

The Customer's attention is particularly drawn to the provisions of clause 14.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Contract: the contract between the Supplier and the Customer for the supply of Products and/or Services comprised of the Supplier's Written Acknowledgment and these Conditions.

Customer: the person or firm who purchases the Products and/or Services from the Supplier.

Deliverables: the deliverables set out in the Contract, for example the instruction manual or maintenance log book for a System.

Existing system: any existing extraction system (or part thereof) installed at the Premises.

Facilities: working space, heat, light, ventilation, electrical power as required by the manufacturers recommendations for the System, within a reasonable distance of the System, and access and use of them to the extent that the Supplier needs to do so in order to perform the Services.

Force Majeure Event: has the meaning given to it in clause 17.1(a).

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.

Order: the Customer's order for the supply of Products and/or Services, being the Customer's acceptance of the Quotation.

Premises: the premises specified in the Order.

Product(s): the product(s) (or any part of them) set out in the Order.

Products Specification: any specification for the Products, including any relevant plans or drawings, agreed in writing by the Customer and the Supplier.

Quotation: the Suppliers quotation for the Products and/or Services

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

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Nederman Limited, registered in England and Wales with company number 01393492 whose registered office is at 91 Seedlee Road, Walton Summit Centre, Bamber Bridge, Preston, PR5 8AE.

Supplier Materials: has the meaning set out in clause 9.1(k).

System: the Products installed at the Premises during the term of this Agreement by the Supplier.

1.2 In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its 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; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Products and/or Services in accordance with these Conditions. For the avoidance of doubt, the Supplier provides three separate offerings to its Customers:

- (a) Product, -contracts for the provision of Products;
- (b) Services, -contracts for the provision of Services including repair or maintenance of a System;

- (c) Solutions, being contracts for the provision of Products and Services namely the supply and installation of extraction systems.
- 2.2 The Order shall only be deemed to be accepted by the Supplier at the earlier of:
 - (a) the Supplier issues written acknowledgement of the Order;
 - (b) the Supplier delivers the Products (all or part thereof) or commences delivery of the Services;at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any:
 - (a) descriptions, technical data sheets, weights and dimensions of the Products; or
 - (b) illustrations or descriptions of the Servicescontained in the Supplier's catalogues or brochures or other literature, are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of:
 - (a) 30 Business Days from its date of issue for quotes for the provision of Products or Services (not Products and Services); and
 - (b) 60 Business Days from its date of issue for quotes for the provision of Products and Services.

3. PRODUCTS

- 3.1 The Products are described in the Order.
- 3.2 To the extent that the Products are to be manufactured in accordance with a 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 and other 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 the specification. This clause 3.2 shall survive termination of the Contract.

4. DELIVERY OF PRODUCTS

4.1 The Supplier shall ensure that:

- (a) each delivery of the Products is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Products remaining to be delivered; and
- (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall deliver the Products to the Premises or such other address agreed in writing between the parties.

4.3 For the avoidance of doubt, the Premises may be the Supplier's business premises, and in those circumstances the Products will be made available for collection by the Customer during the Suppliers normal working hours.

4.4 Delivery of the Products shall be completed on the Products' arrival at the Premises.

4.5 Any dates quoted for delivery of the Products are approximate only, and in this clause 4.4 time is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

4.6 If the Customer fails to accept or take delivery of the Products within 20 Business Days of the Supplier notifying the Customer that the Products are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Products:

- (a) delivery of the Products shall be deemed to have been completed at 9.00am on the 20th Business Day following the day on which the Supplier notified the Customer that the Products were ready for delivery; and
 - (b) the Supplier shall store the Products until delivery takes place, and may (at its discretion) charge the Customer for all related costs and expenses (including insurance).
- 4.7 The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. SUPPLY OF PRODUCTS

5.1 The Supplier warrants that on delivery, and for period of 12 months from the date of delivery (**Warranty Period**), the Products shall:

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

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Products; and
- (c) the Customer (if reasonably requested to do so by the Supplier) returns such Products to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option repair or replace the defective Products (or parts thereof), or refund the price of the defective Products (or parts thereof) in full.

