

**HARTSHORNE MOTOR SERVICES LIMITED  
TERMS AND CONDITIONS FOR THE  
SUPPLY OF GOODS AND SERVICES**

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## 1 Interpretation

The following definitions and rules of interpretation apply in these Conditions.

Definitions:

<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>"Commencement Date"</b>	has the meaning given in clause 2.2.
<b>"Conditions"</b>	these terms and conditions as amended from time to time in accordance with clause 18.8.
<b>"Contract"</b>	the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.
<b>"Control"</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of Control</b> shall be construed accordingly.
<b>"Customer"</b>	Hartshorne Motor Services Limited registered in England and Wales with company number 00940949.
<b>"Customer Materials"</b>	has the meaning set out in clause 5.3.9.
<b>"Data Protection Legislation"</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

<b>"Deliverables"</b>	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
<b>"Delivery Location"</b>	has the meaning given in clause 4.2.2.
<b>"Due Date"</b>	has the meaning given in clause 8.4.
<b>"Expert"</b>	A suitably qualified member of the Institute of Purchasing Managers
<b>"Financial Position"</b>	has the meaning given in 15.2.4.
<b>"Goods"</b>	the goods (or any part of them) set out in the Order.
<b>"Goods Specification"</b>	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.
<b>"Intellectual Property Rights"</b>	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up , goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

<b>"Part"</b>	means any part, component, lubricant, assembled unit, accessory, tool, reconditioned unit or service exchange unit marketed by the Customer.
<b>"Product"</b>	means Vehicle and/or Part.
<b>"Order"</b>	the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.
<b>"Services"</b>	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
<b>"Service Specification"</b>	the description or specification for Services agreed in writing by the Customer and the Supplier.
<b>"Supplier"</b>	the person or firm from whom the Customer purchases the Goods and/or Services.
<b>"UK Data Protection Legislation"</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>"Vehicle"</b>	means a truck chassis or passenger carrying vehicle or passenger carrying vehicle chassis marketed by the Customer.

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 successors and 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 fax and email.

## 2 **Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

2.2.1 the Supplier issuing written acceptance of the Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

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

### **3 Supply of Goods**

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable Goods Specification;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

### **4 Delivery of Goods**

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

4.2.1 on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order;

4.2.2 to the Customer's premises at Hartshorne Motor Services Limited, Bentley Mill Close, Walsall WS2 0BN or such other location as is set out in the Order or as instructed by the Customer before delivery (the "**Delivery Location**"); and

4.2.3 during the Customer's normal hours of business or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier:

4.4.1 delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or

4.4.2 delivers more than 105% of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be



invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.

4.6 Title and risk in the Goods shall pass to the Customer on completion of delivery.

## 5 **Supply of Services**

5.1 The Supplier shall from the Commencement Date and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or the dates that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.

5.3 In providing the Services, the Supplier shall:

5.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;

5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

5.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or

transferred to the Customer, will be free from defects in workmanship, installation and design;

- 5.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 5.3.9 hold all Products, materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (the "**Customer Materials**") in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 5.3.10 accept that title to the Customer Materials shall never pass to the Supplier;
- 5.3.11 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;
- 5.3.12 shall notify the Customer in writing of any additional Services required and wait for a new Order to be provided by the Customer prior to commencing any additional Services; and
- 5.3.13 comply with any additional obligations as set out in the Service Specification.

