

## Interpretation

The definitions and rules of interpretation of this clause apply in these terms and conditions (**Conditions**):

**Building** the building(s) at which the Company is to perform the Services as set out in the Quotation;

**Company** Omega Asbestos Consulting Ltd, a company registered in England and Wales (number 7307832) whose registered address is Wellsprings Business Centre, Durham Rd West, Bowburn, Durham DH6 5AU;

**Company's Equipment** any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer;

**Company's Manager** the Company's manager for the Services appointed under condition 5.3;

**Contract** the Customer's purchase order and the Company's acceptance of it, or the Customer's acceptance of a quotation for Services by the Company under condition 2.2;

**Customer** the person, firm or company who purchases Services from the Company;

**Customer's Manager** the Customer's manager for provision of the Services, appointed in accordance with condition 5;

**Deliverables** all Documents, products and materials developed by the Company in respect of the Services in any form, including any deliverables specified in the Quotation, computer programs, data, reports, surveys and specifications;

**Document** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

**Input Material** all Documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications;

**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;

**Pre-existing Materials** all Documents, information and materials provided by the Company relating to the Services which existed prior to the commencement of the Contract;

**Quotation** the Company's quotation for the Services;

**Services** the services to be provided by the Company under the Contract, namely the surveying of, testing for and management of asbestos containing materials in buildings and the delivery of any Deliverables identified in the Quotation, together with any other services which the Company provides or agrees to provide to the Customer pursuant to the Contract;

**VAT** Value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Condition and paragraph headings shall not affect the interpretation of these conditions.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.6 A reference to **writing** or **written** includes faxes but not e-mail.

1.7 Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.8 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.9 References to conditions are to the conditions of the Contract.

## 2. Application of Conditions

2.1 These Conditions shall:

apply to and be incorporated into the Contract; and prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of the Quotation or specification, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order, or the Customer's acceptance of the Quotation for Services by the Company, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Company other than: by a written acknowledgement issued and executed by the Company; or (if earlier) by the Company starting to provide the Services; when a contract for the supply and purchase of those Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 the Quotation is given by the Company on the basis that no agreement shall come into existence except in accordance with condition 2.2. The Quotation is valid for a period of 30 days from its date, provided that the Company has not previously withdrawn it.

## 3. Commencement and Duration

3.1 The Services supplied under the Contract shall be provided by the Company to the Customer from the date specified in the purchase order and such Services will relate to the Building only and not any surrounding land.

3.2 The Services supplied under the Contract shall continue to be supplied until the Services have been completed in accordance with the Quotation or, if earlier, until the Contract is terminated by one of the parties giving to the other not less than 3 month's notice, unless the Contract is terminated in accordance with condition 14.

## 4. Company's Obligations

4.1 The Company shall use reasonable endeavours to provide the Services in accordance in all material respects with the Quotation.

4.2 Subject to the Customer's compliance with condition 6, in carrying out the Services the Company shall comply with all current legislation and supporting guidance documents, including (but not limited to) the Control of Asbestos Regulations 2012 and Health and Safety at Work Act 1974 but shall not be liable if in doing so it is in breach of its obligations pursuant to the Contract.

4.3 The Company shall use reasonable endeavours to meet agreed contract dates, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.4 The Company shall appoint the Company's Manager who shall have authority contractually to bind the Company on all matters relating to the Services. The Company shall use reasonable endeavours to ensure that the same person acts as the Company's Manager throughout the provision of the Services, but may replace him from time to time where reasonably necessary in the interests of the Company's business.

4.5 The Company shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under condition 6.1.5, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

#### 5. Customer's Obligations

5.1 The Customer shall: co-operate with the Company in all matters relating to the Services and appoint the Customer's Manager in relation to the Services, who shall have the authority contractually to bind the Customer on matters relating to the Services; provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as requested by the Company in order to allow adherence to the Company's standard and technical operating procedures; provide, in a timely manner, such Input Material and other information as the Company may request and ensure that it is accurate in all material respects; be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services; inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Company's Equipment, the use of Input Material insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment in all cases before the date on which the Services are to start.

