



THE PURCHASER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 13.

1. INTERPRETATION

1.1 In these General Terms the following definitions and rules of interpretation apply:

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>Company</b>	Apex Hydraulics Limited, a company registered in England and Wales (company number 2126278) whose registered office is at Tenter Fields, Thornhill Road Business Park, Dewsbury, West Yorkshire, WF12 9QT;
<b>Company Materials</b>	all materials, equipment, documents and other property of the Company;
<b>Deliverables</b>	the documents, products, materials or other deliverables produced from the Services;
<b>Delivery Location</b>	has the meaning set out in clause 5.2;
<b>Force Majeure Event</b>	an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors;
<b>General Terms</b>	these terms and conditions as amended from time to time in accordance with clause 16.11;
<b>Goods</b>	the goods to be purchased by the Purchaser from the Company, if any, set out in the Order;
<b>Insolvency Event</b>	for a party, any of the following events: (a) it is or admits that it is unable to pay its debts as defined in section 123 Insolvency Act 1986; (b) it takes any step with a view to renegotiating or compromising in satisfaction of its debts; (c) any step is taken in relation to its winding up, and (where capable of being set aside) is not set aside within 7 days; (d) any step is taken to appoint a

liquidator, administrator, receiver or administrative receiver, or any such officer is appointed, in each case over that party or any of its assets, (e) any other valid step is taken to enforce any security interest or otherwise enforce any debt in relation to that party or any of its assets; (f) it ceases or suspends or threatens to cease or suspend all or any material part of its business or payment of any of its debts; or (g) any step is taken in any jurisdiction that is the same or similar in effect to any of those set out above; or (h) (being a partnership) any Individual Insolvency Event affects a partner;

**Individual Insolvency Event**

for a party who is a natural person, any of the following events: (a) they are unable to or admit that they are unable to pay their debts or otherwise appear to have no reasonable prospect of being able to pay their debts in each case as defined in section 268 of the Insolvency Act 1986; (b) they take any step with a view to renegotiating or compromising in satisfaction of their debts; (c) a valid, written demand is made against them, and not discharged or set aside with 21 days; (d) a bankruptcy petition is filed or bankruptcy order is made relating to them; (e) they take any step to obtain a debt relief order, or a debt relief order is made relating to them; (f) any step is taken to appoint a receiver, or a receiver is appointed, in each case over any of their assets, (g) any other valid step is taken to enforce any security interest or otherwise enforce any debt in relation to them or any of their assets; (h) they cease or suspend or threaten to cease or suspend all or any material part of their business or payment of any of their debts; (i) any step is taken in any jurisdiction that is the same or similar in effect to any of those set out above; or (j) they die or by reason of any mental or physical ailment are incapable of managing their affairs;

**Intellectual Property Rights**

all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual

property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world from time to time;

<b>Order</b>	an order placed by the Purchaser for the supply of Goods and/or Services in accordance with clause 2.1;
<b>Purchaser</b>	the person or firm who purchases the Goods and/or Services from the Company;
<b>Repairs</b>	means repairs carried out by the Company in relation to third party goods other than those goods which have been supplied by the Company to the Purchaser pursuant to a Contract;
<b>Services</b>	the services to be supplied by the Company to the Purchaser, if any, as set out in the Order;
<b>Specification</b>	any specification for Goods and/or Services, including any related plans and drawings which are agreed in writing between the parties;
<b>Warranty Period</b>	means the Goods Warranty Period as defined in clause 6.2 or the Repairs Warranty Period as defined in clause 6.3 (as the case may be);

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. **BASIS OF CONTRACT**

2.1 The Purchaser can request the Company to provide the Purchaser with Goods and/or Services by:

- (a) sending to the Company a written order (by post, fax or e-mail);
- (b) providing written or verbal acceptance of the Company's quotation; or

(c) placing an order with the Company by telephone,  
(each an **Order**).

