

BILLI (UK) LLP

TERMS AND CONDITIONS OF SUPPLY (2018)

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

- (a) **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- (b) **Commencement Date:** has the meaning given in clause 3.5.
- (c) **Conditions:** these terms and conditions as amended from time to time in accordance with clause 23.
- (d) **Confidential Information:** has the meaning given in clause 11.1.
- (e) **Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services formed in accordance with clause 3.5.
- (f) **Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.
- (g) **Customer Default:** has the meaning given in clause 9.5.
- (h) **Data Protection Legislation:** all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).
- (i) **Delivery Date:** the Customer's preferred date for delivery of the Goods as specified in an Order which shall be not less than 14 [insert number] days from the date the Supplier receives the Order (unless otherwise agreed in an Order).
- (j) **Delivery Location:** has the meaning given in clause 5.1.
- (k) **Equipment:** means the Supplier-branded equipment which is the subject of the Services.
- (l) **Event of Insolvency:** has the meaning given in clause 6.4.

- (m) **Force Majeure Event:** means an event beyond the Supplier's reasonable control preventing the Supplier or delaying it from performing its obligations under the Contract (including, without limitation, Act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot, or civil unrest, interruption or failure of supplies of power, fuel, water, transport equipment or telecommunications service or materials required to perform the Contract, or any strike, lock-out, or boycott, or other industrial action).
- (n) **Goods:** the goods (or any part of them) set out in the Order (excluding items supplied under Services).
- (o) **Initial Term:** has the meaning given in clause 8.2.
- (p) **Intellectual Property Rights:** patents, rights to inventions, copyright 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, 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.
- (q) **Order:** the Customer's order for the supply of Goods and/or Services as set out in Supplier's template order form (in the case of Services) or the Customer's purchase order form.
- (r) **Renewal Term:** has the meaning given in clause 8.2.
- (s) **Services:** the services supplied by the Supplier to the Customer (together with any replacement parts provided as part of the Services) as set out in the Order.
- (t) **Service Specification:** the specification for the Services provided in writing by the Supplier to the Customer or as set out in an Order.
- (u) **Supplier:** Billi (UK) LLP registered in England and Wales with Limited Liability Partnership number OC381177.
- (v) **Supplier Materials:** has the meaning given in clause 9.1(h).
- (w) **Supplier Personnel:** any personnel used by the Supplier to perform the Services.

2. Interpretation:

- 2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 2.2 A reference to a party includes its personal representatives, successors and permitted assigns.
- 2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.5 A reference to **writing** or **written** includes email.

3. Application

- 3.1 These Conditions apply to all Contracts between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 3.2 Terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification, or other document shall not form part of the Contract except to the extent that the Supplier otherwise expressly agrees in writing.
- 3.3 Each Order by the Customer to the Supplier shall be an offer to purchase Goods and/or Services subject to these Conditions.
- 3.4 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier for 10 Business Days from the date on which the Customer submitted the Order after which time it shall automatically lapse and be withdrawn.
- 3.5 The Supplier may accept or reject an Order at its discretion. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of an Order (a "Sales Order Confirmation") , or, in the case of any Order for Goods, the Supplier dispatches the Goods or notifies the Customer that they are available for collection (as the case may be), at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 3.6 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 3.7 The Supplier may issue quotations/proposals to the Customer from time to time. Quotations/proposals are invitations to treat only, not an offer to supply goods or services and are incapable of being accepted by the Customer.

Quotations/proposals are only valid for a period of 30 calendar days from their date of issue.

- 3.8 Marketing and other promotional material relating to the Goods and/or Services are illustrative only and do not form part of the Contract.

4. Charges and Payment

- 4.1 The price for 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 as at the date of the Order; and
- (b) shall be inclusive of the Supplier's standard packaging but does not include the costs of delivery and insurance, which shall be invoiced to the Customer at the Supplier's standard rates.

- 4.2 The charges for Services shall be the charges set out in the Order or, if no price is quoted, the price set out in the Supplier's price list as at the date of the Order.

- 4.3 The Supplier may increase its charges for the Services at the end of the Initial Term or any Renewal Term on giving the Customer not less than 30 days' written notice of the increase. Any such increase in the charges for Services shall not be more than the percentage increase in the Consumer Prices Index (all items) (United Kingdom) during the Initial Term or relevant Renewal Term (as appropriate).

- 4.4 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 Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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.

- 4.5 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery.

- 4.6 In respect of Services, the Supplier shall invoice the Customer annually in advance.

- 4.7 Payment for all Goods and Services must be made within 30 days from the date of the Supplier's invoice.

