

The Customer's attention is particularly drawn to the provisions of clause 11.

### 1 INTERPRETATION

- 1.1 Definitions: In these Conditions, the following definitions apply:
- Application Software:** shall mean any software or application that is supplied by the Company to the Customer that is to be installed in Customer premises or Customer managed premises.
  - Authorised Officer:** Senior officer of Customer of Company organisation, for example: Managing Director or equivalent
  - Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
  - Cloud Service:** is a service or software application that will be used to process or otherwise manipulate Customer information that is hosted in the cloud and not on customer premises or customer managed premises.
  - Commencement Date:** has the meaning set out in clause 2.2.
  - Company:** x-tention Limited registered in England and Wales with company number 11896439.
  - Company Materials:** has the meaning set out in clause 8.1(j).
  - Conditions:** these terms and conditions as amended from time to time in accordance with clause 15.
  - Contract:** the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
  - Customer:** the person or firm who purchases the Goods and/or Services from the Company.
  - Customer's Equipment:** any equipment, hardware, software, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.
  - Deliverables:** the deliverables set out in the Specification.
  - Delivery Location:** has the meaning set out in clause 3.1.
  - Download:** A mechanism to obtain software or application directly from a cloud source that is deemed equivalent to a Delivery Location for the purposes of this Agreement.
  - Force Majeure Event:** has the meaning given to it in clause (a).
  - Goods:** the goods (or any part of them) set out in the Order, including **Cloud Service** and **Application Software**.
  - Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
  - Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Company's quotation, or overleaf, as the case may be.
  - Services:** the services, including the Deliverables, supplied by the Company to the Customer as set out in the Specification.
  - Specification:** in relation to Goods, any specification for the Goods (including any relevant plans or drawings) that is provided by the Company to the Customer, and in relation to Services, the description or specification for Services provided by the Company to the Customer.
  - Third Party Goods:** the Goods proprietary to, or manufactured by, third parties which are to be supplied or provided to the Customer by the Company.
- 1.2 Construction: In these Conditions, the following rules apply:
- (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 or permitted assigns;
  - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
  - (e) a reference to **writing** or **written** includes faxes and e-mails.

### 2 BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Company in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties, save for any pre-existing Non Disclosure Agreements between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or any other contract between the Company and the Customer for the supply of the Goods and/or Services.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 14 days from its date of issue, unless otherwise specified in writing by the Company.
- 2.6 The Customer is responsible for ensuring the accuracy of the terms of the Company's quotation and any Order (including any applicable Specification), and for giving the Company any necessary information relating to the Goods and Services within enough time to enable performance of the Contract in accordance with its terms.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3 DELIVERY OF GOODS

- 3.1 The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree or **Download the Application Software** or provide access to **Cloud Service (Delivery Location)** at any time after the Company notifies the Customer that the Goods are ready.
- 3.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 3.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 3.5 If the Customer fails to accept or take delivery of the Goods within five Business Days of the Company notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the sixth Business Day following the day on which the Company notified the Customer that the Goods were ready; and
  - (b) the Company shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 3.6 If 30 Business Days after the Company notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.
- 3.7 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### 4 QUALITY OF GOODS

- 4.1 The Customer acknowledges that the only warranties in relation to any Third-Party Goods or the supply thereof are those contained in the licence or terms and conditions from the third-party supplier(s) of the same, and that to the extent that any of such warranties are given to the Company, it will pass on the benefit of such warranties to the Customer

