

# Glowcroft Contract Packing

A DIVISION OF GLOWCROFT LIMITED

## STANDARD TERMS AND CONDITIONS

### 1. INTERPRETATION

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

#### 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.

**Commencement Date:** has the meaning given in clause 2.2.

**Company:** Glowcroft Limited incorporated and registered in England and Wales with company number 02494007 whose registered office is at Williamsport Way, Lion Barn Industrial Estate, Needham Market, Ipswich, Suffolk, IP6 8RW

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.8.

**Contract:** the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the company, person or firm who purchases the Goods and/or Services from the Company.

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 17.

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

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in the Contract by the Customer and the Company.

**Input Goods:** any goods agreed in the Contract to be supplied to the Company by the Customer for incorporation in the Goods or any part of them and identified in the Contract.

**Input Material:** any documents or other materials, data or other information, provided by the Customer in relation to the Services and/or Goods and identified in the Contract.

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

**Order:** the Customer's written acceptance of the Company's quotation, identifying and comprising the Goods Specification, Input Goods (if any), Input Material (if any), Output Material (if any) and Service Specification.

**Output Material:** any documents or other materials, data or other information, supplied by the Company or a third party (as authorised by the Company) to the Customer in relation to the Goods and/or Services and identified in the Contract.

**Services:** the services, supplied by the Company to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services that are agreed in the Contract by the Company to the Customer.

**VAT:** Value Added Tax or any similar replacement tax.

#### 1.2 Interpretation:

- A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its permitted assigns.
- A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- A reference to **writing or written** includes email.
- Words in the singular include the plural and in the plural include the singular.

### 2. BASIS OF CONTRACT

- The Order constitutes an offer by the Customer to

purchase Goods and/or Services in accordance with these Conditions.

- The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services that are not contained in the Goods Specification or Services Specification are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force unless otherwise stated.
- 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.
- Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3. GOODS

- The Goods are described in the Goods Specification.
- The Company reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Goods and the Company shall notify the Customer in any such event.

### 4. DELIVERY OF GOODS

- The Company shall ensure that:
  - each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the contract number and all relevant Customer and Company reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - states any requirement for the Customer to return any packaging material to the Company. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.
- The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Customer that the Goods are ready.
- Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location. The quantity of any consignment of goods as recorded by the Company shall be conclusive unless the Customer gives notice to the Company within 2 days of the delivery date with evidence to the contrary.
- Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions.
- Subject to clause 4.4 if the Company fails to deliver the Goods the Company's liability shall be limited to replacing the Goods within a reasonable time or issuing a credit note to the value of the Goods at the Contract rate against any invoice raised for such Goods.
- If the Customer fails to take delivery of the Goods within 5 Business Days of the Company notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:
  - delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Company notified the Customer that the Goods were ready; and
  - the Company shall store the Goods until delivery takes place (this may be off site at a third party), and charge the Customer for storage and all related costs and expenses (including insurance and transportation to third party storage facility). Any Goods that can be accommodated on site at the premises of the Company will be charged at £4.50 per pallet per week or part thereof.
- If 10 Business Days after the Company notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted 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 Customer

for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- If the Company delivers:
  - up to and including 10% more or less than the quantity of Goods ordered; or
  - up to and including 30% more or less than the quantity of digitally printed materials,ordered by the Customer then the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Company shall make a pro rata adjustment to the invoice for the Goods.
- The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- The Customer shall be liable to pay an archive storage fee to the Company where the Company is required by the Customer to store Input Goods or Input Material at any of the Company's premises.
- The Company will return any Input Goods and Input Material (as appropriate) to the Customer with the delivery of the Goods unless alternative arrangements have been previously agreed.
- In the event that alternative arrangements have been made pursuant to clause 4.11, the Company will charge for the return of Input Goods on outgoing pallets at the following rate: £6.00 per standard pallet and £8.50 per Euro pallet, and also reserves the right to charge for the return of any Input Material.

### 5. QUALITY OF GOODS

- The Company warrants that on delivery the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- Subject to clause 5.3, the Company shall, at its option, repair or replace any defective Goods (or the defective part of those Goods) or refund the price of the defective Goods in full (at the Contract rate) if:
  - the Customer gives notice in writing of the defect to the Company (including whether the defect has occurred as a result of damage in transit by the courier) within 5 Business Days of when the Customer discovered or ought to have discovered that some or all of the Goods do not comply with the warranty set out in clause 5.1;
  - the Company is given a reasonable opportunity of examining such Goods; and
  - the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business for examination at the Company's cost..
- The Company shall not be liable for the Goods' (or any part thereof) for failure to comply with the warranty in clause 5.1 if:
  - the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - the defect arises as a result of the Company using any Input Goods or Input Material or following any drawing, design or other material supplied by the Customer;
  - the Customer alters or repairs such Goods without the written consent of the Company;
  - the defect arises as a result of fair wear and tear, or the Customer is responsible for wilful damage, negligence, or abnormal working conditions;
  - the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
  - the Customer fails to provide correct or complete instructions;
  - the Input Material is inaccurate or the Customer has failed to supply the whole or any part of the Input Material; or
  - the Customer fails to supply the correct Input Goods stated in the Goods Specification or Services Specification.
- Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- Where the Company is not the manufacturer of the Goods the Company shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Company in relation to the Goods.