5.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

5.3 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of six months after the last date of supply of the Services, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services.

5.5 The Customer acknowledges that in preparing any Documents and in carrying out the Services, the Company has relied and continues to rely on the Customer to make full disclosure of all known assumed or suspected structures, tanks, utilities, pipelines, discharges, spillages and hazardous substances at or under or near the Building and if the Company's inspection of the Building reveals matters which were not disclosed by the Customer then the Company may increase the price and vary the Quotation accordingly.

5.6 The Customer acknowledges that in entering into the Contract, it has fully read and understood the Quotation (including the assumptions contained within it (**Assumptions**)) and is agreeable to the same. The Customer also acknowledges that as the Company is relying on the Assumptions, it reserves the right to amend any prices contained in the Quotation and/or cancel the Contract if any of the Assumptions made are incorrect or incomplete.

#### 6. Change Control

6.1 The Customer's Manager and the Company's Manager shall meet regularly to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, the Company shall, within a reasonable time, provide a written estimate to the Customer of:

the likely time required to implement the change;  
any variations to the Company's charges arising from the change;  
the likely effect of the change on the Quotation; and  
any other impact of the change on the terms of the Contract.

6.3 The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Company requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

6.4 If the Customer wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Quotation and any other relevant terms of the Contract to take account of the change.

6.5 The Company may charge for its time spent in assessing a request for change from the Customer on a time and materials basis in accordance with condition 7.

#### 7. Charges and Payment

7.1 Condition 7.2 shall apply if the Company provides the Services on a time and materials basis and condition 7.5 shall apply if the Company provides the Services for a fixed price. The remainder of this condition 8 shall apply in either case.

7.2 Where the Services are provided on a time and materials basis:

the charges payable for the Services shall be calculated in accordance with the Company's standard daily fee rates, as amended from time to time by the Company giving not less than three months' written notice to the Customer;  
the Company's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm Monday to Thursday and 08:00 am and 4:00 pm Friday (excluding public holidays);  
the Company shall be entitled to charge an overtime rate of 45% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the outside of the hours referred to in this condition 7.2;  
all charges quoted to the Customer shall be exclusive of VAT which the Company shall add to its invoices at the appropriate rate;  
the Company shall ensure that every individual whom it engages on the Services completes adequate records recording time spent, and the Company shall use such records to calculate the charges covered by each monthly invoice referred to in this condition 7.2; and  
the Company shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7.2. Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

7.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the purchase order. The total price shall be paid to the Company (without deduction or set-off) and the Company shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate.

7.4 Any fixed price and daily rate contained in the Quotation includes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services (unless otherwise stated).

7.5 The Customer shall pay each invoice submitted to it by the Company, in full and in cleared funds, within 30 days of receipt.

7.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:

charge statutory debt interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of HSBC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Company may claim statutory debt, recovery costs and interest under the Late Payment of Commercial Debts (Interest) Act 1998; and suspend all Services until payment has been made in full.

7.7 Time for payment shall be of the essence of the Contract.

7.8 All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition 8.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.9 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

7.10 The Customer acknowledges that the price payable is based on the information disclosed by the Customer to the Company in relation to the condition of the Building pursuant to clause 6.5 and the Customer shall endeavour to provide the Company with any new relevant information which may affect the Price.

#### **8. Hazardous Substances and Waste**

8.1 Any hazardous substances or waste arising from the Services shall be held by the Company as agent for the Customer. Whilst the Company will make all reasonable efforts to assist the Customer with the safe handling and disposal of such materials, the Customer shall be responsible for their disposal including any associated costs.

8.2 The Customer acknowledges that the use of exploration, investigative or remedial methods can involve an inherent risk of contamination of previously uncontaminated soils and waters, including new potential migration of contaminants present on or beneath the surface of the Building, or in the vicinity, and that any seal applied to the surface by the Company may be imperfect despite all reasonable precautions and the Customer assumes all associated risks.

