

BUSINESS MATTERS UK LIMITED
STANDARD TERMS AND CONDITIONS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1. Interpretation

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

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.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment) and as further detailed in the Order.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions (which includes, without limitation, these Conditions and the Order).

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

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

Customer Default: has the meaning set out in clause 4.2.

Data Protection Legislation: 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).

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 or unfair competition, 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 order for Services as set out in the Customer's written acceptance of the Supplier's quotation.

Services: the services (including the storage of the Customer's products and their picking, packing and transmitting to a prescribed carrier for delivery), to be supplied by the Supplier to the Customer and as set out in the Order.

Supplier: Business Matters UK is a trading name of Business Matters International Limited registered in England and Wales with company number 12687996 and whose registered office is at 21 Borgard Road, London, SE18 5LD.

Supplier Materials: has the meaning set out in clause **Error! Reference source not found.**

UK Data Protection Legislation: 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.

1.2 Interpretation:

(1.2.a) 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.

(1.2.b) 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.

(1.2.c) a reference to **writing** or **written** includes fax but not email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order or otherwise from time to time notified by the Customer to the Supplier in writing by email to your account manager whose email address is detailed in the Order or by use of the Supplier's online notification system and/or otherwise in accordance with these Conditions (**Notifications**), but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Order (and any other Notifications) 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 Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 Whilst the Supplier uses all reasonable endeavours to operate segregation of Goods between Customers and does operate a conflict of interest policy, this agreement is not exclusive and the Supplier is not restricted from and may undertake work of any nature whatsoever for any number of customers operating in the same business sector as the Customer.

4. Customer's obligations

4.1 The Customer shall:

- (4.1.a) ensure that the terms of the Order and any information it provides in it or to enable it to be produced (including enabling the preparation of any quotation) are complete and accurate;
- (4.1.b) co-operate with the Supplier in all matters relating to the Services;
- (4.1.c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (4.1.d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services and for the operation of the Customer's business before the date on which the Services are to start;
- (4.1.e) comply with all applicable laws, including health and safety laws;
- (4.1.f) provide to the Supplier by email not less than 24 hours prior to the Supplier accepting a delivery of the Customer's goods (**Goods**) by or on behalf of the Customer a written delivery note setting out the precise nature and amount of the goods to be delivered by or on behalf of the Company together with the name and company of the delivery driver and the time of delivery (such delivery time to be between the hours of 8am and 6pm only) (**Delivery Note**). Each individual delivery of Goods will be subject to a goods in charge which is detailed in the Order (**Booking in Charge**). In the event that more Goods arrive than is detailed on the Delivery Note then the Supplier reserves the right to increase the Goods in Charge to reflect the increased number of Goods actually delivered by or on behalf of the Customer to the Supplier;
- (4.1.g) at all times insure the Goods for their full reinstatement value;
- (4.1.h) provide any Notification for picking and packing to the Supplier before 2pm on a Business Day to ensure that the Supplier can fulfil that Notification on the same Business Day;
- (4.1.i) comply with any additional obligations as set out in the Order or associated quotation; and
- (4.1.j) in respect of direct mail offerings (**DMO**), the Customer shall supply to the Supplier a proof of the design of the mailing which shall be in accordance with all laws, regulations and in respect of which the Customer warrants to the Supplier that it is not in breach of any third-party Intellectual Property Rights and in accordance with all and any applicable legislation.

- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (4.2.a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (4.2.b) the Supplier shall not be liable for any costs or losses of any nature whatsoever sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (4.2.c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 4.3 The Customer warrants and undertakes to the Supplier that any and all Goods delivered to it by the Customer or on its behalf are:
- (4.3.a) manufactured or produced in accordance with all any applicable laws and regulations applicable to such Goods;
 - (4.3.b) that the Customer has full legal and beneficial title (lawfully acquired) to such Goods;
 - (4.3.c) are not hazardous or in any manner dangerous to human or animal health;
 - (4.3.d) have been subject (where applicable) to HM Customs in the United Kingdom checks and have had all relevant duty and other levies due on them paid in full; and
 - (4.3.e) are lawful to be owned and transported in the United Kingdom without any special permit or licence from any regulatory or other authority.
- 4.4 The Customer warrants and undertakes to the Supplier that it shall not (save to permit the delivery of Goods to the Supplier's premises by third-party carriers) register the Supplier's trading address, registered office or other premises of the Supplier with Companies House, HM Customs or any other third party of any nature whatsoever in respect of the delivery of Goods, the Customer's organisation or business or otherwise. Further, the Customer shall not name any officer,

employee or advisor of the Supplier as a contact in respect of such Goods with any such third-party.