5.3 The Supplier shall not be liable for the Products' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of the Products after serving a notice under clause 5.2;
- (b) the defect arises as a result of Customer failing to follow the Manufacturer or Supplier's oral or written instructions as to the storage, installation,

commissioning, use or maintenance of the Products or (if there are none) good trade practice;

- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs the Products without the prior written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Products differ from any specification set out in the Order as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
- (g) and to the extent that the fault is to the Electrical Motor and the Customer has failed to comply with clause 9.1(o).

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Products (or parts thereof) supplied by the Supplier under clause 5.2.

5.6 The Supplier reserves the right to amend the specification of the Products as set out in the Order if required by any applicable statutory or regulatory requirements.

5.7 The Products are intended for use in the United Kingdom and the Supplier provides no warranties, express or implied, that the Products are suitable for use outside the United Kingdom, or comply with any laws, regulations or standards of any jurisdiction outside the United Kingdom.

5.8 In compliance with the WEEE Regulation 2006, the buyers accepts full and complete responsibility for the safe disposal of the product(s) purchased, as it's own cost, this responsibility having been charged by the producer, (company name), receiving no responsibility or liability for the end-of-life disposal of the equipment sold. The buyer is responsible for the costs of collection, treatment, recovery, recycling and environmentally sound disposal of any equipment.

6. TITLE AND RISK

6.1 Risk in the Products shall pass to the Customer on delivery.

6.2 Title to the Products shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) where the Contract is for Products exclusively, the Products; and
- (b) where the Contract is for a Solution, the Products and Services; and

- (c) where clause 6.2(a) or 6.2(b) applies, any other products that the Supplier has supplied to the Customer.

6.3 Until title to the Products has passed to the Customer, the Customer shall:

- (a) hold the Products on a fiduciary basis as the Supplier's bailee;
- (b) store the Products separately from all other goods held by the Customer (except where the Products have been installed into the Customer's premises by the Supplier) so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l) inclusive; and
- (f) provide the Supplier with such information relating to the Products as the Supplier may require from time to time,

but the Customer may resell or use the Products in the ordinary course of its business.

6.4 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may:

- (a) at any time require the Customer to deliver up the Products, and,
- (b) if the Customer fails to do so promptly, enter any Premises of the Customer or of any third party where the Products are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 The Supplier shall provide the Services to the Customer in accordance with the Order in all material respects.

7.2 The Supplier shall use its reasonable endeavours to meet any performance dates for the Services specified in the Order, but dates are estimates only and in this clause 7.2 time is not of the essence.

- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier shall not be liable to the extent that the Customer suffers any loss, including any delay in installation as a result of the Suppliers reliance upon designs, reports, plans, or other material provided by the Customer or its third party representatives.
- 7.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. SOLUTIONS

- 8.1 The Customer shall arrange for a representative to be at the Premises at the agreed time when the Services are to commence and during the provision of the Services. Such representative shall have authority to sign status reports produced by the Supplier. If the Customer fails to provide a representative it shall be deemed to accept the work to date as satisfactory.
- 8.2 Once the Supplier notifies the Customer that the System is installed, the Customer shall make a representative available to be trained by the Supplier on the operation of the System, such training concludes the provision of the Services, and for the avoidance of doubt any further training will be chargeable in accordance with applicable charging rates in force from time to time.
- 8.3 The Supplier does not guarantee to the Customer that:
- (a) particular losses or injuries will be prevented by using the System; or
 - (b) the System will work continuously and without errors, in particular where interruptions or errors are due to factors beyond the Suppliers reasonable control.
- 8.4 The Supplier will provide the Customer with one set of operating manuals for the System; any additional copies will be subject to an additional charge payable by the Customer.

