

## GENERAL TERMS AND CONDITIONS

### 1 DEFINITIONS AND INTERPRETATION

1.1 In the Terms and Conditions, the words and expressions defined in the Contract Details or any other Schedule forming part of the Contract shall apply and in addition the following definitions apply:

**Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Contract** means the contract between the Customer and the Supplier for the supply of the Equipment and the Services in accordance with the Contract Details, the Terms and Conditions and any applicable Schedules.

**Contract Details** means the document headed Contract Details to which the Terms and Conditions are attached.

**Commencement Date** means the date specified in the Contract or such other date as agreed between the Supplier and the Customer.

**Equipment** means the equipment detailed in the Contract Details to be hired by the Customer from the Supplier or a Funder and includes all internal cabling as well as the network test termination point or other demarcation point.

**Extended Term** means the extended term for each individual Service as set out in the Contract Details or the Schedules.

**Force Majeure Event** means any event beyond the Supplier's reasonable control including (without limitation) disease, pandemic, flood, fire, war or threat of war, sabotage, civil disturbance, governmental action, default of any supplier of services to the Supplier or any legal and regulatory restrictions.

**Funder** means a third-party finance provider willing to provide finance for the Equipment and enter into a Rental Agreement with the Customer.

**Intellectual Property Rights** means all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, 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.

**Premises** means the place or places at which the Supplier agrees to provide the Services to the Customer.

**Previously Paid Termination Charges** means any early termination charges paid by the Supplier on behalf of the Customer to the Customer's previous line rental provider at any time before or after the Commencement Date.

**Rental Agreement** means the agreement for the hire of the Equipment in the standard form produced by the Funder or the Supplier as the case may be.

**Schedules** means the schedules to the Contract.

**Services** means the services, each an **individual Service**, indicated in the Contract Details, including, where applicable, Maintenance Services, Pre-Installation Services and Network Service.

**Service Minimum Term** means the minimum term for each Service as set out in the Contract Details or the Schedules.

**Service Provider** means any third party provider of the telecommunications network.

**Service Provider Equipment** means equipment owned or provided by the Service Provider.

**Small Business Customer** means a Customer which is not an undertaking for which more than ten individuals work (whether as employees or volunteers or otherwise).

**Supplier Code of Practice** means the code of practice set out on the Supplier's Website as amended by the Supplier from time to time.

**Supplier's Website** means [www.espria.com](http://www.espria.com)

**Terms and Conditions** means the terms and conditions set out in these general terms and conditions.

**Toll Fraud** means any interference or access to the Customer's PABX phone system or the Customer's telephone lines and/or the making of calls by any third party utilising the Customer's telephone lines whether fraudulent or otherwise. For the avoidance of doubt, fraudulent activity includes but is not limited to: (i) calls made from the Customer's PBX without their knowledge; (ii) calls made utilising the Customer's authentication details; and (iii) calls made from an authenticated IP address.

1.2 A reference to a statute or statutory provision in the Contract is a reference to it as amended, re-enacted or extended from time to time.

1.3 The headings in the Contract shall not affect the interpretation of the Terms and Conditions.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## **2 BASIS OF CONTRACT**

2.1 The Contract shall be formed of the Contract Details, the Terms and Conditions and any applicable Schedules to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 The Contract shall come into force on the Commencement Date and shall continue, unless terminated earlier in accordance with the provisions of the Contract, until the end of the last to expire of the Service Minimum Terms. Unless specified otherwise in relation to a Small Business Customer, the term of the Contract shall automatically extend in relation to an individual Service for an Extended Term at the end of the relevant Service Minimum Term

and at the end of each Extended Term, unless either party gives written notice to the other, no later than 90 days before the end of the Service Minimum Term or the relevant Extended Term, to terminate the Contract in relation to that Service at the end of the Service Minimum Term or the relevant Extended Term as the case maybe.

2.3 Any drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures or on the Supplier's Website, are issued or published for the sole purpose of giving an approximate idea of the service described in them and shall not form part of the Contract or have any contractual force.

2.4 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 CUSTOMER OBLIGATIONS**

3.1 The Customer agrees and undertakes:

- a) to co-operate with the Supplier in all matters relating to the Services and provide the Supplier with assistance from the Customer's employees where reasonably required;
- b) to permit or procure permission for the Supplier to freely and safely access its Premises and service connection points and, where necessary, a continuous mains electricity supply;
- c) to 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 accurate in all material respects;
- d) to use the Services in accordance with such instructions/conditions as may be notified in writing by the Supplier from time to time;
- e) not to use the Services for a purpose other than for which each Service is provided;
- f) not to use the Services or permit the Services to be used for the transmission of any material which is intended to be defamatory, offensive, abusive or menacing in character;
- g) not to use the Services or permit the Services to be used in any way which would constitute a violation or an infringement of the rights of any other party;
- h) to supply the Supplier with all such information as it may request from time to time.