#### **9. Deliverables and Exclusions**

9.1 The Company shall prepare all surveys, reports, results of tests carried out, opinions, interpretations and any other information forming part of the Deliverables with all reasonable skill, care and diligence within the constraints of these Conditions.

9.2 In providing those Documents comprised in the Deliverables referred to in condition 9.1, the Company disclaims any responsibility to the Customer and any with respect to any matters that fall outside the scope of these Documents, including but not limited to those matters listed in condition 9.8.

9.3 Analysis results, inspection finding and recommendations stated within the Documents are produced by the Company employing all reasonable skill and care, to the Company standard and technical operating procedures (unless otherwise stated) and are given in good faith, and the Company accepts no liability for any actions taken by the Customer of acting upon these results, findings and recommendations, and the consequences and implications of these actions.

9.4 The primary purpose and scope of surveys for the presence, condition or nature of asbestos in the Building is limited only to an examination of the Building for asbestos containing materials. Any other materials examined and whose composition is reported is incidental to the main scope and purpose of the report. The Company accepts no responsibility in respect of such materials found or presumed not to contain asbestos.

9.5 The contents of any Deliverables provided to the Customer pursuant to the Contract are confidential to the Company and may be used by the Customer solely for the purpose set out in the Quotation. The Company disclaims all liability in respect of any use of the Deliverables not in accordance with this clause or any use by any other third parties.

9.6 Any Deliverables provided to the Customer by the Company shall remain the property of the Company until the price for the Services has been paid in full.

9.7 In carrying out the Services, the Company shall use its best endeavours to locate all asbestos containing materials but the Customer acknowledges that any survey produced as a result of the Services cannot reveal all levels of asbestos containing materials unless the Building is completely taken apart.

9.8 Items or areas normally excluded from within the scope (unless otherwise stated in the Quotation for the Services) of asbestos surveys may include, but are not restricted to:

live electrical systems and apparatus; live heater units; live lift machinery; live hot ovens and steam systems; internal boiler casing insulation materials; moving plant and equipment; unsafe heights; fragile roof structures and glazed partitions or skylights; open sewers or effluent drains; chemical and biological material handling systems; areas of insect or animal infestation; confined spaces or areas of potentially hazardous environment; ventilation ductwork internal acoustic dampers and jointing compounds.

In the case of asbestos surveys (normally excluding those of an invasive nature ie Refurbishment or Demolition surveys); due to unacceptable levels of damage to structures and decorative surfaces, access is not normally gained to: voids to wall linings and partitions; voids to cavities; enclosed ceiling voids; enclosed floor voids and spaces; fire door internal insulation materials; service ducts and boxing without accessible service hatches; beneath adhered floor coverings and floor levelling materials; any areas that may only be accessed with the use of specialist equipment (unless adequate provision is made by the Customer).

9.9 Notwithstanding condition 9.8 above, the Customer acknowledges the following exclusions from the scope of the Services and Deliverables which will therefore not form part of the Contract:

asbestos materials existing within parts of the Building not covered by the scope of the Contract and therefore fall outside the scope of any documents referred to in Condition 9.1;

any potential asbestos-containing materials that remain undetected due to their being hidden or obscured by other items or materials;

any asbestos materials hidden as part of the structure of a Building and not visible until the structure is dismantled at a later date;

general asbestos debris from previous asbestos removal projects;

where any part of the Building has been previously stripped of asbestos, the Customer acknowledges that the asbestos removal techniques prior to the Control of Asbestos at Work Regulations 1987 (since amended to CAR2012) will not have been of current standard and therefore asbestos debris may be present below new coverings; and any survey will detail all areas accessed and all samples taken. The Customer acknowledges that access for any survey may be restricted for many reasons beyond the Company's control including without limitation height restrictions, inconvenience to others, immovable objects or confined spaces.

In the event electrical equipment is present, no access will be attempted until sufficient evidence is provided to the satisfaction of the Company confirming the safety of such equipment;

certain materials contain asbestos of varying degrees and the Customer acknowledges that some may be less densely contaminated at certain locations. Any such sample taken will not be deemed to be representative of the whole product throughout;

where a survey is carried out under the instruction of the Customer (or its representative) the survey will be deemed to be carried out as per the Customer's (or its representative's) instructions and guidance at that time.

