

**BROOKS BROS  
BUSINESS TO BUSINESS  
TERMS OF SUPPLY OF GOODS AND SERVICES**

The Customer's attention is particularly drawn to the provisions of clause 17.

**1. BUSINESS CUSTOMERS**

1.1 These terms apply to our business customers only. You are classified as a business customer if you are buying products from us wholly or mainly in connection with your trade, business, craft or profession. If this is incorrect and you are in fact a consumer buying the products wholly or mainly for personal use, please let us know as soon as possible, and in any event before placing your order.

**2. INTERPRETATION**

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

**2.1 Definitions:**

**Acknowledgement of Order Form:** has the meaning set out in clause 3.2.

**Applicable Data Processing Laws:** has the meaning set out in clause 16.5.1.

**Approved Credit Account:** means the Customer's individual credit account with the Supplier (where the Supplier has granted the Customer such an account).

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Collection Location:** has the meaning set out in clause 9.4.2.

**Commencement Date:** has the meaning set out in clause 3.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 20.2.

**Contract:** the contract between the Supplier 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 Supplier, also referred to as "you" and "your".

**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Deliverables:** the deliverables set out in the Order which are produced by the Supplier for the Customer as a result of the Services.

**Delivery Location:** has the meaning set out in clause 9.4.1.

**Due Date:** has the applicable meaning set out in clause 8.1 or 8.2.

**GDPR:** General Data Protection Regulation ((EU) 2016/679).

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

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

**Order:** the Customer's order for the supply of Goods and/or Services, whether made by telephone or email or by submitting a purchase order form.

**Quotation:** the Supplier's quotation for the Goods and/or Services.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Quotation.

**Service Specification:** the description or specification for the Services and/or Deliverables set out in the Quotation or otherwise provided in writing by the Supplier to the Customer.

**Supplier:** Brooks Bros. (UK) Limited registered in England and Wales with company number 016444146 also referred to as "us" "we" "our".

**TPP:** has the meaning set out in clause 16.6.

**VAT:** has the meaning set out in clause 7.4.

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

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 but not fax.

**3. BASIS OF CONTRACT**

3.1 The Quotation constitutes an offer by us for you to purchase Goods and/or Services in accordance with these Conditions.

3.2 The Quotation shall be deemed to be accepted when you submit an Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

3.3 Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier'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 have any contractual force.

3.4 These Conditions apply to the Contract to the exclusion of any other terms you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.5 Any Quotation given by us is only valid for a period of 30 calendar days from its date of issue (unless otherwise stated in writing).

3.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

**4. GOODS**

4.1 The Goods are described in the Quotation as modified by any applicable Goods Specification and (if provided) as confirmed in our written acknowledgement of your Order (**Acknowledgement of Order Form**).

4.2 Excluding to the extent clause 5.2.2 applies, you shall indemnify and hold us harmless against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Goods Specification. This clause 4.2 shall survive termination of the Contract.

**5. GOODS SPECIFICATION**

5.1 If we prepare the Goods in accordance with your specifications or instructions that we have agreed in advance and in writing to adhere to (**Goods Specification**), you must ensure that:

5.1.1 the Goods Specification is complete and accurate;

5.1.2 Goods prepared in accordance with the Goods Specification will be fit for the purpose for which you intend to use such Goods; and

5.1.3 your Goods Specification will not result in the infringement of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.

5.2 We reserve the right:

5.2.1 to make any changes to the Goods Specification if required by any applicable statutory or regulatory requirement that we are subject to, and we shall notify you in any such event; and

5.2.2 to make without notice any minor modifications to the Goods Specification we think necessary or desirable.

**6. SERVICES**

6.1 We shall supply the Services and Deliverables to you in accordance with the Service Specification in all material respects.

6.2 We shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.3 We reserve the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement that we are subject to, or if the amendment will not materially affect the nature or quality of the Services, and we shall notify you in any such event.

**7. PRICE**

7.1 The price for the Goods:

7.1.1 shall be the price set out in the Quotation; and

7.1.2 unless otherwise stated in writing, shall be inclusive of all costs and charges of packaging, insurance, and transport of the Goods to the Delivery Location if we are arranging delivery, but if you are collecting the Goods from the Collection Location or clause 9.5 applies, the price shall be inclusive of all costs and charges of packaging only.