- 2.2 The Order constitutes an offer by the Purchaser to purchase the Goods and/or Services. The Order shall only be deemed accepted when the Company issues written acceptance of the Order, at which point and on which date the contract shall come into existence. Each Order which is accepted by the Company will be governed by the Order, these General Terms and any other document expressly stated in writing by the Company to form part of the arrangement between the Company and the Purchaser (each, a **Contract**). Any quotation given by the Company shall not constitute an offer, and is only valid (subject to prior revocation by the Company acting in its sole discretion) for a period of 30 days from its date of issue.
- 2.3 Once a Contract has been formed, an Order can only be modified or cancelled by the Purchaser with the prior written consent of the Company. The Company is entitled to charge the Purchaser for modifications in accordance with clause 10.2, or, to be reimbursed for any reasonable costs already incurred in the case of cancellation.
- 2.4 In the event of any conflict or inconsistency between the terms of the Order, these General Terms and any other document expressly stated in writing by the Company to form part of the arrangement between the Company and the Purchaser (**Contractual Document**), the terms of the Order shall prevail over these General Terms and any Contractual Document in that order.
- 2.5 The Contract applies to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Contract constitutes the entire agreement between the parties in relation to its subject matter. The Purchaser acknowledges that the Purchaser has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Any preliminary specifications, samples, drawings, particulars of weights and dimensions, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or any other contract between the Company and the Purchaser for the supply of the Goods and/or Services.

### 3. **SUPPLY OF GOODS AND/OR SERVICES**

- 3.1 The Company shall use its reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for delivery of Goods and/or performance of Services.
- 3.2 The Company shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and/or Services.

#### 4. **GOODS SPECIFICATION**

- 4.1 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Purchaser, or prepared by the Company at the Purchaser's request and in accordance with the Purchaser's instructions:
- (a) the Purchaser shall be solely responsible for ensuring that the Goods are suitable for the purpose and environment intended and the Company shall not be liable (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) if the Goods are not fit for a particular purpose or environment whether or not such purpose or environment was made known to the Company; and
  - (b) the Purchaser shall indemnify the Company in full and on-demand 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 and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's rights (including its Intellectual Property Rights) arising out of or in connection with the Company's use of or compliance with the Specification whether or not the Company has agreed to or confirmed the Specification.

#### 5. **DELIVERY OF GOODS**

- 5.1 The Company shall ensure that each delivery of Goods is accompanied by a delivery note which shows all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.2 The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (the **Delivery Location**) at any time after the Company notifies the Purchaser that the Goods are ready. If no delivery location is set out in the quotation or has been agreed by the parties, the Delivery Location shall mean the site of the Company's premises.
- 5.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location (**Delivery**).
- 5.4 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 5.5 If the Purchaser fails to take delivery of the Goods within 3 Business Days of the Company notifying the Purchaser that the Goods are ready, then, except where such failure or delay is caused by the Company's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3rd Business Day after the day on which the Company notified the Purchaser that the Goods were ready; and

(b) the Company shall store the Goods until Delivery takes place, and charge the Purchaser for all related costs and expenses (including insurance).

5.6 If, 10 Business Days after the day on which the Company notified the Purchaser that the Goods were ready for delivery, the Purchaser has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the charges for the Goods or charge the Purchaser for any shortfall below the charges for the Goods.

5.7 The Purchaser 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 Purchaser to cancel any other instalment.

## 6. **WARRANTIES**

### **Goods**

6.1 In respect of Goods manufactured and supplied by third parties, the Company shall (to the extent it is entitled to do so, and subject to clause 6.2 below), assign to the Purchaser the benefit of warranties received from its third party supplier(s) of the Goods (**Third Party Warranty**).

6.2 Where:

- (a) no Third Party Warranty is provided to the Company from its third party supplier(s) of the Goods;
- (b) the Company alters or integrates any third party Goods into other products or systems supplied by the Company; or
- (c) the Goods are manufactured by the Company,

then (save where the Company has agreed otherwise in writing), the Company warrants that the Goods shall, for a period of 12 months from Delivery (the **Goods Warranty Period**) be free from material defects in design, material and workmanship.

### **Repairs**

6.3 Where the Company carries out Repairs as part of the Services, then (save where the Company has agreed otherwise in writing), the Company warrants that the Repairs shall, for a period of 6 months from completion of the Repairs (the **Repairs Warranty Period**) be free from material defects in material and workmanship.