## 6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 6.2.1 the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery and produce such policy of insurance to the Company on demand;
- 6.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.4; and
- 6.3.5 give the Company such information relating to the Goods as the Company may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Company's agent; and
- 6.4.2 title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.4, then, without limiting any other right or remedy the Company may have:
- 6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 the Company may at any time:
- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, the Company may enter any premises of the Customer or of any third party (in which case the Customer shall, if the Company requires, procure a licence for the Company to do so) where the Goods are stored in order to recover them.

## 7. SUPPLY OF SERVICES

- 7.1 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.2 The Company shall supply the Services to the Customer in accordance with the Service Specification in all material respects, subject to the Customer having supplied all necessary "Input Material" and Input Goods relating to the Services or otherwise within the time period stated in the Service Specification to enable the Company to provide the Services in accordance with the Contract.
- 7.3 The Company shall have no liability (howsoever arising) to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from the use by the Company of any Input Material or Input Goods or other instructions (in whatever form) given by the Customer which are defective for any reason (including without limitation instructions which are incomplete, inaccurate, incorrect, unreliable, out of sequence, in the wrong form or otherwise not provided or provided late or any other matter which is due to the default of the Customer) and the Customer indemnifies the Company from and against all liability accordingly.
- 7.4 The Customer warrants the accuracy of the Input Material in all respects and shall retain duplicate copies of all Input Material and provide any extra copies as the Company shall require.
- 7.5 The Company gives no warranty in relation to the accuracy or otherwise of the Output Material.
- 7.6 The Company shall use all reasonable endeavours to meet any performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.7 The Company reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment

will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

- 7.8 Any stock taking of the Goods or the Input Goods undertaken by the Company on behalf of the Customer shall be subject to a margin of error of plus or minus 10%. The Company will produce a system generated stock report if requested by the Customer (limited to one per completed production run). The Company reserves the right to charge for any additional stock reports.
- 7.9 The Company will undertake a physical stock check of Goods or Input Goods if requested by the Customer at a charge of £12.50 per 10 pallets or part thereof.

## 8. CUSTOMER'S GENERAL OBLIGATIONS AND SUPPLY OF INPUT GOODS

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- 8.1.2 co-operate with the Company in all matters relating to the Services and Goods;
- 8.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services or supply the Goods;
- 8.1.4 provide the Company with all necessary Input Material and Input Goods together with such information and materials as the Company may reasonably require and in a timely manner in order to supply the Services and Goods, and ensure that such information is complete and accurate in all material respects;
- 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services and/or Goods before the date on which the Services are to start or the Goods are to be delivered;
- 8.1.6 comply with all applicable laws, including health and safety laws;
- 8.1.7 keep all materials, equipment, documents and other property of the Company (including Output Material) at the Customer's premises in safe custody at its own risk, maintain the same in good condition until returned to the Company, and not dispose of or use the same (including Output Materials) other than in accordance with the Company's written instructions or authorisation;
- 8.1.8 comply with any additional obligations as set out in the Service Specification and/or the Goods Specification;
- 8.1.9 unless otherwise agreed between the Company and the Customer in writing, the Customer shall supply to the Company 103 percent of the quantity of Input Goods specified in the quotation to allow for wastage during the manufacture of Goods;
- 8.1.10 the Company shall inspect the Input Goods on delivery and shall within 90 days of delivery notify the Client of any alleged defect, shortage in quantity or failure to comply with description or sample. For the avoidance of doubt, the Customer shall pay the reasonable costs incurred by the Company in relation to the testing of the Input Goods; and
- 8.2 Where the Customer fails to supply the required quality and/or quantity of Input Goods to the Company in sufficient time (2 business days before allocated production slot) to enable the Company to supply the Services and the Goods in accordance with the Contract, the Customer shall not be entitled to object to any failure by the Company to supply the Goods or to object or reject the Goods or any shortfall in the Goods delivered as a result.

## 9. CHARGES AND PAYMENT

- 9.1 The price for Goods:
- 9.1.1 shall be the price set out in the Order exclusive of VAT.
- 9.1.2 shall be exclusive of all costs and charges for packaging, insurance and transport of the Goods.
- 9.2 The price of the Services:
- 9.2.1 shall be the price set out in the Order exclusive of VAT.
- 9.2.2 calculated on a time and materials basis set out in the Service Specification.
- 9.3 The Company reserves the right to:
- 9.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index **OR** Average Earnings Index (as the Company shall provide) in the preceding 12-month period and the first such increase shall take effect on the

first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index or Average Earnings Index;

- 9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods 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, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
- 9.4 In respect of Goods, the Company shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Customer on completion of the Services or as the Company and the Customer have agreed in the Service Specification.
- 9.5 The Customer shall pay each invoice submitted by the Company:
- 9.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Company and confirmed in writing to the Customer; and
- 9.5.2 in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.