- 4.8 The Customer shall pay all invoices:

- (a) in full without deduction or set off, in cleared funds; and
- (b) to the bank account nominated by the Supplier.

- 4.9 Time of payment is of the essence. When any sum is due under these Conditions is not paid in full by the due date:
- (a) the Supplier may without limiting its other rights charge interest on such sums at 5% per year above the base rate of the Bank of England from time to time in force;
 - (b) interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment;
 - (c) the Supplier may in its discretion suspend delivery of the Goods and/or Services under the Contract or any other contract between the Customer and the Supplier until payment is made; and / or
 - (d) the Supplier may in its discretion cancel the Contract and/or any other contract between the Supplier and the Customer.
- 4.10 Customers may be subject to a credit checking process, at the Supplier's discretion, and the Customer agrees to this check being carried out ahead of the commencement of the Contract. Should the Supplier deem any Customer not to be credit worthy, the Supplier will notify the Customer in writing of its decision and offering options for resolution.
- 4.11 The Supplier may set and vary credit limits from time to time and/or withhold all further supplies of Goods and Services if the Customer exceeds such credit limit. The Supplier may at any time require the Customer to make payment in advance or require security for payment.

5. Delivery of Goods

- 5.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**). The Supplier shall use its reasonable endeavours to deliver the Goods within three Business Days of the Delivery Date.
- 5.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier 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 Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 If the Supplier 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 Supplier 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 Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

- 5.5 If the Customer fails to take or accept delivery of the Goods at the Delivery Location, except where such failure or delay is caused by a Force Majeure Event or by the Supplier'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 the time of attempted delivery by the Supplier; and
 - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.6 The Supplier 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.

6. Risk and Title

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full and cleared funds for the Goods.
- 6.3 Until title to the Goods has passed to the Customer the Customer shall
- (a) hold the Goods as bailee for the Supplier;
 - (b) store the Goods separately from other materials in the Customer's possession;
 - (c) take reasonable care of the Goods and keep them in the condition in which they were delivered;
 - (d) insure the Goods from the date of delivery with a reputable insurer against all risks for an amount at least equal to their price and noting the Supplier's interest on the policy;
 - (e) ensure the Goods are clearly identified as belonging to the Supplier;
 - (f) not to remove, alter or mark on or packaging of any of the Goods; and
 - (g) on reasonable notice permit the Supplier or its agents to inspect the Goods during the Customer's normal business hours and provide the Supplier with

such information and return the Goods as the Supplier may properly request from time to time.

6.4 If at any time before title to the goods has passed to the Customer:

- (a) the Supplier reasonably believes that the Customer has or is likely to stop carrying on a significant part of its business or indicates that it intends to do so;
- (b) the Customer is unable to pay its debts within Section 123 of the Insolvency Act 1986;
- (c) the Customer 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), 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;
- (d) the Customer has a freezing order made against it; or
- (e) the Customer is subject to any event or circumstances analogous to those specified above in any other jurisdiction (each of these being hereinafter referred to as an **Event of Insolvency**) then in any such event the Supplier may require the Customer at the Customer's expense to redeliver the Goods to the Supplier and if the Customer fails to do so on written demand the Supplier or its agents may enter any premises where the Goods are stored and repossess them.

7. Inspection of the Goods

7.1 If the Goods or any of them are damaged or lost while in the custody of a carrier who is delivering on behalf of the Supplier, the Supplier will (at its option) either replace such Goods or refund to the Customer the cost or price of them but the Supplier's liability in connection with any such Goods will not exceed the cost of replacement of them or the price to be paid by the Customer for them.

7.2 The Supplier will not be under any liability under clause 7.1 above unless the following conditions are strictly complied with:

- (a) in the event of non-delivery of a consignment of Goods the Customer must inform the Supplier in writing within two days of the expected date of delivery; and
- (b) in the case of damage to Goods or loss of part of a consignment, the consignment must be inspected in the presence of the carrier. If any Goods are damaged or lost the consignment note must be endorsed accordingly and the Customer must notify the Supplier within twenty-four hours of

delivery, and such notification must then be confirmed in writing by the Customer to the Supplier within the following five days.

- 7.3 No Goods may be returned without prior written consent of the Supplier. Where Goods correctly supplied are subsequently taken back for a credit, a 10% handling charge payable on presentation of invoice will be implemented. A credit note will only be issued provided the Goods returned are undamaged complete with their packaging and product literature and are suitable for resale 'as new'. The invoice number relating to the Goods must be quoted whatever the reason for return.
- 7.4 The Supplier cannot accept any Goods for return if they have in any way been used, installed, further processed, or altered.
- 7.5 The Customer shall satisfy itself as to the quality and suitability of all Goods ordered before using, installing, further processing or altering the Goods.