7.2 The price of the Services shall be calculated as set out in the Quotation.

7.3 We reserve the right to:

7.3.1 increase the price of the Goods and/or Services, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Goods and/or Services to us that is due to:

7.3.1.1 any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.3.1.2 any request by you to change the delivery date(s), quantities or types of Goods or Services ordered; or

7.3.1.3 any delay caused by any of your instructions in respect of the Goods or Services, or failure by you to give us adequate or accurate information or instructions in respect of the Goods or Services.

7.4 Unless otherwise stated, all amounts payable by you are exclusive of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us, you shall, on receipt of a valid VAT invoice from us, pay such additional amounts in respect of VAT as are chargeable on the supply of Goods or Services at the same time payment is due for such Goods or Services.

7.5 Excluding VAT, any rates of tax and/or duties on the Goods or Services that are chargeable will be those applying at the time of delivery.

**8. PAYMENT TERMS**

8.1 Excluding where clause 8.2 applies, we shall invoice you for the Goods and/or Services before delivery and/or performance starts, and you shall pay each invoice in full, in cash or in cleared funds to a bank account nominated by us in writing prior to delivery (**Due Date**), unless you have an Approved Credit Account.

8.2 Unless otherwise agreed in writing, if you have an Approved Credit Account, payment for the Goods and/or Services is due no later than 30 calendar days after the end of the month on which the invoice is dated (**Due Date**).

8.3 For the avoidance of doubt, time for payment shall be of the essence of the Contract.

8.4 Without limiting any of our other rights and remedies, if you fail to pay us in full by or on the Due Date applicable to you we may:

8.4.1 suspend or cancel future deliveries until payment has been made in full;

8.4.2 cancel any discount offered to you; and/or

8.4.3 charge you interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998 (**Act**);

8.4.3.1 calculated (on a daily basis) from the Due Date until payment; and

8.4.3.2 before and after any judgment (unless a court orders otherwise).

8.5 You acknowledge and accept that if you have an Approved Credit Account we may withdraw it or reduce your credit limit, or bring forward your Due Date for payment. We may take any of these actions at any time and without notice.

8.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8.7 Notwithstanding any other provision of this Contract, we reserve our right to, and our enforcement of, a particular and/or general lien over any property (including Goods and Deliverables) we may hold for you, until you have paid us in full.

8.8 You shall indemnify us in full and hold us harmless against all expenses, costs, damages, losses and liabilities we may suffer or incur (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses arising out of or in connection with your failure to comply with your payment obligations under this Contract when due.

**9. DELIVERY**

9.1 References to Goods in this clause 9 shall also include Deliverables where Services are being provided under the Contract.

9.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

9.3 We shall ensure that

9.3.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable).

9.4 The Quotation shall provide that either:

9.4.1 we shall deliver the Goods to the location set out in the Quotation or the delivery address provided in connection with an Approved Credit Account or such other location as the parties may agree (**Delivery Location**) at any time after we notify you that the Goods are ready; or

9.4.2 you shall collect the Goods from our premises at such other location as may be advised by us (**Collection Location**) within 5 Business Days of us notifying you that the Goods are ready.

9.5 If the Delivery Location is outside of the UK, unless expressly agreed otherwise in writing between the parties, delivery shall be Ex Works (**EXW**) at the terminal notified to the Customer (as per the Incoterms 2010 or for the time to time in force).

9.6 Except where clause 9.5 applies, if the Goods are being:

9.6.1 delivered by us under clause 9.4.1, delivery is completed on the completion of unloading of the Goods at the Delivery Location; or

9.6.2 collected by you under clause 9.4.2, delivery is completed on the completion of loading of the Goods at the Collection Location.

9.7 You must inspect the Goods on delivery and/or collection. If we fail to deliver any Goods or make any Goods available for collection, you must write to tell us within 5 days of delivery or collection, or within 5 days of the expected delivery or collection date.