9. CUSTOMER'S OBLIGATIONS

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

- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) prepare the Customer's premises for the supply of the Services;
- (e) provide the Supplier with:
 - (i) such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects including information concerning health and safety aspects of attending at the Customers premises,
 - (ii) clear access to the Premises for offloading and installation,
 - (iii) the Facilities,to provide the Services;
- (f) ensure that the Premises have sufficient access for plant and operating equipment;
- (g) ensure the presence of asbestos (if any) at the Premises is reported to the Supplier, and made safe prior to the provision of the Services;
- (h) ensure that the Premises has a designated area suitable for the storage of Products and the Suppliers plant and machinery during the provision of Services;
- (i) ensure that the Premises can support the installation of and operation of the System;
- (j) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start including planning permission;
- (k) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (l) use its best endeavours to ensure that the Premises are safe for the provision of the Services. The Customer is also obliged to inform the Supplier and the location of any concealed pipes and wires which may affect the delivery of the Services and about any known risk and any hazardous materials at the Premises;

- (m) operate the System in accordance with any instructions issued by the Supplier and manufacturer of the Products.
- (n) not interfere with or permit any third party to interfere with, adjust, test, service or attempt to repair the System.
- (o) appoint suitably qualified Electrical contractor to complete the installation of the System in accordance with the IEE Wiring Regulations 17th Edition 2008 (as updated from time to time) and provide the Supplier with a copy of the Certificate of Inspection and Completion.
- (p) provides services as required under carries out the electrical installation in accordance with the IEE Wiring Regulations 17th Edition 2008 (as updated from time to time) and provides a certificate of inspection and completion).

9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default including those incurred by the Supplier (in its absolute discretion):
 - (i) in carrying out additional works to ensure clause 8.2 is satisfied;
 - (ii) in mobilising its employees, sub-contractors, Products, plant and machinery from the Premises in circumstances where the Supplier is in its absolute discretion unable to provide or continue the Services due to a Customer Default; and
 - (iii) in returning its employees, sub-contractors, Products, plant and machinery to the Premises, following the application of clause 9.2(c) (ii) above.

9.3 If the Customer has a complaint regarding the provision of Products and/or Services under this agreement or terms of this agreement then please contact the Supplier in writing and any complaint will be handled with in accordance with its complaints procedure set out in ISO 9001 from time to time in force.

10. CHARGES AND PAYMENT

10.1 The price for Products and/or Services shall be the price set out in the Order or, if no price is quoted, in the case of Products the price set out in the Supplier's published price list as at the date of delivery, or in the case of Services, the Suppliers standard daily fee rates, as set out in the Quotation, subject always to adjustment in accordance with this clause 10.

10.2 The Supplier reserves the right to:

- (a) increase charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer; and
- (b) increase the price of the Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Products ordered, or the Products Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Products or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Products.

10.3 The Supplier shall be entitled to charge the Customer for any additional Products supplied and/or Services provided which are over and above those set out in the Order, where such request for additional Products and/or Services has been made on Premises by the Customers site manager, in such circumstances, such Charges for Products and/or Services shall be on a time and materials basis:

- (a) the Charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Suppliers Quotation;
- (b) the Supplier's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.30 am to 5.00 pm worked on Business Days;
- (c) the Supplier shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.4 (b); and
- (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and
- (e) the Supplier shall be entitled to charge the Customer for any additional Products, at cost plus fifteen per cent.

10.4 Following Completion of the installation, the Supplier reserves the right to charge the Customer for labour and materials at the then prevailing rate where:

- (a) any replacement, repairs or modifications to the System are needed which are not covered under the Warranties' or needed as a result of a change in a relevant standard or regulation governing the System.
- (b) the System needs inspecting, resetting, repairing or replacing in circumstances where the Customer, its employees, agents, sub-contractors or workers failed to follow the operating instructions for the System;

10.5 Unless the Supplier agrees otherwise in writing, the Contract does not include:

- (a) any work involving building or civil engineering, (including cutting away brickwork, roofing, structural alterations and returning the same to weatherproof condition) electrical installation (including the mounting of the electrical control panel, providing HRC fused mains isolator and other electrical wiring) , concealing cables, decorating, plastering, building or carpentry works or connection with the installation, repair or maintenance of the System.. It is recommended that your suitably qualified electrician is on site during the provision of the Services and in particular your attention is drawn to clause 9.1(o);

- (b) crane hire or the provision and erection of any scaffolding, ladders, trestles and roof crawler boards or other equipment required to work at height, or a fork lift truck or operator or hire thereof;
- (c) compressed air connections.

