

PART B: CONDITIONS

1. Interpretation

1.1 Definitions:

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

Conditions: these terms and conditions set out in clause 0 to clause 14 (inclusive).

Contract: the contract between the Supplier and the Customer for the supply of the Services and Goods in accordance with the Contract Details, the Schedules and these Conditions.

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

Design Proposal: the design proposal prepared by the Supplier and agreed with the Customer, as set out in Schedule 2, which may only be amended with the written agreement of the Supplier in accordance with the change control procedure set out in clause 9.

Location: the location for the delivery of the Goods and the supply of the Services, as set out in the Contract Details.

Materials: any designs, drawings, plans, concepts, presentations, ideas, schematics, artwork, copy, logos, creative concepts, visual imagery, models, charts, photographs, films, data, documents and any other materials or information prepared by or on behalf of the Supplier (a) as part of the Services; (b) in anticipation of or in connection with the Contract; or (c) prior to entering into the Contract, including the Design Proposal at Schedule 2 and all amendments to and previous drafts or versions of it.

Force Majeure Event: any event, circumstance or cause beyond the Supplier's reasonable control, including (a) acts of God, flood, droughts, earthquake or other natural disaster; (b) pandemic or epidemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination; (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade disputes, strikes, industrial action or lockouts; (h) non-performance by suppliers or contractors; and (i) interruption or failure of utility service.

Goods: any equipment, materials, products or structures manufactured and/or supplied by the Supplier under this Contract, as set out in the Contract Details and the Design Proposal at Schedule 2.



Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, 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.

Price: the price for the Services and Goods, as set out in Schedule 1.

Quotation: means the written price quotation accepted by the Customer, as set out in Schedule 1, which sets out the Price for the Goods and Services to be provided by the Supplier to the Customer under this Contract as per the Design Proposal.

Services: the design, supply, delivery, installation, assembly and fitting of the Goods by the Supplier, as set out in the Contract Details and the Design Proposal at Schedule 2, including any services which are incidental or ancillary to such services.

Services Commencement Date: the estimated date on which the Goods will be delivered to the Location and the Services will commence, as set out in the Contract Details.

Services Completion Date: the estimated date on which the Supplier shall complete the Services, as set out in the Contract Details.

Specification: the specification for, and features or description of, the Goods and Services as set out in the Design Proposal at Schedule 2 (or in any amended Design Proposal that is expressly agreed in writing between the Supplier and the Customer in accordance with the change control procedure set out in clause 9).

Warranty Period: as set out in the Contract Details.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Interpretation:

- (a) Except where expressly stated otherwise in this Contract, a reference to a statute or statutory provision is a reference to such statute or provision as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (b) Any phrase introduced by 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.



(c) A reference to **writing** or **written** includes emails.

2. Commencement and Term

2.1 Subject to clause 2.2, this Contract shall take effect on the date on which it has been signed by both parties and shall terminate automatically on the date on which the Services are completed and payment has been made in full by the Customer.

2.2 If, with the consent or knowledge of the Customer, the Supplier commences any part of the Services prior to the date on which this Contract is signed by both parties, the Customer will be deemed to have accepted all the terms of this Contract and this Contract will be deemed to take effect from the date on which the Supplier starts to provide the Services.

3. The Services

3.1 The Supplier shall provide the Goods and Services:

- (a) using reasonable skill and care;
- (b) in accordance with this Contract in all material respects; and
- (c) to conform in all material respects to the EN1176 standards (relating to playground equipment and surfacing) in force on the date on which this Contract comes into effect (but not to conform to any other local or international standards unless they have been notified to and expressly agreed with the Supplier in accordance with clause 3.2).

3.2 If the Goods and/or Services are required to comply with any health and safety or other standards, laws or regulations (whether local or international) that are applicable to them at the Location or in the country where the Location is located (or if the Customer wishes the Goods and/or Services to comply with any such standards, laws or regulations), the Supplier shall be under no obligation to ensure any such compliance (and shall have no liability whatsoever in this regard) unless: (a) such standards, laws and/or regulations have been notified in writing by the Customer to the Supplier prior to the entering into of this Contract; and (b) the Supplier has expressly agreed in writing in the Contract Details or Design Proposal to ensure such compliance. If, after this Contract has been entered into, the Customer wishes to ensure that the Goods and/or Services comply with any applicable laws, regulations or standards other than the EN1176 standards, it shall follow the change control procedure at clause 9.