8. Supply of Services

- 8.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 8.2 Each Contract for Services shall commence on the Commencement Date and shall continue for an initial period of 12 months, unless otherwise stated in an Order (**Initial Term**) whereupon it will automatically renew for successive periods of 12 months (each a **Renewal Term**) unless the Contract is terminated by either party giving not less than 30 days' written notice prior to the end of the Initial Term or any Renewal term to terminate the Contract such notice to take effect at the end of the Initial Term or any Renewal term as applicable.
- 8.3 The Supplier shall use all reasonable endeavours to meet any agreed performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.4 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

9. Customer's obligations

- 9.1 The Customer shall:
- (a) ensure that the terms of the Order are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;

- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) ensure the Customer's premises is prepared for the supply of the Services;
- (f) 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;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (i) only use the Equipment exclusively with Supplier-branded internal filters. This obligation does not limit the Customer's ability to use third party external pre-filters or scale filters with the Equipment, however the Supplier accepts no responsibility and excludes all liability to the Customer for any loss or damage to the extent such loss or damage is caused by the use of such third party equipment in conjunction with the Equipment;
- (j) provide reliable supply of water and electricity for the operation of the Equipment, the water supplier being a minimum of 2.5 bar of dynamic water pressure;
- (k) operate the Equipment in accordance with any additional instructions given to the Customer by the Supplier;
- (l) ensure the Equipment has periodic electrical 'PAT' tests conducted on it;
- (m) maintain the Equipment in a good, hygienic condition at all times, including emptying the drip tray and waste container where applicable and descaling the dispenser and font;
- (n) permit the Supplier (on giving not less than 24 hours' prior notice) to enter its premises during normal business hours to inspect the Equipment from time to time to ensure that it is being operated and maintained in accordance with the Contract and to carry out such routine checks as the Supplier deems necessary for the safe and reliable operation of the Equipment;
- (o) comply with any additional obligations as set out in the Service Specification.

- 9.2 If the Customer is concerned about the safety of the Equipment, it must assess the risks and act in accordance with its own company policies. The Supplier shall not be liable for the Customer's actions or negligence relating to any Equipment or its misuse of the Equipment.
- 9.3 The Supplier does not accept any responsibility for damage to the Customer's property to the extent such damage is caused by the Customer failing to adhere to its obligations under this clause 9.
- 9.4 Call outs linked to poor housekeeping and / or cleaning by the Customer as per clause 9.1 will result in calls being charged to the Customer at the Supplier's standard tariff call out charges.
- 9.5 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.5; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

10. Supplier Obligations

- 10.1 The Supplier shall be and remain fully responsible for the acts, omissions and management of all Supplier Personnel.
- 10.2 The Supplier shall ensure that all Supplier Personnel involved in the performance of the Services:
- (a) have undergone appropriate checks to verify their identity and other screening checks prior to performing Services at a Customer premises;
 - (b) possess qualifications and experience appropriate to the roles they are required to fulfil;
 - (c) receive appropriate training for their roles before they commence them;

- (d) carry out their roles with all due care, skill and diligence and in accordance with industry standards and in a professional manner;
 - (e) abide by any security and health and safety requirements applicable to Customer's premises where the Services are being performed;
 - (f) perform the Services so as to cause minimum disruption to the Customer and its personnel at any Customer premises where the Services are being performed;
 - (g) are polite, presentable and respectful to the Customer's employees and to members of the public, including having ID displayed and wearing correct company issue uniform.
- 10.3 The Supplier reserves the right to use subcontractors to perform the Services. The Supplier shall ensure that its subcontractors comply with the terms of the Contract and shall be responsible for the acts and/or omissions of its subcontractors as though they were its own.
- 10.4 The Supplier shall not be liable for any services performed by a subcontractor which are not set out in the Service Specification.

11. Confidentiality

- 11.1 Each party recognises that in relation to the Contract they may receive or become aware of confidential information concerning the business, affairs, customers, clients or suppliers of the other party (**Confidential Information**).
- 11.2 Each party agrees:
- (a) to take all proper and reasonable measures (which in any event shall be no less than the measures it takes to protect its own Confidential Information) to keep secret and treat as confidential the other party's Confidential Information;
 - (b) only to use the other's Confidential Information for the purposes of performing its obligations under the Contract;
 - (c) not to divulge, or permit disclosure of or access to, Confidential Information belonging or relating to the other party to any third party except:
 - (i) to its employees, officers, agents, consultants, subcontractors and professional advisers (**Representatives**) to the extent they need know such information for the purposes of carrying out its obligations under the Contract; or
 - (ii) as required by law, court order or any governmental or regulatory authority.

