect of any duties or import taxes payable in respect of the Goods and such duties or taxes shall be entirely the Customer's responsibility and liability (including if Goods are held by any customs authority whether in the UK or the EU or otherwise)

6. Delivery of Goods

- 6.1 The Delivery Date is approximate only and the time of delivery is not of the essence and therefore whilst the Supplier shall make reasonable efforts to adhere to the Delivery Date it shall not be liable for any damages (whether for loss of profits or otherwise) caused by any
 - 6.1.1 Delay in delivery or
 - 6.1.2 Non-delivery
 of any Goods but if the Customer notifies the Supplier of the delay or the non-delivery then the Supplier will make reasonable efforts to deal with it
- 6.2 The Supplier shall arrange delivery of the Goods to the Delivery Address

- 6.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Address
- 6.4 The Customer must make arrangements to accept delivery of the Goods but if it fails to accept them then the Supplier shall be entitled to charge the Customer
 - 6.4.1 Such charges as the Supplier incurs as a result of
 - (a) The non-delivery and
 - (b) All further attempts at delivery and
 - 6.4.2 The Supplier's own handling charge in respect of the Supplier's wasted time and resources
- 6.5 The Supplier may deliver the Goods by instalments and
 - 6.5.1 Where the Supplier chooses to do so then such instalments shall be invoiced and paid for separately but
 - 6.5.2 Where the delivery is by instalments at the request of the Customer then the full Price for all the Goods shall be invoiced and paid for collectively as if delivery were of all the Goods at once
- 6.6 Each instalment shall constitute a separate Contract and any
 - 6.6.1 Delay in delivery of or
 - 6.6.2 Defect in

An instalment shall not entitle the Customer to cancel any other instalment
- 6.7 The Customer shall not be entitled to reject the Goods if the Supplier delivers more or less than the quantity of Goods ordered but provided that the discrepancy is noted by the Customer on the delivery note a pro rata adjustment shall be made to the invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered
- 6.8 The carrier of the Goods shall be deemed to be the agent of the Customer and therefore
 - 6.8.1 The Customer shall not be entitled to reject the Goods if they or the packaging are damaged on delivery and
 - 6.8.2 The Supplier shall not be liable for it

But provided that the damage is noted by the Customer on the delivery note and the Customer takes a photograph of the damage and makes it available to the Supplier then the Supplier shall take reasonable steps to assist the Customer in any claim against the carrier

7. Quality and fitness for purpose

- 7.1 All Goods delivered to the Customer
 - 7.1.1 Shall conform in all material respects with
 - (a) Their description
 - (b) Samples or
 - (c) Any Goods Specification (if applicable as amended by the Supplier) and
 - 7.1.2 Shall be free from material defects in
 - (a) Design
 - (b) Material and
 - (c) Workmanship
- 7.2 If any of the Products delivered to the Customer do not conform with clause 7.1 then the Customer must give notice in writing of this to the Supplier within 48 (forty-eight) hours of the time on which those Products were delivered otherwise
 - 7.2.1 The Products will all be conclusively be deemed to conform with clause 7.1 and
 - 7.2.2 The Customer will conclusively be deemed to have accepted them and after such acceptance the Customer shall not be entitled to reject any Products for any reason
- 7.3 Subject to clauses 7.4 and 7.6 as long as
 - 7.3.1 promptly after a report is made under clause 7.2 the Supplier is given a reasonable opportunity to have such Goods examined and
 - 7.3.2 The Customer (if asked by the Supplier to do so) returns at the Customer's cost

- (a) Such Goods together with
 - (b) All packaging materials

To such address as directed by the Supplier

then the Supplier shall at the Supplier's option repair or replace any Goods which the Supplier has found not to comply with clause 7.1 and this shall be the Supplier's only liability to the Customer in respect of any breach of that clause
 - 7.4 The Supplier shall not be liable for any failure of any Goods to comply with clause 7.1 if
 - 7.4.1 The Customer makes any further use of such Goods after discovering the relevant non-compliance
 - 7.4.2 The non-compliance arises from the Customer's failure to follow
 - (A) the Supplier's oral or written instructions or
 - (b) good trade practice

Regarding the storage commissioning installation use and maintenance of the Goods
 - 7.4.3 The non-compliance arises from the Supplier's following any Goods Specification
 - 7.4.4 The Customer has (without the written consent of the Supplier)
 - (A) altered or repaired or
 - (b) Had altered or repaired