3.3 If the Customer wishes to make any change to the Design Proposal, it shall follow the change control procedure at clause 9. The effect on the Price of any such change will be notified by the Supplier in the Change Order and payable by the Customer. The Supplier may make reasonable charges for the time it spends on amending the Design Proposal.



- 3.4 The Supplier shall use reasonable endeavours to meet the Services Commencement Date, the Services Completion Date and any other agreed milestones or deadlines, but any such dates are reasonable estimates only and not guarantees. Time for performance by the Supplier shall not be of the essence of this agreement (unless otherwise expressly agreed in writing by the Supplier) and, accordingly, the Supplier does not accept any liability for any delay unless it is directly caused by the Supplier's negligence or breach of contract.
- 3.5 The Supplier shall not be liable for any delay in the supply of any or all of the Goods or Services that is caused by:
- (a) a Force Majeure Event; or
 - (b) the Customer's failure to provide the Supplier with adequate instructions or information relevant to such supply;
 - (c) the Customer's failure to ensure that the Location is ready for the delivery and installation of the Goods and Services (as required by the Supplier) on the Services Commencement Date or on such other date that has been agreed between the parties as the date on which the Goods will be delivered and/or the Services will commence; or
 - (d) the Customer's failure to provide exclusive and unobstructed access to the Location if required by the Supplier for the proper provision of the Services.
- 3.6 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Location or any of the Customer's other premises and that have been communicated to it, provided that it shall not be liable under this Contract if, as a result of such observation, it is in breach of any of its obligations under this Contract.
- 3.7 Once the Goods have been installed at the Location or during the installation of the Goods, the Supplier accepts no responsibility for, and shall not be under any obligation to rectify, any damage or other issues caused to the Goods, the installation or the Services where such damage or other issues are caused by the Customer's employees, agents, contractors or any party other than the Supplier.
- 3.8 As part of the Price, the Supplier shall carry out one full clean of the installed Goods upon full completion of the Services. The Customer acknowledges that the Supplier shall be under no obligation to carry out any further cleans (without further charge), including in circumstances where, subsequent to the clean, the Customer's employees, agents or contractors or any third party have failed to keep the installed Goods clean and fit for use.



4. The Goods

- 4.1 The Supplier shall, in all material respects, manufacture and/or supply the Goods in accordance with the Specification and the Design Proposal.
- 4.2 All drawings, colours, descriptive matter, styles, dimensions and advertising produced by the Supplier (including in the Design Proposal) and any descriptions, colours, drawings or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 4.3 The Customer acknowledges and agrees that although the Supplier has used reasonable endeavours to display the colours of the Goods accurately in the Design Proposal, any electronic display of colours may not accurately reflect the actual colours of the Goods, and the Supplier shall have no liability in this regard.
- 4.4 All sizes provided by the Supplier in the Design Proposal are intended to be reasonably approximate. The Supplier shall have no liability to the Customer for minor variations during the course of manufacture.
- 4.5 Although the Supplier will use reasonable endeavours to ensure that the design and dimensions of the Goods (as set out in the Design Proposal) are appropriate for and shall fit the Location, it is solely the responsibility of the Customer to check the size, dimensions and measurements of the Location and that the design and dimensions of the Goods (as set out in the Design Proposal) are appropriate for and shall fit the Location. Accordingly, the Supplier shall have no liability if the Goods fail to fit in the Location (provided that the Goods conform in all material respects to their dimensions as outlined in the Design Proposal).
- 4.6 Without prejudice to the generality of clause 4.5 above, if the Customer has provided to the Supplier the dimensions and measurements of the Location, the Supplier shall (a) be entitled to rely on those dimensions and measurements as being accurate and complete in all respects; and (b) not be obliged to double check them. If, subsequently, the Goods fail to fit in or be appropriate for the Location because of any inaccuracies or incompleteness in the dimensions or measurements provided by the Customer, the Supplier shall have no responsibility or liability in this regard.
- 4.7 To the extent that the Goods are manufactured and/or supplied to the Customer's design, drawing, measurements or specification, no warranty is given or implied as to their suitability for the purpose for which they are used by the Customer.
- 4.8 To the extent that the Goods are to be manufactured in accordance with a design or specification supplied by the Customer, the Customer shall indemnify the Supplier 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 other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of such design or specification. This clause 4.8 shall survive termination of the Contract.