- 4.5 The Customer hereby indemnifies the Supplier in full and on a continuing basis (this clause surviving termination of this the Contract of which these Conditions form part) in respect of any al all losses (of any nature whatsoever), claims, demands, costs (including reasonable legal and other professional costs) or other liabilities whatsoever incurred or suffered by the Supplier in respect of:
- (4.5.a) any breach by the Customer of these terms and conditions; and
 - (4.5.b) damage caused by the Goods to any other goods stored in the Supplier's premises or to such premises themselves.

5. Charges and payment

- 5.1 The Charges for the Services shall be calculated as detailed in the Order and associated quotation. Charges are made, without limitation, for the following items:
- (5.1.a) the Goods in Charge (as detailed in the Order);
 - (5.1.b) storage charge in respect of the storage of Goods in the Supplier's warehouses (at a price per pallet of Goods (or part thereof) per day (or part thereof)) (**Storage Charge**). **No refund or reduction in the Storage Charge is made in respect of the storage of Goods for only a part of a day or the storage of only part only of a pallet of Goods;**
 - (5.1.c) a charge for picking and packing the basis of which is set out in the Order; and
 - (5.1.d) carrier charges in respect of the delivery of Goods picked and packed by the Supplier to a third-party carrier at the rate notified to the Customer by the Supplier following receipt of each Notification (**Carrier Charges**);
 - (5.1.e) customer service and Goods management charges (which are charges made by the Supplier to the Customer in respect of, without limitation, account set-up and management, dealing with the Customer's customers queries in respect of Goods and their delivery and return of Goods queries from the Customer and their customers as well as liaising with third-party carriers of Goods on behalf of Customers, including when Goods are lost by third-party carriers) at the rate per hour specified on the Order. If the rate per hour is not so specified, it shall be £20 per hour;
 - (5.1.f) charges for direct mail offerings on behalf of the Customer as detailed on the Order;

- (5.1.g) contract termination charges detailed on the Order and/or associated quotation (which include, without limitation, charges for disposal of waste, packaging and movement of Goods to other premises, Goods disposal charges and exit stock counts); and
- (5.1.h) disposal of waste (including, without limitation, end of print lines and/or Goods which are not collected within 5 Business Days of termination of this Contract) which shall be payable by the Customer at the cost to the Supplier of such disposal plus 25% of such cost plus the amount of management time incurred in such disposal and its arrangement charged at the hourly rate referred to in clause 5.1(e) above.
- 5.2 Subject to clause 5.3 below, the Supplier reserves the right to increase the Charges on an annual basis with effect from 1 January in each calendar year in line with the percentage increase in the Retail Prices Index in the preceding 12- month period and the first such increase shall take effect on the 1 January next following the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.3 The Supplier shall notify the amount of the Charges in respect of Carrier Charges in respect of each Notification received and as such the Carrier Charges may increase or decrease depending on the cost charged to the Supplier by the relevant third-party carrier.
- 5.4 The Supplier shall invoice the Customer monthly or fortnightly in arrears as detailed in the Order.
- 5.5 The Customer shall pay each invoice submitted by the Supplier:
- (5.5.a) within 30 days of the date of the invoice; and
- (5.5.b) in full and in cleared funds to a bank account nominated in writing from time to time by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 5.6 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 Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable

on the supply of the Services at the same time as payment is due for the supply of the Services.

5.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9:

(5.7.a) **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 5.7 will accrue each day 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 that base rate is below 0%; and**

(5.7.b) **there shall immediately and without action by either party arise a lien in favour of the Supplier over all and any Goods of the Customer which are held by the Supplier pursuant to the Contract. If within five Business Days of the lien so arising and/or the Supplier having notified the Customer of its intention to do so (the Customer having still failed to make payment) then the Supplier shall have the express and absolute unfettered right to sell in such manner as the Supplier shall in its absolute discretion determine (including at public auction or otherwise) all the Goods held by the Supplier on behalf of the Customer for whatever price it can do so and set off any amounts so raised against such outstanding Charges. The costs of such sale together with a management charge in accordance with clause 5.1(e) (together "Costs of Sale") shall be borne by the Customer. The Customer hereby agrees to execute any and all documents necessary to enable the Supplier to enforce the provisions of this clause and/or sell such Goods. In the event that such sale realises funds in excess of monies due to the Supplier then the Supplier shall transfer such funds to the Customer within 30 Business Days of their receipt by the Supplier. In the event that the proceeds of such sale less the Costs of Sale do not cover all the outstanding Charges then the balance shall remain due and payable to the Supplier.**

5.8 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).