3.2 The Customer warrants that the number of employees stated on in the Contract Details is correct.

3.3 Should the Supplier or the Service Provider be required to cross any land belonging to any party other than the Customer or to put the Service Provider's Equipment on any property which does not belong to the Customer (for example a neighbour or a landlord), the Customer will obtain the prior written permission (including any wayleaves) of such party.

3.4 The Customer shall indemnify and keep indemnified the Supplier completely and in full against all costs and losses (including without limitation, damages, claims, charges, damage to property, call costs charged by the Service Provider or others and expenses) incurred by the Supplier as a result of or in connection with:

- a) any breach of the Customer's obligations under the Contract;
- b) the death or personal injury of any of the Supplier's employees caused by the negligence or wilful misconduct of the Customer;
- c) Toll Fraud or other fraudulent activity;
- d) investigations into Toll Fraud or other fraudulent activity;
- e) any claims made by third parties because the Service is faulty or cannot be used where the Service is used for business purposes.

The Customer shall reimburse the Supplier on written demand for any such costs and losses sustained by the Supplier pursuant to this condition 3. The Supplier recommends the Customer obtains professional security advice with regard to PBX, trunking or other equipment or resource.

3.5 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**):

- a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Service (or part of) until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 3; and
- c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

#### **4 PAYMENT**

4.1 The Supplier shall invoice the Customer monthly in advance. The Supplier may at its discretion submit invoices to the Customer via email. The Customer may also view its invoices online on the Supplier's Website.

4.2 The Customer shall pay each invoice submitted by the Supplier by direct debit by the due date detailed on the invoice (**Due Date**). Time for payment shall be of the essence of the Contract.

4.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable for the time being (**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 Service at the same time as payment is due for the supply of the Service.

- 4.4 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the Due Date, the Supplier has the right to charge the Customer interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 4.5 The Supplier reserves the right to charge an administration fee of £75 if the Customer has cancelled its Direct Debit instruction or has insufficient funds in its bank account on the Due Date, without informing the Supplier in advance. The Customer agrees that this administration fee is reasonable and proportionate to recompense the Supplier for the cost incurred in recovering sums due.
- 4.6 The Customer agrees that the Supplier may recover from the Customer all its legal and other costs reasonably incurred by the Supplier in recovering any sums due to it pursuant to the Contract.
- 4.7 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to the Supplier within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiry of this period.
- 4.8 All amounts due under the Contract shall be paid without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **5 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights in or arising out of or in connection with the Service shall be owned by the Supplier. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier the license such rights to the Customer.

## **6 LIMITATION OF LIABILITY**

- 6.1 Nothing in the Terms and Conditions shall limit any liability which cannot legally be limited, including, but not limited to liability for death or personal injury caused by the Supplier's negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 6.2 Subject to condition 6.1 :
- a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or

otherwise, for any loss of profit; loss of sales; loss of business; loss of anticipated savings; loss of use or corruption of software, data or information; or any indirect or consequential loss arising under or in connection with the Contract;

- b) the Supplier shall have no liability for any breach of the Customer's security; and
- c) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the aggregate price paid by the Customer to the Supplier in the three month period immediately preceding the matter giving rise to the liability in question.

6.3 Subject to condition 6.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

6.4 The Supplier's employees or agents are not authorised to make any representations concerning the Service unless confirmed by the Supplier in writing.

## **7 INSOLVENCY OF CUSTOMER AND SUSPENSION**

7.1 Without limiting its other rights or remedies, the Supplier may terminate or suspend all or some of the Services supplied in the Contract by giving 14 days written notice to the Customer if:

- a) the Customer suspends payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- b) a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- c) the Customer is the subject of a bankruptcy petition or order;
- d) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- e) an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- f) a floating charge holder over the assets of the Customer has appointed an administrative receiver;
- g) a receiver is appointed over the assets of the Customer;
- h) the Customer fails to pay any amount due under the Contract on the Due Date;

- i) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;
- j) the Customer at any time does not have the necessary valid licence to run its telecommunications system;
- k) the Customer commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach.

7.2 Without limiting its other rights or remedies:

- a) the Supplier may terminate the Contract for convenience without liability at any time by giving 30 days written notice to the Customer;
- b) the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition 7.1 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

7.3 If the Service is suspended:

- a) the Supplier will tell the Customer what needs to be done before it can be reinstated. It is at the Suppliers sole discretion to reconnect the Service;
- b) the Customer may still make emergency calls;
- c) the Customer will continue to pay for the Service whilst the Contract continues;
- d) the Supplier may at its complete discretion elect to reconnect a Service which has been terminated. In such case a reconnection charge of £120 per analogue line and £250 per pair of ISDN lines will be payable by the Customer.