6.4 Subject to clause 6.5, if:

- (a) the Purchaser gives notice in writing to the Company during the Warranty Period that some or all of the Goods or Repairs do not comply with the warranty set out in clause 6.1, 6.2 or 6.3 (as applicable);
- (b) the Company is given a reasonable opportunity of examining such Goods or Repairs (as applicable); and

- (c) the Purchaser (where applicable and if asked to do so by the Company) returns such Goods to the Company's place of business at the Purchaser's cost,

the Company shall, at its option, repair or replace the defective Goods or Repairs (as applicable), or refund the price of the defective Goods or Repairs (as applicable) in full and this shall constitute the Purchaser's exclusive remedy in the event that the Goods or Repairs do not comply with the warranty.

6.5 The Company shall not be liable for Goods' or Repairs' (as applicable) failure to comply with the warranty set out in clause 6.1, 6.2 or 6.3 (as applicable) in any of the following events:

- (a) if the Purchaser makes any further use of such Goods after giving notice in accordance with clause 6.4;
- (b) the defect arises because the Purchaser failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Company following any drawing, design or Specification supplied by the Purchaser;
- (d) the Purchaser alters, modifies or repairs such Goods or combines or uses them with any third party products without the written consent of the Company;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence (except for the Company's negligence), or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

and for the purpose of this clause 6.5, a reference to Goods shall include those third party goods in relation to which the Company has carried out Repairs.

6.6 Except as provided in this clause 6 and 13.1, the Company shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 6.1, 6.2 or 6.3 (as applicable).

6.7 This terms of this clause 6 shall apply to any repaired or replacement Goods supplied by the Company pursuant to clause 6.4.

6.8 The Company warrants that the Services will be provided using reasonable care and skill.

## 7. **TITLE AND RISK**

7.1 The risk in the Goods shall pass to the Purchaser on Delivery.

7.2 Legal and beneficial title to the Goods shall not pass to the Purchaser until the Company has received payment in full (in cash or cleared funds) for:

- (a) the Goods; and

- (b) any other goods, services and Deliverables that the Company has supplied to the Purchaser in respect of which payment has become due.

## 8. RETENTION OF TITLE

8.1 Until the date on which legal and beneficial title to the Goods and Deliverables pass to the Purchaser in accordance with clause 7.2 above, the Company shall retain the legal and beneficial title to the Goods and Deliverables and the Purchaser shall:

- (a) insure the Goods and Deliverables for their full replacement value with a reputable insurance company and ensure the Company's interest in the Goods and Deliverables is noted on the policy;
- (b) if the Goods and/or Deliverables are destroyed by an insured risk, hold the insurance proceeds on trust for the Company and separately from all other monies;
- (c) hold the Goods and Deliverables on a fiduciary basis as the Company's bailee;
- (d) not incorporate the Goods or Deliverables into any other items;
- (e) store the Goods and Deliverables at the Purchaser's own cost separately from other property and in such manner so as to ensure that the Goods and Deliverables remain readily identifiable as the Company's property;
- (f) not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods or Deliverables;
- (g) ensure that the Goods and Deliverables remain in satisfactory condition;
- (h) not sell or purport to sell the Goods or Deliverables to a third party;
- (i) not create or purport to create any lien, charge or other encumbrance over or otherwise affecting the Goods or Deliverables;
- (j) notify the Company immediately if the Purchaser becomes subject to an Insolvency Event;
- (k) immediately provide the Company with such information relating to the Goods and Deliverables as the Company may require from time to time; and
- (l) notwithstanding clause 8.1(d) and 8.1(h) hold as trustee for the Company any proceeds of sale of the Goods and/or Deliverables to the level of sums owed to the Company in a trust account separate from other monies.

8.2 The Company may trace the proceeds of any sale or purported sale of the Goods and/or Deliverables that the Purchaser receives into any bank or other account which the Purchaser maintains.