- 4.2 Subject to clauses 4.1 and 11, the Customer uses the Goods at its own risk. The Company does not warrant that the Goods will meet any particular requirements or that operation of the Goods will be uninterrupted or error free.
- 5 TITLE AND RISK**
- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Where specified in the **Order**, Title shall be passed to the Customer.
- 5.2.1 Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- the Goods; and
  - any other goods that the Company has supplied to the Customer in respect of which payment has become due.
- 5.2.2 Until title to the Goods has passed to the Customer, the Customer shall:
- hold the Goods on a fiduciary basis as the Company's bailee;
  - store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
  - notify the Company immediately if it becomes subject to any of the events listed in clause 14.1(c); and
  - give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may use the Goods in the ordinary course of its business.
- 5.2.3 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(c), or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 5.3 Where specified in the **Order**, Title to the Goods shall remain with the Company which will provide the Customer with a Limited Right to Use License (EULA) as specified in clause 6.
- 5.4 Delivery of all Goods to be supplied pursuant to this Contract, where applicable shall be made Carriage and Insurance Paid (**CIP**). "CIP" has the meaning given in Incoterms 2010 published by ICC Publishing, as amended by ICC Publishing from time to time.
- 6 END USER LICENSE AGREEMENT (SOFTWARE APPLICATION)**
- 6.1 The Customer will be granted a Right to Use License to enable the use of the goods and services pursuant to the Order, subject to:
- The Customer shall not alter or modify the Software Application in any way
  - The Customer shall use the Software Application solely for the agreed intended purpose.
  - The Customer shall not allow the Software Application to be copied other than for purposes of security backup and business continuity.
  - The Customer shall not allow any unauthorised person or organisation to access the Software Application.
  - The Customer will return all copies of the Software Application to the Company upon demand and/or shall certify the active destruction of all copies.
- 7 SUPPLY OF SERVICES**
- 7.1 The Company shall provide the Services to the Customer in accordance with the Specification in all material respects.
- 7.2 The Company shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 7.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8 CUSTOMER'S OBLIGATIONS**
- 8.1 The Customer shall:
- ensure that the terms of the Order and the information it provides in the Specification are complete and accurate;
  - co-operate with the Company in all matters relating to the Services;
  - provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services and inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply to the premises;
  - provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - prepare the Customer's premises for the supply of the Services;
  - 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;
  - provide the Company with access to and use of the Customer Equipment;
  - competent operators of the Customer Equipment;
  - provide all power, lighting, heating and air conditioning at the Customer's premises needed for the Company to provide the Services;
  - keep and maintain all materials, equipment, documents and other property of the Company (Company Materials) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 8.2 The Customer will be responsible for ensuring that the Customer Equipment is properly installed and configured and is sufficient and suitable for its purpose and that any adjustments which may be required are carried out expeditiously. The Customer is responsible at its own expense for the prompt and continuing availability to the Company of the Customer Equipment and any other computing facilities to be provided by the Customer in good working order throughout the duration of the Contract.
- 8.3 The Customer will ensure that, all software which is part of the Customer Equipment is either the Customer's property or is legally licensed to the Customer and that the Company and its employees and agents are permitted to use such software.
- 8.4 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 9 CHARGES AND PAYMENT**
- 9.1 The price for Goods and Services shall be the price set out in the Order. The price of the Goods, unless otherwise specified by the Company in writing, is exclusive of all costs and charges of packaging, insurance transport of the Goods, expenses, which shall be paid by the Customer when it pays for the Goods and/or Services.
- 9.2 Where an Order involves pre-build or assembly of components into a solution or as part of a project managed solution, such Goods shall be invoiced on delivery from the manufacturer or their agent to the Company's premises. The total design and implementations costs shall be invoiced under the following profile, unless otherwise specified in writing by the Company:
- 25% on acceptance of the Order in accordance with clause 2.2;
  - 25% on signing scope of works;
  - 25% on signing preliminary acceptance test; and
  - 25% on signing works acceptance test.
- At the Company's sole discretion all other Services including service works will be invoiced 50% on acceptance of the Order in accordance with clause 2.2 and 50% on completion of the provision of such Services.
- 9.3 Where an Order involves Services including support and maintenance services the Company will invoice 100% on acceptance of the Order in accordance with clause 2.2.
- 9.4 The Company reserves the right to:

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- (a) increase its charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Company will give the Customer written notice of any such increase one month before the proposed date of the increase; and
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:
- (I) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (II) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification in respect of the Goods; or
  - (III) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
- 9.5 In respect of Goods, the Company shall invoice the Customer on or at any time after completion of delivery.
- 9.6 The Customer shall pay each invoice submitted by the Company:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8 Without limiting any other right or remedy of the Company, if the Customer fails to make any payment due to the Company under the Contract by the due date for payment (**Due Date**), the Company shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Lloyds TSB Bank plc's base lending rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 10 INTELLECTUAL PROPERTY RIGHTS**
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- 10.3 If the Company supplies or provides any Third Party Goods to the Customer, then such Third Party Goods shall be supplied or provided subject to the standard terms and conditions of the proprietor or manufacturer of such Third Party Goods at the time of supply or provision. The Customer undertakes to use such Third Party Goods strictly in accordance with such terms and conditions.
- 10.4 All Company Materials are the exclusive property of the Company.
- 11 CONFIDENTIALITY**
- 11.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11.1 shall survive termination of the Contract.
- 12 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 12.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - (e) defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1:
- (a) the Company shall not be liable to the Customer for:
    - (I) loss of profits; or
    - (II) loss of business; or
    - (III) depletion of goodwill and/or similar losses; or
    - (IV) loss of anticipated savings; or
    - (V) loss of goods; or
    - (VI) loss of contract; or
    - (VII) loss of use; or
    - (VIII) loss of corruption of data or information; or
    - (IX) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
    - (X) any damages arising from fair wear and tear, performance or non-performance of the Goods during a testing period or for any damages caused by the failure of the Customer to perform its responsibilities;
    - (XI) any software, firmware, information or memory data of Customer contained in, stored on, or integrated with any Goods returned to Company under the Contract; and
    - (XII) any failure of third parties to provide the Goods; and
  - (b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by the Company's deliberate personal repudiatory breach (each an **Event of Default**) in connection with:
    - (I) an individual Event of Default shall be limited to a sum equal to 50% of the price paid by the Customer in accordance with the Contract during the twelve month period preceding the date acknowledged by the Customer as being the date of the Event of Default (such acknowledgement not to be unreasonably withheld); and
    - (II) all Events of Default shall be limited to the lower of:
      - (a) 150% of the aggregate price paid by the Customer in accordance with the Contract or (where the Contract operates for more than 12 months) the price paid by the Customer shall be deemed to be the average sum paid to the Company in a 12 month period of the Contract;
      - (b) the purchase price of the Goods and/or Services supplied and provided by the Company to the Customer under this Contract; and
      - (c) £5,000,000.
- 12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.4 This clause 12 shall survive termination of the Contract.
- 13 DISPUTE RESOLUTION**
- 13.1 Any dispute arising out of or in connection with this Contract will in the first instance be referred to the **Authorised Officer** of each party who must meet within six Business Days of the reference to attempt to resolve the dispute.
- 13.2 Each party will use all reasonable endeavours to reach a negotiated resolution through the above dispute resolution procedure.
- 13.3 If the dispute is not resolved at the meeting the **Authorised Officer**, then either party may (at such meeting or within 10 Business Days of its conclusion) request that the dispute be referred to an expert to be agreed between the parties.