Such Goods or
 - 7.4.5 The non-compliance arises from
 - (a) Wilful damage
 - (b) Negligence or
 - (c) Abnormal storage or working conditions

After delivery
 - 7.5 All terms conditions warranties and representations implied at law regarding
 - 7.5.1 Description
 - 7.5.2 Quality and
 - 7.5.3 Fitness for purpose

Are excluded from the Contract to the fullest extent permitted by law
 - 7.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier
 - 7.7 The Goods may come with a manufacturer's guarantee
- 8. Title and risk**
- 8.1 Risk in the Goods shall pass to the Customer on completion of unloading the Goods at the Delivery Address
 - 8.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full for them
 - 8.3 Until title to the Goods has passed to the Customer in accordance with clause 8.2 the Customer shall
 - 8.3.1 Store the Goods separately from all other goods held by the Customer so that the Goods remain readily identifiable as the Supplier's property
 - 8.3.2 Not remove deface or obscure any identifying mark or packaging on or relating to the Goods
 - 8.3.3 Maintain the Goods in satisfactory condition
 - 8.3.4 Keep the Goods insured against all risks from the date of delivery for their full Price
 - 8.3.5 provide to the Supplier all information relating to the Goods which the Supplier may require and
 - 8.3.6 Notify the Supplier immediately if the Customer becomes subject to any of the events set out in clauses 16.1.1 to 16.1.9
 - 8.4 The Supplier may recover Goods in which title has not passed to the Customer and the Customer irrevocably licenses the Supplier and its officers employees and agents to enter (including with vehicles) any premises under the control of the Customer
 - 8.4.1 to

- (a) check whether the Customer is complying and/or
 - (b) to enforce compliance
 - With the obligations in clause 8.3 and
 - 8.4.2 to recover any Goods in which property has not passed to the Customer
- 8.5 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer in which case the Customer shall immediately pay the Price to the Supplier
- 9. **Supply of Services**
 - 9.1 The Supplier shall provide the Services to the Customer
 - 9.1.1 in accordance with the Service Specification in all material respects and
 - 9.1.2 Using reasonable care and skill
 - 9.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification but
 - 9.2.1 Any such dates shall be estimates only
 - 9.2.2 Time shall not be of the essence for the performance of the Services and
 - 9.2.3 whilst the Supplier shall make reasonable efforts to adhere to such dates it shall not be liable for any damages (whether for loss of profits or otherwise) caused by any delay in performance of the Services
 - 9.3 The Supplier shall have the right to make any changes to the Services
 - 9.3.1 Which are necessary to comply with any applicable law or safety requirement or
 - 9.3.2 Which do not materially affect the nature or quality of the Services and the Supplier shall notify the Customer in any such event
- 10. **Customer's obligations**
 - 10.1 The Customer shall do the following
 - 10.1.1 Co-operate with the Supplier in all matters relating to the Services
 - 10.1.2 Provide the Supplier (or its employees agents consultants and subcontractors) with access to the Customer's
 - (a) premises and/or office accommodation and
 - (b) Other facilities

As reasonably required by the Supplier to provide the Services including ensuring that members of the Customer's staff are available to facilitate this
 - 10.1.3 Provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services and in relation to such information ensure before providing it to the Supplier that it is accurate in all material respects
 - 10.1.4 Prepare the Customer's premises for the supply of the Services
 - 10.1.5 Obtain and maintain all necessary licences permissions and consents which may be required for the Services before the date on which the Services are to start
 - 10.1.6 In respect of all Supplier Materials at the Customer's premises
 - (a) Keep and maintain all such Supplier Materials in safe custody
 - (i) at the Customer's own risk and
 - (ii) In good condition

Until collected by or returned to the Supplier and
 - (b) Not dispose of or use any of such Supplier Materials
 - (i) for any purpose not connected with the Contract or
 - (ii) other than in accordance with the Supplier's written instructions or authorisation
 - 10.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any Customer Default
 - 10.2.1 The Supplier shall (without limiting its other rights or remedies) have the right
 - (A) to suspend performance of the Services until the Customer remedies the Customer Default and