- 11.3 Each party shall take all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 11 and shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause 11.
- 11.4 The following shall not be Confidential Information for the purposes of this clause 11;
- (a) any information in the public domain otherwise than by a breach of this clause 11 or of any other duty of confidentiality in relation to that information;
 - (b) information obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - (c) information lawfully in the possession of the receiving party before the date of the Contract and in respect of which that party is not under an existing obligation of confidentiality.
- 11.5 The obligations in the preceding provisions of this clause 11 shall survive the expiry or termination of the Contract for any reason for a period of seven years.
- 11.6 Nothing in the Contract shall prevent either party from using any general concepts, ideas, know how, methodologies, processes, techniques or algorithms retained in the unaided memory of such party's personnel which were developed or disclosed under the Contract, provided that in doing so such party does not:
- (a) breach its obligations of confidentiality under the Contract; or
 - (b) infringe the Intellectual Property Rights of the other party or of third parties who have licensed or provided materials to the other party.

12. Data Protection

- 12.1 In respect of any Customer personnel contact information used by the Supplier in relation to the performance of its obligations under the Contract and the Supplier's management of its relationship with the Customer, the parties acknowledge that the Customer and the Supplier shall each be controllers of such personal data.
- 12.2 Each party shall comply with their respective obligations under Data Protection Legislation in relation to any personal data provided to the Supplier by the Customer under the Contract.
- 12.3 The Customer warrants that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data it provides to the Supplier for the duration of the Contract and for the Supplier to use such personal data for the purposes of managing its relationship with the Customer.

13. Warranties

- 13.1 The Supplier and the Customer both warrant that they;
- (a) have authority to enter into the Contract, to grant the rights contained in the Contract and to perform their obligations under the Contract'
 - (b) shall perform their obligations under the Contract in compliance with all applicable laws and regulations; and
 - (c) hold and shall continue to hold all necessary approvals and licences necessary to perform their obligations under the Contract.
- 13.2 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 13.3 If any Services do not comply with the warranty in clause 13.2, the Customer shall promptly notify the Supplier and the Supplier shall either reperform the Services or refund the Customer the price paid for the affected Services.
- 13.4 The Supplier warrants that the Goods when delivered shall conform in all material respects to the Contract and any written specification provided by the Supplier and be free from material defects in design, materials, and workmanship.
- 13.5 If any Goods do not comply with the warranty in clause 13.4 the Supplier at its option shall repair or replace the Goods or refund the price paid for the Goods provided that the Customer:
- (a) serves a written notice on the Supplier as soon as the defects are discovered by physical inspection; or
 - (b) in the case of latent defects within one month of the date on which the Customer became aware or should reasonably become aware of the defect;
 - (c) provides the Supplier with sufficient information as to the nature and extent of the defects and in relation to Goods supplied the uses to which the Goods have been put prior to the defect arising; and
 - (d) gives the Supplier reasonable opportunity to examine the defective Goods and returns the defective Goods to the Supplier at the Customer's own expense.
- 13.6 The Supplier shall not be liable for any failure in the Goods to comply with the warranty in clause 13.4:
- (a) where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise through normal course or use of the Goods;

- (b) where caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods including instructions for any installation, operation, storage or maintenance;
- (c) to the extent caused by the Supplier following any specification or requirement of the Customer in relation to the Goods;
- (d) where the Customer modifies any Goods without the Supplier's prior written consent or has done so not in accordance with the Supplier's instructions; or
- (e) the Customer uses any of the Goods after notifying the Supplier that they do not comply with the terms of the warranty.

13.7 Except as set out in this clause 13:

- (a) the Supplier gives no warranties and makes no representations in relation to the Goods or Services; and
- (b) the Supplier shall have no other liability for failure to comply with the warranties in clauses 13.2 and 13.4; and
- (c) all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

14. Limitation of Liabilities

14.1 The extent of the parties' liability under or in connection with the Contract, regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation shall be as set out in this clause 14.

14.2 Subject to Clause 14.5 the Supplier's total liability in respect of all claims arising out of or in connection with the Contract shall not exceed 150% of the total fees and charges paid by the Customer (excluding Value Added Tax, delivery and insurance costs) under the Contract which gave rise to the liability during the preceding 12 months.