- 9.6 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 Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods.
- 9.7 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 15 (Termination), 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 9.7 will accrue each day at 5% a year above the Bank of England's base rate from time to time.
- 9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services and/or Goods including the Output Material (other than Intellectual Property Rights in any Input Material or Input Goods provided by the Customer) shall be owned by the Company or its licensors.
- 10.2 The property and all Intellectual Property Rights in any Input Material or Input Goods shall belong to the Customer or its licensors and any Output Material shall, unless otherwise agreed in writing between the Customer and the Company, belong to the Company or its licensors.
- 10.3 The Customer grants or shall procure the grant from its licensors to the Company of a fully paid-up, non-exclusive, royalty-free, worldwide, non-exclusive, non-transferable licence to copy, modify and use any Input Material and Input Goods for the purposes of supplying the Services and the Goods pursuant to the Contract.
- 10.4 The Company hereby grants to the Customer for a period of 2 years (insofar as it is legally entitled to do so) from the date of completion of the Services and/or delivery of the Goods a royalty-free, non-exclusive licence to use the Output Material anywhere in the European Union and the European Economic Area for the purpose of utilising the Services and/or Goods subject to payment in full of all sums payable under the Contract.
- 10.5 Any Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Customer.
- 10.6 The Customer warrants that any Input Material and the Customer's Intellectual Property Rights and their use by the Company for the purpose of supplying the Services and/or the Goods will not infringe the copyright or other rights of any third party and the Customer shall indemnify the Company from and against all liability in respect thereof.
- 10.7 To the extent that the Goods are to be manufactured using Input Goods with reference to Input Material supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs,

expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights. This clause 10.7 shall survive termination of the Contract.

## 11. INDEMNITY AND INSURANCE FOR INPUT GOODS AND INPUT MATERIALS

11.1 The Customer shall indemnify the Company from and against any and all direct, indirect or consequential loss, expense, liability, claims or proceedings incurred by the Company arising from breach of contract, negligence, or breach of statutory duty by the Customer in relation to any of the Customer's obligations under the Contract and also in relation to the supply of Input Goods and Input Material to the Company, including but not limited to any infestation or contamination of the Company's premises caused by the Input Goods.

11.2 The Customer shall be responsible at all times for insuring the Input Goods and Input Material for their full price against all risks.

## 12. DATA PROTECTION AND DATA PROCESSING

Each party agrees that in relation to the processing of any data pursuant to its rights and obligations under the terms of the Contract, it will comply with any applicable data protection legislation.

## 13. CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time OR at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person, any business, affairs of the other party (including without limitation the customers, suppliers of the other party) ("Confidential Information") except as permitted by clause 13.2.

13.2 Each party may disclose the other party's Confidential Information:

13.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 13; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under 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 Company's liability for:

14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

14.1.2 fraud or fraudulent misrepresentation;

14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

14.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

14.2 Subject to clause 14.1, the Company shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

14.2.1 loss of profits;

14.2.2 loss of sales or business;

14.2.3 loss of agreements or contracts;

14.2.4 loss of anticipated savings;

14.2.5 loss of use or corruption of software, data or information;

14.2.6 loss of or damage to goodwill; and

14.2.7 any indirect or consequential loss.

14.3 Subject to clause 14.1, the Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid under the Contract. For the avoidance of doubt, the Company shall not be liable for any damage to Input Goods or Input Material howsoever arising.

14.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 or terms otherwise implied by trade usage are, to the fullest extent permitted by law, excluded from the Contract.

14.5 This clause 14 shall survive termination of the Contract.

## 15. TERMINATION

15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the Customer not less than 12 weeks written notice.

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

15.2.1 the Customer commits a breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 5 days after receipt of notice in writing to do so;

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

15.2.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.2.4 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

15.2.5 the Customer fails to pay any amount due under the Contract on the due date for payment.

15.3 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if the Customer prevents the Company from performing any of its obligations under the Contract, fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2.21 to clause 15.2.4, or the Company reasonably believes that the Customer is about to become subject to any of them.

15.4 The Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 15.4; and

15.5 The Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the customer default.

## 16. CONSEQUENCES OF TERMINATION

16.1 On termination of the Contract:

16.1.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

16.1.2 the Customer shall return all of the Output Material or Goods which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises or the premises of any third party (in which case the Customer shall, if the Company requires, procure a licence for the Company to do so) 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.

16.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination.

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

## 17. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, including without limitation acts of God, government actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting couriers or inability or delay in obtaining supplies of adequate or suitable materials provided that if the event in question continues for a period in excess of 180 days the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 18. GENERAL

### 18.1 Assignment and other dealings

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

18.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

### 18.2 Notices.

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

18.2.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after transmission.

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

18.3 **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.

18.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

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

### 18.6 Entire agreement.

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

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

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

18.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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

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

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