- (b) to rely on the Customer Default to relieve it from the performance of any of its obligations
 - to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations
 - 10.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly out of the Supplier's consequential
 - (a) failure to perform or
 - (b) delay in performing
 any of its obligations and
 - 10.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly out of the Customer Default
 - 10.3 All Supplier Materials are the exclusive property of the Supplier
- 11. Charges and payment**
 - 11.1 The Price shall be exclusive of
 - 11.1.1 VAT (which shall be charged if the Customer is registered in the UK) and
 - 11.1.2 (if applicable) costs and charges for packaging insurance and transport of the Goods
 - 11.2 Where the Customer is from outside the UK
 - 11.2.1 the Customer shall provide to the Supplier its registration number for the equivalent of VAT in the country in which it is registered
 - 11.2.2 the Supplier will not charge VAT but
 - 11.2.3 the Customer shall be responsible for paying the equivalent of VAT in the country in which it is registered
 - 11.3 The Price as stated in a Quotation shall be in sterling or Euros (as required by the Customer) but if it is in Euros then
 - 11.3.1 this shall be based on exchange rates obtained by the Supplier that day and
 - 11.3.2 this Quotation shall remain valid and open for acceptance for 7 days
 - 11.4 The Supplier may at any time send to the Customer an invoice for
 - 11.4.1 the price of
 - (a) the Goods (plus the costs and charges for packaging insurance and transport of the Goods) and/or
 - (b) the Services and
 - 11.4.2 (if applicable) VAT
- 12. Tenders**
 - 12.1 When submitting a tender the Price in the Quotation is only fixed for the first 12 (twelve) months of the Contract after which it
 - 12.1.1 will be reviewed and
 - 12.1.2 maybe increased depending on whether the Supplier's own costs payable to the manufacturers have been increased
 - 12.2 If any Goods provided to the Customer pursuant to a Contract following a successful tender become discontinued by the manufacturer then the Supplier shall provide a Quotation for replacement Goods which may be more expensive than the discontinued Goods
- 13. Credit**
 - 13.1 An application for a Credit Facility is made by completing and submitting a Credit Application Form
 - 13.2 The Supplier will use the information provided to make credit checks on the Customer
 - 13.3 If the Customer is approved by the Supplier for credit then this will be subject to a stated credit limit
 - 13.4 Provided that the sum of
 - 13.4.1 the total amount of the Customer's current indebtedness to the Supplier and
 - 13.4.2 the value of the Customer's Order

does not exceed the credit limit then the Supplier's invoice must be paid within 30 (thirty) days of the date of the invoice and in default the Supplier shall be entitled to withdraw the Customer's Credit Facility

- 13.5 If the sum of
- 13.5.1 the total amount of the Customer's current indebtedness to the Supplier and
 - 13.5.2 the value of the Customer's Order
- exceeds the credit limit then the Supplier will contact the Customer to discuss the position
- 13.6 If the Customer is not (or is no longer) approved by the Supplier for a Credit Facility then the invoice must be paid before dispatch of the relevant Goods or provision of the relevant Services either
- 13.6.1 by credit card or debit card via SAGE Pay a link to which is on the Supplier's website or
 - 13.6.2 by BACS to the bank account nominated in writing by the Supplier
- 13.7 SAGE Pay is a secure site and the Supplier will not have access to the information provided by the Customer on this site to make payment
- 13.8 Time for payment is of the essence
- 13.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment then
- 13.9.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time
 - 13.9.2 such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount whether before or after judgment
 - 13.9.3 the Customer shall pay the interest together with the overdue amount and
 - 13.9.4 the Supplier may suspend all further
 - (a) deliveries of Goods and
 - (b) provision of Servicesuntil payment has been made in full
- 13.10 The Customer shall pay all amounts due under the Contract in full without any set-off counterclaim deduction or withholding (except for any deduction or withholding required by law)
- 13.11 The Supplier may at any time without limiting any other rights or remedies it may have set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer

14. IP Rights

- 14.1 The Customer acknowledges that in respect of any third-party IP Rights in the Services the Customer's use of any such IP Rights is conditional on obtaining a written licence from the relevant third-party
- 14.2 Some licences can be provided by the Supplier in return for payment of the Price for them
- 14.3 Where the Supplier provides the licence it will provide to the Customer the relevant certificates
- 14.4 If the Customer is obtaining the licence other than from the Supplier then obtaining the relevant certificates shall be the Customer's responsibility