- 4.9 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

5. Customer's Obligations

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Goods and the Services;
- (b) if requested by the Supplier, promptly approve any designs or plans (or any amendments to any such designs or plans) in relation to the provision of the Services;
- (c) appoint a manager for the Services who shall have the authority to contractually bind the Customer on matters relating to the Goods and the Services (including by signing Change Orders);
- (d) ensure that the Location is ready for delivery and installation of the Goods on the Services Commencement Date or on any other agreed date or dates;
- (e) give to the Supplier clear and accurate instructions for the delivery of the Goods and ensure that a competent person is present at the delivery location to accept the Goods on delivery;
- (f) ensure that the Supplier (and its agents, subcontractors, consultants and employees) have exclusive and unobstructed access to the Location as required by the Supplier for the provision of the Services;
- (g) give the Supplier at least 20 Business Days' written notice if it wishes to change the Services Commencement Date or any other date that has been agreed between the parties as the date on which the Goods will be delivered and/or the Services will commence. If the Customer fails to do so, without limiting any other rights or remedies that the Supplier may have, the Customer agrees that: (i) it shall be responsible for, and shall promptly reimburse the Supplier for, any shipping or other costs incurred by the Supplier as a result of such failure and (ii) shall remain liable to pay Invoice 2 on its original due date;
- (h) provide to the Supplier in a timely manner all documents, information, measurements, dimensions, items and materials in any form reasonably



required by the Supplier in connection with the Services and ensure that they are accurate and complete (and remain so at all times);

- (i) ensure that the Goods and/or Services comply with all health and safety and other standards, laws or regulations that are applicable to them at the Location or in the country where the Location is located, subject to clause 3.2;
- (j) inform the Supplier of all health and safety and security requirements that apply at the Location or any of the Customer's premises. If the Customer wishes to make a change to those requirements which will materially affect the provision of the Services, it can only do so via the change control procedure set out in clause 9;
- (k) comply with all applicable laws, statutes, regulations and standards from time to time in force when performing its obligations under the Contract;
- (l) if any of the Customer's Equipment is required for the performance of the Services, ensure that any such Customer's Equipment is in good working order, suitable for the purposes for which it is used in relation to the Services and in place or available on the days and at the times required by the Supplier;
- (m) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Goods and the use of any of the Customer's Equipment, in all cases before the Services Commencement Date;
- (n) check that the dimensions and measurements of the Goods as outlined in the Design Proposal will be appropriate for and fit the Location; and
- (o) during the Warranty Period and at all times thereafter:
 - (i) ensure that the Goods are used in a safe and appropriate manner by suitable persons taking into account their age, height, weight, physical and mental conditions and any other relevant factors;
 - (ii) ensure that the Goods are used in accordance with all applicable laws and regulations, including those relating to the care and supervision of children, and ensure that only a reasonable number of persons use the Goods at any one time under adequate supervision;
 - (iii) keep the Goods properly cleaned and maintained on a regular basis;
 - (iv) ensure that the Goods are inspected by a third party RPII inspector on a yearly basis to ensure that they comply with all applicable safety standards; and
 - (v) not allow the use of any Goods that are defective or suffering from visible damage.



5.2 If the Supplier's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer and shall have no liability to the Customer in this regard.

6. Warranty

6.1 The Supplier warrants that, for the Warranty Period, the Goods and Services shall, in all material respects:

- (a) conform with the Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

6.2 Subject to clause 6.3, if:

- (a) the Customer gives notice in writing to the Supplier, during the Warranty Period, promptly after discovery that some or all of the Goods or Services do not comply with the warranties set out in clause 6.1; and
- (b) the Supplier is given a reasonable opportunity of examining such Goods and/or Services,

the Supplier shall, at its option, repair or replace any Goods or Services that are found to be defective.