8.3 The Company may, where title to the Goods and/or Deliverables remains with the Company, recover and resell the Goods and/or Deliverables, and the Purchaser hereby grants to the



Company an irrevocable licence to enter any premises owned and/or controlled by the Purchaser in order to for the Company to exercise its rights pursuant to this clause 8.3.

## 9. THE PURCHASER'S OBLIGATIONS

9.1 The Purchaser shall:

- (a) co-operate with the Company in all matters relating to the Goods and/or Services;
- (b) provide the Company, in a timely manner, with such information and materials as the Company may reasonably require in order to supply the Goods and/or Services, and ensure that it is complete, accurate in all respects and may be relied upon by the Company in providing the Goods and/or performing the Services including any specification or information in the Order that the Purchaser provides;
- (c) provide the Company, its employees, agents, consultants and sub-contractors with access to the relevant premises and other facilities as reasonably required by the Company to provide the Services;
- (d) prepare the relevant premises for the delivery of Goods and/or supply of the Services;
- (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Goods and the use of the Purchaser's equipment with the Goods.

9.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Purchaser or failure by the Purchaser to perform any relevant obligation (the **Purchaser's Default**):

- (a) the Company shall without limiting its other rights or remedies have the right to suspend delivery of the Goods and/or performance of the Services until the Purchaser remedies the Purchaser's Default, and to rely on the Purchaser's Default to relieve it from the performance of any of its obligations to the extent the Purchaser's Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Purchaser arising directly or indirectly from the Company's failure or delay to perform any of its obligations; and
- (c) the Purchaser shall reimburse the Company in full on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Purchaser's Default.

## 10. CHARGES

10.1 The charges for the Goods shall be the price set out in the Company's quotation. If no price is quoted, the charges for the Goods shall be as reasonably specified by the Company.

- 10.2 The Company reserves the right to increase the price of the Goods or Services, by giving notice to the Purchaser at any time before Delivery to reflect any increase in the cost of the Goods or Services to the Company that is due to:
- (a) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs);
  - (b) any request by the Purchaser to change the delivery date(s), quantities or types of Goods or Services ordered or the Specification; or
  - (c) any delay caused by any instructions of the Purchaser in respect of the Goods or Services or failure by the Purchaser to give the Company adequate or accurate information or instructions in respect of the Goods or Services.
- 10.3 The price of the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods which shall be paid by the Customer when it pays for the Goods. The Company shall notify the Purchaser of the mode of delivery of the Goods prior to Delivery. Prior to Delivery, the Company and the Customer shall agree in writing the charges for delivery but where no charges are agreed, the charges shall be as reasonably specified by the Customer.
- 10.4 The charges for the Services shall be as set out in the Company's quotation for such Services. If the charges for the Services are not quoted, or any such quote is stated to be an approximation only, the Services shall be provided on the following time and materials basis:
- (a) the charges shall be calculated in accordance with the Company's standard daily fee rates, as amended from time to time;
  - (b) the Company's standard daily fee rates for each individual are calculated on the basis of an eight and half hour day from 8.00am to 4.30 pm worked on Business Days; and
  - (c) the Company shall be entitled to charge its overtime rate for work done outside the hours referred to in clause 10.4(b);
  - (d) the Company shall be entitled to charge the Company for any expenses reasonably incurred by any individual whom the Company engages in connection with the Services, including but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses,
- 10.5 Where the Company carries out 'fault finding' as part of the Services, the Company shall still be entitled to the charges in accordance with clause 10.4 where, upon investigation, no such fault is found.
- 10.6 Where the Purchaser has requested repair services, the Company may undertake a "Strip and Quote Service" to assess the repairs needed and to provide a quote for the same but will notify the Purchaser before doing so. Where the Company undertakes such "Strip and Quote Service", unless agreed otherwise in writing, the "Strip and Quote Service" shall be provided free of charge PROVIDED THAT the Company reserves the right to charge for such "Strip

and Quote Service” where the Purchaser decides not to proceed with the repairs and, in the Company’s reasonable opinion, the “Strip and Quote Service” was particularly time consuming or complex.