14.3 Subject to clause 14.5 the Supplier shall not be liable for consequential, indirect, or special losses.

14.4 Subject to clause 14.5 the Supplier shall not be liable for any of the following whether direct or indirect: loss of profit; loss of data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation; or loss of goodwill.

14.5 Notwithstanding any other provisions of the Contract the liability of the parties shall not be limited in any way in respect to any of the following: death or personal injury caused by negligence; fraud or fraudulent misrepresentation; or any other losses which cannot be excluded or limited by applicable law.

14.6 Both parties commit to maintaining in force for the duration of the Contract full and comprehensive insurance policies with reputable insurers against all risks that would normally be insured against by a prudent business in connection with the risks associated with their respective obligations and liabilities under the Contract. The Customer shall produce to the Supplier on demand full particulars of such insurances and the receipt for the then current premiums.

14.7 The Customer shall indemnify the Supplier against any claim made by any third party against the Supplier for loss or damage to the extent such loss or damage is caused by (i) the Customer's failure to maintain, operate or use the Equipment in accordance with the terms of the Contract; and/or (ii) the Customer's use of any third party equipment in conjunction with the Equipment.

15. Termination

15.1 Either party may terminate the Contract by notice in writing if the other party is in material breach of the Contract and the breach is incapable of remedy or the breach is capable of remedy but the offending party fails to remedy it within 30 days after the date of notice from the other party in writing requiring it to be remedied.

15.2 If there is an Event of Insolvency in relation to the Customer, the Supplier may by notice in writing to the Customer cancel all Contracts between the Supplier and the Customer or any part of them remaining unfulfilled.

15.3 Termination shall not affect any accrued rights and liabilities of either party at any time up to termination.

15.4 Any expiry or termination of Contract shall not affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination.

15.5 On termination of a Contract for Services due to a Customer Default, without prejudice to its other rights and remedies, the Supplier may re-possess the Equipment.

15.6 On termination of a Contract for Services for any reason, the Supplier shall be available for the removal and/or disposal of any Equipment from the Customer Location, in accordance with the Waste Electrical and Electronic Equipment Regulations 2006.

16. Announcements

16.1 The Supplier reserves the right to take photographs at Customer locations for the Supplier's internal use (including, without limitation, for installation, training and

improvement purposes) and for marketing and promotional purposes. The Supplier shall obtain the Customer's prior written approval (such approval not to be unreasonably withheld or delayed) prior to using any photographs of Customer locations for marketing or promotional purposes. The Supplier shall ensure that no sensitive data or Confidential Information of the Customer is captured in the photographs it takes at the Customer locations. No public statement or press release shall contain any named personnel except where this has been approved in writing between the parties beforehand.

17. Entire agreement

- 17.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 17.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

18. Force majeure

- 18.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 18.2 Where a Force Majeure Event prevents the Supplier from providing Services, the Supplier shall promptly notify the Customer in writing of its reasons for the delay or stoppage and its likely duration and shall take all reasonable steps to overcome the delay or stoppage or to find a solution by which its obligations under the Contract may be performed despite the Force Majeure Event.
- 18.3 If the Supplier does not resume full provision of the affected services within 45 consecutive Business Days the Customer may (in addition to any other rights it might have) terminate the Contract on written notice to the Supplier.

19. Set off

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

20. Severance

- 20.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 20.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

21. Waiver

- 21.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 21.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
- 21.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

22. Third party rights

- 22.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

23. Variation

- 23.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

24. Assignment

- 24.1 In no event may Customer assign its rights or obligations under a Contract to a third party without the Supplier's prior written consent.

25. Governing law

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

26. Jurisdiction

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

27. Notices

27.1 Any notice or other communication given by a party under these Conditions shall:

- (a) be in writing and in English;
- (b) be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- (c) be sent to the relevant party to the address or email address set out in the Contract.

27.2 Notices may be given, and are deemed received:

- (a) by hand: on receipt of a signature at the time of delivery;
- (b) by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- (c) by Royal Mail International Tracked & Signed or Royal Mail International Signed post: at 9.00 am on the fourth Business Day after posting; and
- (d) by email provided confirmation is sent by first class post within two Business Days: on receipt of a delivery receipt email from the correct address.

27.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 27.1 and shall be effective:

- (a) on the date specified in the notice as being the date of such change; or
- (b) if no date is so specified, two Business Days after the notice is deemed to be received.

27.4 All references to time are to the local time at the place of deemed receipt.

27.5 This clause does not apply to notices given in legal proceedings or arbitration.