15. Confidentiality

- 15.1 The Supplier and the Customer shall not (other than in the proper performance of the relative Contract) at any time (including after termination of the Contract for whatever reason) disclose any confidential information concerning
 - 15.1.1 the business accounts finance contractual arrangements or intellectual property (whether owned or licensed) or
 - 15.1.2 other dealings transactions affairs or propertyof the other (including any of the Conditions) which may come to its knowledge
- 15.2 Clause 15.1 shall not apply
 - 15.2.1 to information which shall come into the public domain other than by a breach of clause 15.1 or
 - 15.2.2 to the extent disclosure is required

- (a) by law or
- (b) by any governmental or other regulatory authority or
- (c) by a court or other authority of competent jurisdiction

provided that to the extent it is legally permitted to do so the Party who is required to make the disclosure gives to the other Party as much notice of such disclosure as possible and takes into account the latter's reasonable requests in relation to the content of such disclosure

16. Termination and suspension

16.1 In any of the following events the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer

16.1.1 The Customer

- (a) suspends or threatens to suspend payment of its debts or
- (b) is unable to pay its debts as they fall due or admits inability to pay its debts or
- (c) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986

16.1.2 The Customer

- (a) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or
- (b) makes a proposal for or enters into any compromise or arrangement with its creditors

16.1.3 A petition is filed or a notice is given or a resolution is passed or an order is made (in each case) for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for

- (a) a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer
- (b) in such manner that the resulting company effectively agrees to be bound by or to assume the obligations imposed on the Customer under the Contract

16.1.4 An application is made to court or an order is made for the appointment of an administrator or a notice of intention is given to appoint an administrator or an administrator is appointed (in each case) over the Customer

16.1.5 The holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver

16.1.6 A person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets

16.1.7 A creditor or encumbrancer of the Customer attaches or takes possession of or a distress execution sequestration or other such process is levied or enforced on or sued against (in each case) the whole or any part of its assets and such attachment or process is not discharged within 14 days

16.1.8 Any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in clause 16.1.1 to clause 16.1.7 inclusive

16.1.9 The Customer suspends threatens to suspend ceases or threatens to cease (in each case) to carry on all or a substantial part of its business

16.1.10 The Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability adequately to fulfil its obligations under the Contract has been placed in jeopardy

16.2 Without limiting its other rights or remedies the Supplier may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and the Supplier or withdraw or suspend the Customer's Credit Facility

16.2.1 if

- (a) the Customer becomes subject to any of the events listed in clause 16.1.1 to clause 16.1.10 inclusive or

- (b) the Supplier reasonably believes that the Customer is about to become subject to any of them or
 - 16.2.2 if the Customer fails to pay any amount due under this Contract on the due date for payment
 - 16.3 On termination of the Contract for any reason the Customer
 - 16.3.1 shall immediately pay to the Supplier
 - (a) all of the Supplier's outstanding unpaid invoices and
 - (b) (if applicable) all interest due and
 - 16.3.2 return all of the Supplier Materials (and if the Customer fails to do so then the Supplier may enter the Customer's premises and take possession of them)
 - 16.4 Termination of the Contract however arising shall not affect any of the Parties' rights remedies obligations and liabilities accrued as at termination
 - 16.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect
- 17. Limitation of liability**
- 17.1 Nothing in the Contract shall limit any liability which cannot legally be limited including liability for
 - 17.1.1 death or personal injury or
 - 17.1.2 fraud or fraudulent misrepresentation
 - 17.2 Subject to clause 17.1
 - 17.2.1 the Supplier shall not be liable whether in the law of contract tort (including negligence) breach of statutory duty or otherwise
 - (a) for any loss or damage which is an
 - (i) indirect or
 - (ii) unforeseeable (that is not obvious or contemplated by the Parties at the time they entered into this Agreement)
 - result of a Party's act or failure to act or
 - (b) for any
 - (i) loss of profit or business or
 - (ii) damage to reputation or goodwill and
 - 17.2.2 under no circumstances shall the liability of either Party whether in the law of contract tort (including negligence) breach of statutory duty or otherwise for any loss or damage exceed £2,000,000 (two million pounds sterling)
 - 17.3 The Supplier shall have no liability in respect of any losses or damages caused or contributed to by the electrical supply at the premises where
 - 17.3.1 the Goods are used and/or
 - 17.3.2 the Services are provided
- 18. Event outside the Parties' control**
- 18.1 Neither the Supplier nor the Customer shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by an event outside the Parties' reasonable control
 - 18.2 An event will be deemed to be outside the Parties' reasonable control
 - 18.2.1 if it could not reasonably have been foreseen or
 - 18.2.2 (if it reasonably could have been foreseen) if it could not reasonably have been avoided by the taking of reasonable commercial measures
 - 18.3 Examples of events outside the Parties' reasonable control are
 - 18.3.1 strikes lock-outs or other industrial disputes (whether at a Party's premises or otherwise)
 - 18.3.2 failure of energy sources power supplies or transport network
 - 18.3.3 acts of God
 - 18.3.4 war or terrorism
 - 18.3.5 riot or civil commotion
 - 18.3.6 interference by civil or military authorities
 - 18.3.7 national or international calamity or armed conflict
 - 18.3.8 malicious damage