9.8 For the avoidance of doubt, where clause 9.4.2 applies, we are not liable for any damage to the Goods during transit.

9.9 Subject to you complying with clause 9.7, but excluding where clause 9.13 applies, if we fail to deliver or make available:

9.9.1 some, but not all, of the Goods:

9.9.1.1 our liability shall be limited to (at your option):

(a) us making good the shortfall within a reasonable time; or

(b) if the relevant invoice has not been paid, us issuing a credit note for the non-delivered Goods at the pro-rata charge to you for the non-delivered Goods; or

(c) if the relevant invoice has been paid, us refunding the pro-rata amount paid for the non-delivered Goods.

9.9.2 all of the Goods:

9.9.2.1 our liability shall be limited to the costs and expenses incurred by you in obtaining replacement Goods of a similar description and quality in the cheapest market available, less the price of the Goods,

but, for the avoidance of doubt, we shall have no liability for any failure to deliver or make the Goods available to the extent that such failure is caused by (where relevant): a Force Majeure Event; or your failure to provide us with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods; or if clause 9.14 applies.

9.10 If:

9.10.1 you fail to take delivery of the Goods within 5 Business Days of us notifying you that the Goods are ready; or

9.10.2 you fail to accept delivery of the Goods when we attempt to deliver such Goods, then except where such failure or delay is caused by a Force Majeure Event or by our failure to comply with our obligations under the Contract in respect of the Goods:

9.10.2.1 delivery of the Goods shall be deemed to have been completed at:

(a) 9.00 am on the 5th Business Day following the day on which we informed you in writing that the Goods were ready; or

(b) at the time on the day on which we attempted to deliver the Goods to you; and

9.10.2.2 we shall store the Goods until actual delivery or collection takes place, and charge you for all related costs and expenses (including insurance).

9.11 If:

9.11.1 10 Business Days after we informed you in writing that the Goods were ready for delivery you have not taken delivery of them; or

9.11.2 within 10 Business Days of us notifying you in writing that our delivery attempt failed and you have not taken delivery of such Goods,

we may resell or otherwise dispose of part or all of the Goods and, if we resell the Goods, after deducting reasonable storage and selling costs, account to you for any excess over the price of the Goods or charge you for any shortfall below the price of the Goods or charge you for the full price of the Goods if we are unable to resell them.

9.12 If we deliver up to and including 5% more or less than the quantity of Goods ordered you may not reject them, but on receipt of notice from you that the wrong quantity of Goods was delivered, we shall make a pro rata adjustment to the invoice for the Goods.

9.13 Unless otherwise agreed, we may deliver the Goods in instalments. Each instalment is treated as a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

9.14 We may decline to deliver if:

9.14.1 we believe that it would be unsafe, unlawful or unreasonably difficult to do so; or

9.14.2 the premises (or the access to them) are unsuitable for our vehicle.

**10. TITLE AND RISK**

10.1 The risk in the Goods shall pass to you on completion of delivery under clause 9.6 or, if clause 9.5 applies, shall pass in accordance with Ex Works (**EXW**) (as per the Incoterms 2010 or for the time to time in force) (unless expressly otherwise agreed in writing between the parties).

10.2 Title to the Goods shall not pass to you until the earlier of:

10.2.1 us receiving payment in full (in cash or cleared funds) for the Goods in which case title to the Goods shall pass at the time of payment; or

10.2.2 you resell the Goods, in which case title to the Goods shall pass to you at the time specified in clause 10.4.

10.3 Until title to the Goods has passed to you, you shall:

10.3.1 store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;

10.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;

10.3.4 notify us immediately if you become subject to any of the events listed in clause 18.1.1 to clause 18.1.4 (inclusive); and

10.3.5 give us such information relating to the Goods as we may require from time to time.

10.4 Subject to clause 10.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:

10.4.1 you do so as principal and not as our agent; and

10.4.2 title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.