- 13.4 If the parties cannot agree on an expert to act within 10 Business Days of the date of the request to appoint an expert, such independent expert will be appointed by the President for the time being of the British Computer Society on the application of either party.
- 13.5 Any person to whom a reference is made under this paragraph will act as an expert and not as an arbitrator and accordingly the Arbitration Act 1996 shall not apply. The parties agree that the decision of an expert (which will be given in writing stating reasons) will be final and binding on the parties.
- 13.6 Each party will provide the expert to whom a reference is made under this clause with such information as he may reasonably require for the purposes of his determination. If either party claims such information to be confidential to it then, provided in the opinion of the expert that party has properly claimed the same as confidential, the expert will not disclose the same to the other party or to any third party.
- 13.7 The costs of the reference to an expert (including the costs of any technical expert appointed by him) will be borne in the first instance by the party making the reference. The expert will in his decision determine the liability of such costs, which decision will be final and binding on both parties.
- 13.8 Nothing in this paragraph will restrict, at any time while the above dispute resolution procedures are in progress or before or after they are invoked, either party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect any intellectual property or right of confidentiality.

#### 14 TERMINATION

- 14.1 Without affecting the Company's other rights, the Company may defer or cancel any deliveries of Goods or any provision of Services and terminate the Contract if the Customer:
- fails to make any payment to the Company on time;
  - breach any of the terms or conditions of the Contract; or
  - enter or propose to enter into any arrangement with its creditors, becomes bankrupt or otherwise insolvent, are unable to pay its debts as they become due, have any receiver, administrator or liquidator appointed or any event similar to any of the foregoing happens to it.
- 14.2 The Customer may terminate the Contract in the event that the Company materially breaches its obligations under the Contract and the Company fails to remedy the breach within 28 days of the Customer's notice in writing requiring the Company to remedy the breach. Otherwise, the Customer may only terminate the Contract with the Company's agreement in writing.
- 14.3 If the Company terminates the Contract under clause 14.1 or if the Customer terminates the Contract in any way, the Customer will indemnify the Company in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges (including re-stocking charges) and expenses incurred by the Company as a result of termination.
- 14.4 Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if:
- the Customer fails to make pay any amount due under this Contract on the due date for payment; or
  - the Customer becomes subject to an insolvency type event listed in clause 14.1(c), or the Company reasonably believes that the Customer is about to become subject to any of them.

#### 15 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

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

#### 16 GENERAL

- 16.1 Force majeure:
- For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
  - The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
  - If the Force Majeure Event prevents the Company from providing any of the Services and/or Goods for more than four weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 16.2 Assignment and subcontracting:
- The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
  - The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.3 Notices:
- Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
  - Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
  - This clause 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 16.4 Waiver and cumulative remedies:
- A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
  - Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 16.5 Severance:
- If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
  - If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.7 Data Protection: The Company will only use the personal information the Customer provides it to provide the Goods or Services, or to inform the Customer about similar Goods and Services which the Company provides, unless the Customer tells the Company that it does not want to receive this information. The Company will not pass the Customer's data to third parties. The Customer acknowledges and agrees that the Company may pass the Customer's details to credit reference agencies.
- 16.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.9 Variation: Any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Company.
- 16.10 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.