## 6 **Customer rights and remedies**

- 6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights and remedies:
  - 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

- 6.1.3 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
  - 6.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
  - 6.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:
- 6.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - 6.2.3 to require the Supplier to repair or replace the rejected Goods, or if the Goods have been paid for, to provide a full refund of the price of the rejected Goods;
  - 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 6.2.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
  - 6.2.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.3 If the Supplier has supplied Services that do not comply with the requirements of clause 5.3.4 then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:
- 6.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

- 6.3.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
  - 6.3.3 to require the Supplier to provide repeat performance of the Services or, if the Services have been paid for, to provide a full refund of the price paid for the Services;
  - 6.3.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 6.3.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and
  - 6.3.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with clause 5.3.4.
- 6.4 At any time the Customer shall have the right to enter the Supplier's premises where the Customer Materials are stored with the consent not unreasonably withheld from the Supplier to recover from the Supplier any of the Customer Materials.
- 6.5 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.6 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

## **7 Customer's obligations**

- 7.1 The Customer shall:
- 7.1.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
  - 7.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

## **8 Charges and payment**

- 8.1 Subject to 8.3, the price for the Goods:
- 8.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

- 8.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 8.2 Subject to 8.3, the charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 If the Customer has exercised its right to recover the Customer Materials pursuant to clause 6.4 then the price for the Goods and/or the charges for the Services shall be adjusted as agreed between the Customer and the Supplier within 5 days of the Customer Materials being recovered. In the event that the Customer and the Supplier cannot agree an adjusted price for the Goods and/or charges for the Services then the price for the Goods and/or the charges for the Services shall be decided by the Expert.
- 8.4 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice including, but not limited to, the relevant purchase order number.
- 8.5 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts 30 days from the end of the month following the date of a correctly rendered invoice (the “**Due Date**”) to a bank account nominated in writing by the Supplier.
- 8.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (the “**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 Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.7 The Supplier shall not have a general or particular right to retain the Customer Materials in its possession as security for payment of all sums claimed by the Supplier from the Customer. If an invoiced amount for the Goods and/or Services is not paid in full on its Due

Date for payment by the Customer, the Supplier may not in any circumstances sell or otherwise dispose of some or all of the Customer Materials in its possession.

- 8.8 If a party fails to make any payment due to the other party under the Contract by the Due Date for payment, then the defaulting party shall pay interest on the overdue sum from the Due Date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 14 days after the dispute is resolved until payment.
- 8.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 8.10 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## 9 **Intellectual property rights**

All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.

## 10 **Indemnity**

- 10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:

10.1.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);

- 10.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;
- 10.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services; and
- 10.1.4 any claim made against the Customer by a third party arising out of or in connection with any failure by the Customer to exercise its rights in clause 6.4.

10.2 This clause 10 shall survive termination of the Contract.

## 11 **Insurance**

During the term of the Contract and for a period of 2 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## 12 **Confidentiality**

12.1 Each party undertakes that it shall not, at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

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

12.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### 13 **Compliance with relevant laws and policies**

In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations from time to time in force.

### 14 **Data protection**

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 14, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

14.3 Without prejudice to the generality of clause 14.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.

14.4 Without prejudice to the generality of clause 14.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

14.4.1 process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

14.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological



development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 14.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 14.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 14.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 14.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and

14.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

## 15 Termination

15.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:

15.1.1 with immediate effect by giving written notice to the Supplier if:

- (a) there is a change of Control of the Supplier; or
- (b) the Supplier commits a breach of clause 13 (Compliance with relevant laws and policies).

15.1.2 for convenience by giving the Supplier one months' written notice.

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

15.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

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

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

15.2.4 the other party's financial position (the “**Financial Position**”) deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy and each party may inspect the financial records of the other party on giving written notice to the other party for the purpose of determining the Financial Position.

## 16 **Consequences of termination**

16.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

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

16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain 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. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

## 18 **General**

### 18.1 **Assignment and other dealings.**

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

18.1.2 The Supplier shall not assign, transfer, mortgage, charge, delegate, 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 Customer.

### 18.2 **Notices.**

18.2.1 Any notice 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).

18.2.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt; and
- (b) 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;

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 arbitration or other method of dispute resolution.

18.2.4 A notice given under the Contract is not valid if sent by email.

18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 18.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 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 right or remedy. 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. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 18.6 **Entire agreement.** 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.
- 18.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, 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.