9.10 Where asbestos has been located in the Building and it is clear that not all areas of the Building have been investigated, any material found to be suspicious and not detailed as part of the survey will be treated with caution and sampled accordingly.

#### 10. Intellectual Property Rights

10.1 All Intellectual Property Rights arising from the Services, including in any Deliverables shall at all time belong to the Company, unless agreed otherwise by the Company in writing.

10.2 As between the Customer and the Company, all Intellectual Property Rights and all other rights in the Pre-existing Materials and Deliverables shall be owned by the Company. Subject to condition 10.3 and to payment in full by the Customer for the Services, the Company licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services solely for the purpose set out in the Quotation. If the Contract is terminated by the Company prior to completion of the Services pursuant to clause 14, this licence shall automatically terminate.

10.3 The Customer acknowledges that, where the Company does not own all rights in the Deliverables or Pre-existing Materials, the Customer's use of rights in the Deliverables or Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Customer.

#### 11. Confidentiality and the Company's Property

11.1 Each party (the **Recipient**) 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 Recipient by the other party (the **Discloser**), its employees, agents or sub-contractors and any other confidential information concerning the Discloser's business or its products which the Recipient may obtain. The Recipient shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know the same for the purpose of discharging the Recipient's obligations to the Discloser, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Recipient.

11.2 The inspection body (Omega) shall be responsible, through legally enforceable commitments, for the management of all information obtained or created during the performance of inspection activities. The inspection body shall inform the client, in advance, of the information it intends to place in the public domain. Except for information that the client makes publicly available, or when agreed between the inspection body and the client (eg for the purpose of responding to complaints), all other information is considered proprietary information and shall be regarded as confidential.

11.3 When the inspection body is required by law or authorised by contractual commitments to release confidential information, the client or individual concerned shall, unless prohibited by law, be notified of the information provided.

11.4 Information about the client obtained from sources other than the client (eg complainant, regulators) shall be treated as confidential

11.5 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer (including Pre-existing Materials) shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

11.6 This condition 11 shall survive termination of the Contract, however arising.

#### 12. Limitation of Liability

12.1 This condition 12 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

any breach of the Contract;

any use made by the Customer of the Services or the Deliverables; and

any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these Conditions limits or excludes the liability of the Company:

for death or personal injury resulting from negligence; or

for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company or for any other liability which cannot by

law be limited or excluded.

12.4 Subject to condition 12.3:

the Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

loss of profits; or

loss of business; or

depletion of goodwill and/or similar losses; or

loss of anticipated savings; or

loss of goods; or

loss of contract; or

loss of use; or

loss of corruption of data or information; or

any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;

any damage caused to the Building, provided such damage was caused in the proper performance of the Services.

12.4.2 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services by the Customer.

#### 13. Data Protection

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Company in connection with the Services.

#### 14. Termination

14.1 Subject to condition 14.3, the Contract shall terminate automatically on completion of the Services in accordance with the Quotation.

14.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than [three] months written notice or immediately on giving notice to the other if:

the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or  
an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or  
a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or  
the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or  
the other party ceases, or threatens to cease, to trade; or  
there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or  
the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3 On termination of the Contract for any reason:

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

the Customer shall return all of the [Company's Equipment and] Pre-existing Materials. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

#### 15. Force Majeure

The Company shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

#### 16. Variation

Subject to condition 6, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

#### 17. Waiver

17.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

17.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

#### 18. Severance

18.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

18.3 The parties agree, in the circumstances referred to in condition 18 and if condition 18.1 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

#### 19. Status and Pre-contractual Statements

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

#### 20. Assignment

20.1 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20.2 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### 21. No Partnership

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### 22. Rights of Third Parties

This Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else

#### 23. Notices

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 23 is not within business hours (meaning 9.00 am to 5.00 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

#### 24. Governing Law and Jurisdiction

24.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

24.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.