10.5 If before title to the Goods passes to you, you become subject to any of the events listed in clause 18.1.1 to clause 18.1.4 (inclusive), then, without limiting any other right or remedy we may have:

10.5.1 your right to resell Goods or use them in the ordinary course of your business ceases immediately; and

10.5.2 we may at any time:

10.5.2.1 require you to deliver up all Goods in your possession which have not been resold, or irrevocably incorporated into another product; and

10.5.2.2 if you fail to do so promptly, enter any premises of yours or of any third party where the Goods are stored in order to recover them.

**11. CUSTOMER'S OBLIGATIONS**

11.1 You shall:

11.1.1 ensure that the terms of the Order and Service Specification are complete and accurate;

11.1.2 co-operate with us in all matters relating to the Services;

11.1.3 provide us with such information as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and

11.1.4 comply with any additional obligations as set out in the Service Specification.

11.2 If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by of yours or failure by you to perform any relevant obligation (**Customer Default**):

11.2.1 without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from

the performance of any of our obligations in each case to the extent the Customer Default prevents or delays our performance of any of our obligations;

11.2.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 11.2; and

11.2.3 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

## 12. WARRANTIES

12.1 We warrant that:

12.1.1 on delivery the Goods shall:

12.1.1.1 comply in all material respects with their description as set out in clause 4.1; and

12.1.1.2 meet the grading rules as set out in the Quotation.

12.1.2 the Services:

12.1.2.1 will be provided using reasonable care and skill; and

12.1.2.2 the Deliverables will comply in all material respects with their description as set out in clause 6.1.

12.2 We have given commitments as to compliance of the Goods and Services with relevant specifications in clauses

12.1. In view of these commitments, the terms implied by: sections 13 to 15 of the Sale of Goods Act 1979; and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.3 If you believe that we have delivered, or you have collected, Goods or Deliverables which are in breach of clause 12.1, you must:

12.3.1 notify us (in writing), with full details, as soon as possible and in any event, within 3 Business Days of delivery or collection of the Goods and/or Deliverables; and at our option

12.3.2 give us a reasonable opportunity to examine the Goods or Deliverables which may include, allowing us to attend your premises to take product samples; or

12.3.3 return such Goods (or a sample of such Goods) or such Deliverables (or a sample of such Deliverables) to our place of business at our costs for our inspection.

12.4 Subject to clause 12.5, if, following our inspection of the Goods or Deliverables, the Goods or Deliverables are found to be in breach of clause 12.1 and you have complied with those conditions in 12.3 in full, we will (at our option):

12.4.1 for Goods, repair the Goods, replace the Goods or refund the price paid for such Goods; or

12.4.2 for Services and Deliverables, correct any material deficiencies at no additional cost to you or replace the Deliverables or refund the price paid for such Services and Deliverables.

12.5 We shall not be liable for the Goods' or Deliverables' failure to comply with the warranty in clause 12.1 if:

12.5.1 you make further use of the such Goods or Deliverables after giving notice in accordance with clause 12.3.1;

12.5.2 the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Deliverables or (if there are none) good trade practice;

12.5.3 the defect arises as a result of us following any drawing design or Goods Specification or Services Specification supplied by you;

12.5.4 you alter or repair such Goods or Deliverables without our written consent;

12.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

12.5.6 the Goods or Deliverables differ from their description set out in clause 4.1 or 6.1 as a result of clauses 5.2.1 or 6.3 (as applicable).

12.6 Except as provided in this clause 12, we shall have no liability to you in respect of the Goods' or Services' failure to comply with the relevant warranty set out in clause 12.1.

## 13. EXPORT TERMS

13.1 Unless otherwise agreed in writing between us, clause 13 of these Conditions applies where we supply the Goods and Deliverables outside of the UK, over an international border or overseas.

13.2 If clause 9.5 applies, save as expressly agreed otherwise in writing between the parties, the sale of the Goods and Deliverables is on an Ex Works (EXW) basis (as per the Incoterms 2010 or for the time to time in force). For the avoidance of doubt, unless otherwise stated, if there is any conflict between the Ex Works (EXW) Incoterms 2010 (or other version for time to time in force) and these Conditions, these Conditions shall prevail.