- 10.7 The Company shall invoice the Purchaser for the charges. Except where otherwise agreed in writing by the Company, the Purchaser shall pay each invoice submitted by the Company:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Company.
- 10.8 All amounts payable by the Purchaser under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**), which shall be payable in addition by the Purchaser.
- 10.9 Without prejudice to any other right or remedy that it may have, if the Purchaser fails to pay the Company on the due date, the Company may:
- (a) claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
  - (b) with immediate effect suspend the provision of Goods and/or all Services until the Company has received all such overdue sums in cleared funds.
- 10.10 The Purchaser shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Purchaser shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Purchaser against any amount payable by the Company to the Purchaser.

## 11. **INTELLECTUAL PROPERTY RIGHTS**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (including the Deliverables and the Company Material) shall (as between the Purchaser and the Company) be the exclusive property of and owned by the Company. Subject to clause 11.2, with effect from full payment by the Purchaser of the charges, the Company licenses all such rights to the Purchaser free of charge (save in respect of the charges) and on a personal, non-exclusive, worldwide basis only to such extent as is necessary to enable the Purchaser to make reasonable use of the Deliverables and the Services.
- 11.2 The Purchaser acknowledges that, in respect of any third party Intellectual Property Rights, the Purchaser’s use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Purchaser and that any such licence will be subject to the relevant licensor’s terms.

12. **CONFIDENTIALITY**

12.1 Each party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes information or documentation which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain and shall only use the same for the purposes of the Contract. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

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

13.1 Nothing in the Contract shall limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979.

13.2 Subject to clause 13.1:

- (a) the Company shall not be liable to the Purchaser or any person claiming through the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract or any collateral contract; and
- (b) the Company's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract or any collateral contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall:
  - (i) not exceed the value of the Contract to which the claim relates; and
  - (ii) shall be subject always to a maximum cap of £2,000,000.

13.3 Except as set out in the Contract, all warranties, conditions and other terms implied by statute or common law in the Purchaser's favour are, to the fullest extent permitted by law, excluded from the Contract.

14. **TERMINATION**

14.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Purchaser if:

- (a) the Purchaser fails to pay any amount due under the Contract on the due date for payment;
- (b) the Purchaser commits a material breach of the Contract and (if such a breach is remediable) the Purchaser fails to remedy that breach within 10 Business Days of being notified in writing of the breach; or
- (c) the Purchaser suffers an Insolvency Event or Individual Insolvency Event (as the case may be).

14.2 Without limiting its other rights or remedies, the Company shall have the right to suspend provision of the Goods and/or performance of the Services (or any part of them) under the Contract or any other contract between the Purchaser and the Company if the Purchaser becomes subject to an Insolvency Event or Individual Insolvency Event (as the case may be), or the Company reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under the Contract on the due date for payment, or if the Purchaser breaches any term of the Contract.

## 15. **CONSEQUENCES OF TERMINATION**

15.1 On termination of the Contract for any reason:

- (a) the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and/or Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Purchaser immediately on receipt;
- (b) the Purchaser shall return all of the Company Materials. If the Purchaser fails to do so, then the Company may enter the Purchaser's premises and take possession of them. Until they have been returned, the Purchaser shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect including clauses 2.4, 4, 6, 7.2, 8, 11, 12, 13, 15 and 16.

## 16. **GENERAL**

16.1 The Company shall not be liable to the Purchaser as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

16.2 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

- 16.3 The Purchaser shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of the Purchaser's rights or obligations under the Contract.
- 16.4 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, to its registered office (if a company) or (in any other case) its principal place of business. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. This clause 12.4 shall not apply to the service of any proceedings or other documents in any legal action.
- 16.5 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.6 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 16.7 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.8 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 16.9 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.10 A person who is not a party to the Contract shall not have any rights under or in connection with it whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.11 No servant or agent of the Company has any authority to give any warranty or representation in relation to the Goods or Services or to agree any oral variation to the Contract. Any variation, including the introduction of any additional warranties, terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Company (by a Director or other person duly authorised by the Company) and the Purchaser.

16.12 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales and the parties irrevocably submit to the non- exclusive jurisdiction of the courts of England and Wales.