11. PAYMENT

11.1 In respect of contracts for the provision of Products excluding Services:

- (a) the Supplier shall invoice the Customer on or at any time after completion of delivery.
- (b) the Customer shall pay each invoice submitted by the Supplier within 30 days of the date of invoice.

11.2 In respect of contracts for the provision of Services, excluding Products:

- (a) the Supplier shall invoice the Customer on or at any time after delivery of its Report to the Customer.
- (b) the Customer shall pay each invoice submitted by the Supplier within 30 days of the date of invoice.

11.3 In respect of contracts for the provision of Products and Services:

- (a) The Supplier shall invoice the Customer on or at any time after the Order is place, for up to 30% (thirty per cent) of the Order value;
- (b) The Customer shall pay such invoice under clause 11.3(a) within 5 business days of the date of invoice.
- (c) The Supplier shall invoice the Customer on or at any time after delivery of the Products for up to a further 60% of the Order value;
- (d) The Customer shall pay such invoice under clause 11.3(c) within 30 days of the date of invoice;
- (e) The Supplier shall invoice the Customer for the balance of the Order value on or at any time from Completion.
- (f) The Customer shall pay such invoice under clause 11.3(e) within 30 days of the date of invoice.

11.4 The Customer shall pay each invoice submitted by the Supplier in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

11.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer,

the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.

- 11.6 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge a late payment fee and interest on the overdue amount at the rate of 8% per cent per annum above the then current Skandinaviska Enskilda Banken's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly. The Supplier reserves the right to instruct a third party to recover any monies owing by the Customer and to pass onto the Customer any costs incurred as a result of instructing a third party to collect an overdue account.
- 11.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Products and/or Services shall be owned by the Supplier.
- 12.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 12.3 All Supplier Materials are the exclusive property of the Supplier including any designs of the System or modifications to an Existing System prepared by the Supplier.

13. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict

disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13 shall survive termination of the Contract.

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

14.1 Nothing in these Conditions 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;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Products and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Products Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

14.2 Subject to clause 14.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss including any economic loss or other loss of turnover, profits, business or goodwill arising under or in connection with the Contract ; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate sum payable by the Customer under this Contract.

14.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

14.4 For the avoidance of doubt, the Supplier does not accept any liability for damage unavoidably caused to decorations, fitting and the like at the Premises as a result of the installation of this System or the Suppliers in providing the Services.

14.5 This clause 14 shall survive termination of the Contract.

15. TERMINATION

15.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 90 days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(b) to clause 15.1(i) (inclusive);
 - (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 15.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- (a) by giving the Customer 1 months' written notice;
 - (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 15.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
 - (b) the Customer becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them.

Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16.2 The parties have agreed that where this Contract is in respect of a Solution, namely for the provision of Products and Services the Customer may terminate this agreement with notice (in accordance with clause 17.3) in writing, such notice taking effect on or before a day:

- (a) more than one month prior to the first planned due date for commencement of the work, SUBJECT TO the Customer paying the Supplier on demand 25% of the aggregate sum payable under this Contract;
- (b) one month or less, but more than 7 days prior to the due date for commencement of the work, SUBJECT TO the Customer paying the Supplier on demand 50% of the aggregate sum payable under this Contract,
- (c) seven days or less prior to the due date for commencement of the work, SUBJECT TO the Customer paying to the Supplier on demand 100% of the aggregate sum payable under this Contract.

16.3 The parties have agreed that where this Contract is in respect of Products or Services the Customer may terminate this Contract at any time prior to dispatch of the Products or provision of the Services, as applicable, on notice (in accordance with clause 17.3) in writing, SUBJECT TO the Customer paying to the Supplier on demand 25% of the aggregate sum payable under this Contract.

16.4 The parties have agreed that clause 16.2 and 16.3 represent a genuine pre-estimate of the loss which the Supplier may suffer in the event of termination of the contract.

17. GENERAL

17.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network,

act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Products for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

17.2 Assignment and subcontracting:

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

17.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 17.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall

not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

17.4 Waiver and cumulative remedies:

- (a) 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.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

17.5 Severance:

- (a) 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.
- (b) 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.

17.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

17.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

17.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English

law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.