13.3 For the avoidance of doubt:

13.3.1 where the Goods and Deliverables are to be sent by us to you by a route including sea transport, we are under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979; and

13.3.2 you are responsible for arranging testing and inspection of the Goods and Deliverables at our premises before shipment (unless otherwise agreed in writing); and

13.3.3 we are not liable for:

13.3.3.1 any defect in the Goods and Deliverables which would be apparent on inspection unless a claim is made before shipment; and/or

13.3.3.2 any damage to the Goods and Deliverables during transit.

## 14. RETURN OF GOODS AND CANCELLATION

14.1 For the avoidance of doubt and excluding where clause 12.4 applies, we will accept the return of Goods from you only:

14.1.1 at your risk and expense;

14.1.2 by prior arrangement (confirmed in writing by us);

14.1.3 on payment of an agreed handling charge which the parties agree is reasonable and proportionate to protect our legitimate interest in performance under the Contract; and

14.1.4 provided the Goods are, in our sole opinion, as fit for sale on their return as they were on delivery. If on inspection by one of our sales representatives, this clause 14.1.4 has not been complied with, we shall not be obliged to accept the Goods for return.

14.2 After the Contract comes into existence in accordance with clause 3.2, you may not cancel the Order unless we agree in writing.

14.3 If the Order is cancelled under clause 14.2 you shall pay us the cost of all stock (finished or unfinished) that we may then hold (or to which we are committed) for that Order.

## 15. INTELLECTUAL PROPERTY RIGHTS

15.1 You acknowledge and accept that all Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (including the Deliverables) (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by us or our licensors.

15.2 You grant us a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by you to us for the term of the Contract for the purpose of providing the Services (including the Deliverables) and/or supplying the Goods to you.

## 16. DATA PROTECTION AND DATA PROCESSING

16.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

16.2 For the avoidance of doubt, the terms "data controller", "data processor", "data subject", "processing" and "personal data" bear the respective meanings given in the Data Protection Legislation.

16.3 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the data controller and we are the data processor. Schedule 1 sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of data subject.

16.4 Without prejudice to the generality of clause 16.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of the Contract.

16.5 Without prejudice to the generality of clause 16.1, we shall, in relation to any personal data processed in connection with the performance by us of our obligations under the Contract:

16.5.1 process that personal data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process personal data (Applicable Data Processing Laws). Where we are relying on laws of a member of the European Union or European Union law as the basis for processing personal data, we shall promptly notify you of this before performing the processing required by the Applicable Data Processing Laws, unless those Applicable Data Processing Laws prohibit us from so notifying you;

16.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

16.5.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

16.5.4 only transfer personal data outside of the European Economic Area where the following conditions are fulfilled:

16.5.4.1 you or us have provided appropriate safeguards in relation to the transfer;

16.5.4.2 the data subject has enforceable rights and effective legal remedies;

16.5.4.3 we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

16.5.4.4 we comply with reasonable instructions notified to us in advance by you with respect to the processing of the personal data;

16.5.5 assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

16.5.6 notify you without undue delay on becoming aware of a personal data breach;

16.5.7 at your written direction, delete or return personal data and copies thereof to you on termination of the Contract unless required by Applicable Data Processing Law to store the personal data; and

16.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 16.

16.6 You consent to us appointing credit reference agencies, banks, credit insurers, suppliers and sub-contractors as third-party processor(s) (TPP) to process personal data under the Contract. We confirm that we have entered or (as the case may be) enter into a written agreement with the TPP incorporating terms which are substantially similar to those set out in this clause 16. As between the parties, we shall remain fully liable for all acts or omissions of any TPP (with respect to the processing of personal data) appointed by it pursuant to this clause 16.6.

16.7 Prior to any intended change concerning the addition or replacement of a TPP, we shall provide you with notice (TPP Notice). If you object to the appointment or replacement of the TPP then you shall, within 7 days of receipt of the TPP Notice, provide notice of such objection. We shall have the option to obtain a replacement TPP acceptable to you (consent to which is not to be unreasonably withheld or delayed) or to terminate the Contract on 7 days written notice.

16.8 Either party may, at any time on not less than 30 days' notice, revise this clause 16 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

17. **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

17.1 In respect of our own legal liability for individual claims we have obtained insurance cover not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover we have been able to arrange and you are responsible for making your own arrangements for the insurance of any excess loss.