6.3 The Supplier shall not be liable for the failure of any Goods or Services to comply with the warranties set out in clause 6.1 if:

- (a) the Customer makes any further use of such Goods or Services after giving notice of defects in accordance with clause 6.2;
- (b) the defect or issue arises because the Customer (or any of its employees, agents or contractors) failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and/or maintenance of the Goods and/or Services (including those set out in clause 5.1) or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, dimension, measurement, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods or Services without the written consent of the Supplier;



- (e) the defect or issue arises as a result of fair wear and tear, wilful damage or negligence, or abnormal storage or working conditions;
 - (f) the defect or issue is caused by the act or omission of anyone other than the Supplier (such as an employee or contractor of the Customer or any third party or any user of the Goods);
 - (g) the Goods or Services differ from their description in the Specification as a result of changes made to ensure that they comply with applicable statutory or regulatory requirements; or
 - (h) clause 3.7 applies.
- 6.4 The Supplier's only liability to the Customer if the Goods or Services fail to comply with the warranties set out in clause 6.1 is as set out in this clause 6.
- 6.5 The terms of the Contract shall apply to any repaired or replacement Goods or Services supplied by the Supplier. For the avoidance of any doubt, the Warranty Period for such repaired or replacement Goods or Services shall remain as one year from the date on which the Services were completed.
- 6.6 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.
- 6.7 Except as expressly provided in this clause 6 and to the fullest extent permitted by law, all express and implied warranties, conditions, undertakings, and representations, whether statutory or otherwise, are hereby excluded and expressly disclaimed by the Supplier.
- 6.8 If the parties dispute whether any Goods or Services comply with clause 6.1, either party may refer the matter to a UK independent expert for determination. In such a case, the parties must first agree on who to appoint as an independent expert and agree with such expert the terms of their appointment.
- 6.9 If the Customer is a consumer, nothing in this clause 6 will affect or prejudice the Customer's legal rights.
- 7. Title and Risk**
- 7.1 Risk in the Goods shall pass to the Customer on completion of unloading the Goods at the Location.
- 7.2 Title to Goods shall only pass to the Customer once the Supplier receives the Price in full (in cash or cleared funds).



- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods as bailee for the Supplier;
 - (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (c) stand the Goods in the Customer's books in the name of the Supplier;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) or clause 13.2(c); and
 - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to the Goods and the ongoing financial position of the Customer.
- 7.4 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.3, and to recover any Goods in which property has not passed to the Customer.

8. Price and Payment

- 8.1 The Customer shall pay the Price for the Goods and the Services (as set out in Schedule 1) in accordance with the Contract Details and this clause 8.
- 8.2 Where special discount terms are agreed, the Customer must strictly adhere to such terms or otherwise shall not be eligible for the discount.
- 8.3 Unless expressly agreed otherwise by the Supplier in the Contract Details or Schedule 1, the Price excludes:
- (a) the costs of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the Price (and in respect of which the Supplier shall provide a reasonable estimate in Schedule 1 or on request);
 - (b) the costs of flights and accommodation for the Supplier's installation team, which shall be invoiced to the Customer in addition to the Price (and in respect of which the Supplier shall provide a reasonable estimate in Schedule 1 or on request);
 - (c) amounts in respect of VAT (if applicable), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate; and
 - (d) amounts in respect of any taxes or duties (including import taxes and customs duties) applicable to the delivery of the Goods to the Location or the provision of the Services that may be levied or charged in the UK or in the country of destination, which the Customer shall additionally be liable to pay to the Supplier.



- 8.4 The Supplier shall issue invoices to the Customer on the payment dates specified in the Contract Details.
- 8.5 The Customer shall pay each invoice in full in cleared funds on the terms and by the due date set out in the applicable invoice or (if no terms are specified in the invoice) as set out in the Contract Details. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies or rights under clause 11 or otherwise:
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%; and/or
 - (b) the Supplier may suspend the provision of the Goods and the Services until such payment has been made in full; and/or
 - (c) in relation to the Customer's failure to pay Invoice 2 by its due date, the Supplier shall not deliver or ship out the Goods until payment has been made in full by the Customer and, in such a case, the Customer shall be liable to pay to the Supplier on demand any extra shipping costs and any other costs incurred by the Supplier as a result of such failure to pay.
- 8.7 All amounts due under this agreement from the Customer to the Supplier 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). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