6. Intellectual property rights and DMO

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

- 6.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, nontransferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 6.3 In respect of DMO:
- (6.3.a) the Oder shall specify the amount of any typesetting, data hours, printing and mailing fees;
 - (6.3.b) the Supplier will send a proof of the mailing to the Customer for final approval (**Initial DMO Proof**). Save in the event of errors in typesetting made by the Supplier, in the event that the Customer wishes to amend the Proof, the Supplier will notify the Customer of any additional charges for such amendments to be made and send the final Proof (**Final DMO Proof**) to the customer for approval. Once the Customer has approved the Final DMO Proof or Initial Proof for printing, the Supplier shall not be obliged to make any further changes without the Customer being liable to pay for a second typesetting fee and/or printing fee (at the Supplier's absolute discretion).

7. Data protection

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 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 7, **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 Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.]
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 7.3 Without prejudice to the generality of clause 7.1, 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.
- 7.4 Without prejudice to the generality of clause 7.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (7.4.a) 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 laws of a member of the European Union or European Union law 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;
- (7.4.b) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- (7.4.c) 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:
 - (7.4.c.i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (7.4.c.ii) the data subject has enforceable rights and effective legal remedies;
 - (7.4.c.iii) 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
 - (7.4.c.iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (7.4.d) assist the Customer, at the Customer's cost (at the rates referred to in clause 5.1(e), 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.

7.5 The Customer consents to the Supplier appointing any third-party carrier (including, by way of example only, Royal Mail, DPD and FedEx) as a third-party processor of Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business.

8. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (8.1.a) death or personal injury caused by negligence;
- (8.1.b) fraud or fraudulent misrepresentation; and
- (8.1.c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1, the Supplier's total liability to the Customer shall not exceed the amount of the Charges paid to the Supplier by the Customer in the six months prior to the date of the relevant claim being notified by the Customer to the Supplier in accordance with these Conditions. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

8.3 This clause 8.3 sets out specific heads of excluded loss:

(8.3.a) Subject to clause 8.1, the Supplier shall not be liable to the Customer for any of the types of loss listed in clause 8.3(b), such losses being wholly excluded by the parties.

(8.3.b) The following types of loss are wholly excluded:

(8.3.b.i) Loss of profits

(8.3.b.ii) Loss of sales or business.

(8.3.b.iii) Loss of agreements or contracts.

(8.3.b.iv) Loss of anticipated savings.

(8.3.b.v) Loss of use or corruption of software, data or information.

(8.3.b.vi) Loss of or damage to goodwill.

(8.3.b.vii) Indirect or consequential loss.

(8.3.b.viii) Any losses of any nature whatsoever (including any of those listed above in this clause 8.3(b)) arising directly or indirectly from the loss of Goods by third party carriers once demonstrably (by the Supplier) those Goods have been passed to such third-party carrier. The Customer hereby agrees and undertakes with the Supplier that the Supplier shall have no liability to the Customer or otherwise in respect of Goods (including for the purposes of this clause all items sent on a DMO basis) passed to a third-party carrier.

8.4 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied

by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

8.6 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 30 days written notice.

9.2 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:

(9.2.a) 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), 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;

(9.2.b) 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

(9.2.c) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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

(9.3.a) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(9.3.b) there is a change of control of the Customer.

9.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer 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

9.2(a) to clause 9.2(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

10. Consequences of termination

10.1 On termination of the Contract:

(10.1.a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt. The provisions of clause 5.7 shall apply on termination; and

(10.1.b) the Supplier shall notify in writing to the Customer the termination actions and costs associated with the matters referred to in clause 5.1(g) and provide to the Customer a schedule of its actions and an invoice for such amount as is referred to in that clause which the Customer shall pay immediately on receipt whereupon receipt of such payment the Supplier shall proceed to undertake the actions detailed in the Termination Schedule. In the event that no response is received by the Supplier within 5 days to the notice and invoice referred to above then the provisions of clause 5.7 (b) shall apply.

10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of 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.

10.3 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.

11. General

11.1 **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.

11.2 Assignment and other dealings.

(11.2.a) The Supplier 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.

(11.2.b) The Customer shall not assign, transfer, mortgage, charge, subcontract, 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 Supplier.

11.3 Confidentiality.

(11.3.a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).

(11.3.b) Each party may disclose the other party's confidential information:

(11.3.b.i) 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 11.3; and

(11.3.b.ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(11.3.c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 Entire agreement.

(11.4.a) 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.

(11.4.b) 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- (11.4.c) Nothing in this clause shall limit or exclude any liability for fraud.
- 11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **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.
- 11.7 **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.

11.8 Notices.

- (11.8.a) 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); Any notice shall be deemed to have been received:
- (11.8.a.i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (11.8.a.ii) 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.
- (11.8.b) 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.

11.9 Third party rights.

- (11.9.a) 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.
 - (11.9.b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 **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.
- 11.11 **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.