17.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

17.2.1 death or personal injury caused by negligence;

17.2.2 fraud or fraudulent misrepresentation; and

17.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

17.3 Subject to clause 17.2, our total liability to you including liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall not exceed £5,000,000.

17.4 Subject to clause 17.2, the following types of loss are wholly excluded by the parties:

17.4.1 loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.

17.5 This clause 17 shall survive termination of the Contract.

## 18. TERMINATION

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

18.1.1 the other party commits a material breach of its obligations under the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so (such notice shall inform the party in breach of the material breach in question and the action needed to remedy such breach);

18.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; and

18.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

18.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

18.2 Without affecting any other right or remedy available to us:

18.2.1 we may terminate the Contract with immediate effect by giving written notice to you if:

18.2.1.1 you fail to pay any amount due under the Contract on the due date for payment; or

18.2.1.2 you experience a change of control within the meaning given in section 1124 of the Corporation Tax Act 2010.

18.2.2 we may suspend the supply of Services and/or all further deliveries of Goods under the Contract or any other contract between you and us if you fail to pay us any amount due under the Contract on the relevant Due Date; if you become subject to any of the events listed in clause 18.1.1 to clause 18.1.4 (inclusive), or we reasonably believe that you are about to become subject to any of them.

## 19. CONSEQUENCES OF TERMINATION

19.1 On termination of the Contract:

19.1.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services and/or Goods supplied but for which no invoice has been submitted, we shall submit an invoice to you, which shall be payable by you immediately on receipt;

19.1.2 you shall return all of the Deliverables and/or Goods which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

19.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

19.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 20. WAIVER AND VARIATIONS

20.1 No waiver shall be effective unless in writing signed by us and shall not be deemed a waiver of any subsequent right or remedy. No failure or delay by us in enforcing any of our rights under the Contract or by law shall constitute a waiver of that right or any other of our rights or remedies, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this clause shall restrict the further exercise of that or any other right or remedy.

20.2 No variation of these terms is binding unless:

20.2.1 made in writing;

20.2.2 signed on behalf of each party; and

20.2.3 expressly stating an intention to vary these terms.

## 21. FORCE MAJEURE

21.1 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.

## 22. GENERAL

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

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

22.3 **Severance.** If any of these terms are illegal or unenforceable as drafted the parties agree:

22.3.1 it will not affect the validity or enforceability of the rest of the Contract; and

22.3.2 such provision or part-provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible the relevant provision or part-provision shall be deemed deleted.

## 22.4 Notices.

22.4.1 Any notice given to a party under or in connection with this Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

22.4.2 Any notice shall be deemed to have been received:

22.4.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

22.4.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

22.4.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.4.4 A notice given under this Contract is not valid if sent by email.

22.5 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

## 22.6 Entire agreement.

22.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

22.6.3 Nothing in this clause shall limit or exclude any liability for fraud.

## 22.7 Assignment and other dealings

22.7.1 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under the Contract.

22.7.2 You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract.

22.8 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## SCHEDULE 1 - PERSONAL DATA

### 1. SCOPE, NATURE AND PURPOSE OF PROCESSING OF PERSONAL DATA

1.1 If we process any personal data as a data processor under the Contract, we shall process it in accordance with the relevant terms of the Contract and the following specification:

1.1.1 **Scope.** Personal data in relation to this Contract must only be processed for the purposes detailed in paragraph 1.1.3 below.

1.1.2 **Nature of the processing:** any processing operation regarding the personal data such as collecting, recording, organising, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of personal data (whether or not by automated means).

1.1.3 **Purpose of the processing:** to facilitate our performance of our obligations under this Contract.

1.1.4 **Duration of the processing:** the term of the Contract, except to the extent required under applicable law to preserve the personal data.

1.1.5 **Plan for destruction of the personal data once the processing is complete:** seven years from delivery or termination of the Contract.

1.2 The **types** of personal data that will be processed are: name, email address, telephone number, work address, payment details.

1.3 The **categories** of data subject are: sole traders, employees, directors and shareholders.