- 18.3.9 breakdown of plant or machinery
 - 18.3.10 nuclear chemical or biological contamination
 - 18.3.11 sonic boom or explosions
 - 18.3.12 collapse of building structures
 - 18.3.13 fires floods storms earthquakes epidemics
 - 18.3.14 loss at sea
 - 18.3.15 omissions of network operators
 - 18.3.16 default of suppliers or subcontractors or
 - 18.3.17 epidemic or pandemic
- or similar events natural disasters or extreme adverse weather conditions

19. Third party rights

The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to the Contract and a person who is not a Party shall have no right under that Act to enforce any term of the Contract

20. Notices

20.1 Any notice under or in connection with the Contract shall be in writing and shall be served

- 20.1.1 by hand or
- 20.1.2 by first class post or
- 20.1.3 by recorded delivery or
- 20.1.4 by facsimile or
- 20.1.5 by E-mail

at or to the address or facsimile number of the Party set out in the Contract or at or to such other address or facsimile number as may be subsequently notified by one Party to the other from time to time

20.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served

- 20.2.1 if delivered by hand when left at the address cited in clause 20.1
- 20.2.2 if sent by first class post 2 Business Days after posting (but if such deemed receipt is not between 9.00a.m. and 5.00p.m. on a Business Day then deemed receipt shall be on the next Business Day) and
- 20.2.3 if sent by recorded delivery facsimile or E-mail when received

21. Miscellaneous

21.1 General

In the Conditions to the extent of any inconsistencies

- 21.1.1 between this document and the Quotation it is the Quotation which shall prevail
- 21.1.2 between this document and the Credit Application Form it is the Credit Application which shall prevail and
- 21.1.3 between this document and any special terms and conditions agreed pursuant to clause 1.2.2 it is the latter which shall prevail

21.2 Severance

Any provision of the Contract which is or may be void or unenforceable to the extent of such invalidity or unenforceability

- 21.2.1 shall be deemed severable and
- 21.2.2 shall not affect any other provision of the Contract

21.3 Waiver

21.3.1 No waiver or forbearance by a Party (whether express or implied) in enforcing any of its rights under the Contract shall prejudice its right to do so in the future

21.3.2 A waiver of any right under any Contract shall only be effective if it is

- (a) in writing and
- (b) signed by the duly authorised representative of the Party granting the waiver

21.3.3 A waiver shall only apply

- (a) to the Party to whom the waiver is addressed and
- (b) to the circumstances for which it is given

- 21.4 Sub-contracting
The Supplier may licence or sub-contract all or any part of its rights and obligations under the Contract without the Customer's consent but the Customer may only do so with the Supplier's consent in writing signed by an authorised representative of the Supplier on its behalf
- 21.5 Assignment
The Supplier may assign the benefit of the Contract without the Customer's consent but the Customer may only do so with the Supplier's consent in writing signed by an authorised representative of the Supplier on its behalf
- 21.6 No partnership
Nothing in this Contract shall create or be deemed to create a partnership agency or joint venture between the Parties
- 21.7 Announcements
Unless required by law or by any applicable regulation neither of the Parties shall make any press statement or other public announcement in connection with this Contract without the prior agreement of the other as to the timing and text of such statement or announcement
- 21.8 Entire agreement
The Contract
21.8.1 contains the entire agreement and
21.8.2 supersedes all previous agreements and undertakings
between the Parties regarding its subject-matter
- 21.9 Variation
A variation amendment or modification of the Contract shall only be effective if it is
21.9.1 in writing and
21.9.2 signed by the duly authorised representatives of the Parties
- 22. Proper law of contract**
- 22.1 The Contract and any disputes or claims arising out of or in connection with it (including non-contractual disputes or claims) shall be subject to the laws of England
- 22.2 All disputes or claims arising out of or in connection with the Contract (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England