9. Change Control

- 9.1 Either party may propose changes to the Goods or the Services (including any change to the Design Proposal), but no proposed changes shall come into effect until a **Change Order** has been signed or expressly agreed via email by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Goods and/or the Services;
 - (b) the Price;
 - (c) the timetable of the supply of the Goods and/or the Services; and



- (d) any of the terms of this Contract.
- 9.2 If the Supplier wishes to make a change to the Goods and/or the Services, it shall provide a draft Change Order to the Customer.
- 9.3 If the Customer wishes to make a change to the Goods and/or the Services:
- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes; and
 - (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 9.3(a), provide a draft Change Order to the Customer.
- 9.4 If the parties:
- (a) agree to a Change Order, they shall sign it (or expressly agree to it via email) and that Change Order shall amend this Contract; or
 - (b) are unable to agree a Change Order (having acted reasonably and in good faith with each other), the change shall not be implemented.
- 9.5 The Supplier may make reasonable charges for the time it spends on preparing and negotiating Change Orders and amending the Design Proposal which implement changes proposed by the Customer pursuant to clause 9.3.

10. Limitation of liability

- 10.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 Except to the extent expressly stated in clause 6.1, all 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 hereby excluded.
- 10.3 Subject to clause 10.1:
- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any 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 or any indirect or consequential loss arising under or in connection with the Contract; and

- (b) the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed the Price paid by the Customer under this Contract.

10.4 If the Customer is a consumer, nothing in this clause 10 will affect or prejudice the Customer's legal rights.

11. Intellectual Property Rights

11.1 The Supplier shall own and retain ownership of all Intellectual Property Rights in all and any Materials (including the Design Proposal) prepared or developed by or on behalf of the Supplier and provided to the Customer: (a) as part of the Services; (b) in anticipation of or in connection with the Contract; or (c) prior to entering into the Contract.

11.2 The Supplier hereby grants to the Customer a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Contract to use the Materials for the purpose of receiving and benefiting from the Services. This licence shall end automatically upon the termination of the Contract.

11.3 The Supplier shall keep all Materials strictly confidential and shall not disclose or publish any Materials (or any part thereof) to any other person in any circumstances without the prior written consent of the Supplier.

12. Data Protection

Each party shall comply with all data protection laws and regulations that apply to the provision and receipt of the Services.

13. Termination or Cancellation Rights

13.1 The Customer shall have no right to terminate or cancel this Contract except in accordance with clause 13.2. If, despite being in breach of contract, the Customer decides to terminate or cancel the Contract, the Supplier shall be entitled to retain any part of the Price that has been paid by the Customer and seek immediate payment from the Customer of such part of the Price that is outstanding. This is without prejudice to any other rights or remedies that the Supplier may have under the Contract or otherwise.



- 13.2 Without limiting its other rights or remedies, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 13.4 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
- 13.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect, including clause 1, clause 3.7, clause 4.8, clause 5, clause 6, clause 7, clause 10, clause 11, clause 13 and clause 14.
- 13.6 In the event of termination of the Contract for any reason, the Customer acknowledges and agrees that none of the Materials shall be used by the Customer or disclosed to any third party in any circumstances.
- 13.7 Nothing in these Conditions shall affect any statutory rights of cancellation that the Customer may have if it is a consumer.



14. General

14.1 Force majeure. The Supplier shall not 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 results from a Force Majeure Event. The Supplier shall: (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and (b) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations. Provided such notice has been given by the Supplier, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

14.2 Assignment, sub-contracting and other dealings.

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

14.3 Confidentiality.

- (a) Except as permitted by clause 14.3(b), each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, intellectual property rights, affairs, customers, clients or suppliers of the other party (or of any member of the group to which the other party belongs), including any and all Materials (**Confidential Information**). For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's Confidential Information:
 - (i) to its employees, officers, representatives, suppliers, contractors or advisers who need to know such information for the sole purposes of exercising such party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, suppliers, contractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 14.3; and



- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use or copy any of the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14.4 Entire agreement.

- (a) This 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.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

14.5 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it 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. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.



- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, when left at the address referred in clause 14.8(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, at the time of transmission. If deemed receipt under this clause 14.8(b) would occur outside business hours in the place of receipt, it shall be deferred until business hours resume, and for this purpose business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.9 Third party rights. No one other than a party to this Contract shall have any right to enforce any of its terms.

14.10 Governing law. This 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.

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