## **8 TERMINATION BY THE CUSTOMER PRIOR TO EXPIRY OF MINIMUM TERM AND TERMINATION FEE**

8.1 Notwithstanding any other provision of the Contract, the Customer may terminate the Contract in relation to any Service:

- a) upon 90 days' written notice to the Supplier prior to the expiry of the Service Minimum Term; and
- b) with immediate effect without penalty on providing the Supplier written notice to take effect prior to any proposed change made by the Supplier in accordance with condition 11.4 taking effect.

8.2 If the Contract is terminated by the Supplier under condition 7.1 or by the Customer pursuant to condition 8.1a) the Customer shall pay to the Supplier as and by way of liquidated damages an early termination fee equal to the average of the price paid by the Customer to the Supplier in the three months immediately preceding the date of the notice of termination multiplied by the number of months remaining within the Service Minimum Term at termination less a discount of 5%. If less than three months has elapsed prior to the date of the notice of termination the early termination fee shall be calculated by reference

to the average of the price paid by the Customer from the Commencement Date to the date of the termination notice multiplied by the number of months remaining within the Service Minimum Term at termination less a discount of 5%. For the avoidance of doubt, the Customer will not be required to pay an early termination fee where they have terminated the Contract under condition 8.1 b) following notice from the Supplier of a Contract change notified in accordance with condition 11.4. The parties agree that these liquidated damages are reasonable and proportionate to protect the Supplier's legitimate interest.

- 8.3 If the Contract is terminated in relation to any Service prior to the expiry of the Service Minimum Term due to any act or omission of the Customer, the Customer shall on demand, in addition to its payment obligations under condition 8.2, reimburse to the Supplier the Previously Paid Termination Charges.

## 9 CONSEQUENCES OF TERMINATION

- 9.1 On termination of the Contract for any reason:

- a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- c) conditions or clauses which expressly or by implication have effect after termination shall continue in full force and effect.

- 9.2 If the Supplier terminates the Contract in relation to a Service in accordance with condition 7.1 prior to the expiry of the Service Minimum Term the Customer shall be liable to pay an early termination fee calculated in accordance with the provisions of condition 8.2.

## 10 DATA PROTECTION

- 10.1 In this condition 10 the following definitions shall apply:

**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

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Data Protection Legislation** means 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.



**Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

**UK Data Protection Legislation** means 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.

- 10.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.3 The parties acknowledge that for the purposes of the Data Protection Legislation, each party may be a Controller but the Supplier may be a Processor of the Customer's data. Condition 10.8 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 10.4 Without prejudice to the generality of clause 10.2, 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 and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of this agreement.
- 10.5 Without prejudice to the generality of clause 10.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- 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 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;
  - b) 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);
  - c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- d) 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:
  - i. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - ii. the data subject has enforceable rights and effective legal remedies;
  - 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
  - iv. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e) 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;
- f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- h) maintain complete and accurate records and information to demonstrate its compliance with this condition 10 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.

10.6 The Supplier uses third-party processors in the course of its business and the Customer consents to such appointments At the Commencement Date the third-party processors are:

Nix Network Services LLP

The Sage Group Plc & Union Street

BT, Talk Talk, Gamma, Daisy, Nine, Voiceflex, Voicehost, Timico

But the Supplier reserves the right to terminate or make new appointments from time to time. The Supplier confirms that it has entered or (as the case may be) will enter with each third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this condition 10 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this condition 10.

10.7 The Supplier may, at any time on not less than 30 days' notice, revise this condition 10 by replacing it with any applicable controller to processor standard clauses or similar terms

forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

- 10.8 The Supplier records and monitors call calls received and made by it and will be the Controller of all Personal Data collected by the Supplier in the course of such recoding and monitoring. The Supplier's Privacy Policy sets out details of how the Supplier will use such Personal Data.
- 10.9 This condition sets out the nature and purpose of processing by the Supplier and the types of Personal Data and categories of Data Subject
- a) **Scope:** the provision of the Services and administration of the Contract
  - b) **Nature:** use of data in order to contact and liaise with the Customer and in order to supply the Services
  - c) **Purpose of processing:** for the purpose processing information generated by the Customer's use of the Services in accordance with the Contract
  - d) **Duration of the processing:** the term of the Contract
  - e) **Types of Personal Data:** name, telephone number, email address, bank details, gender, data of birth, recordings
  - f) **Categories of Data Subject:** the Customer, users and employees of the Customer and third party participants in calls.

The information listed in this condition is not exhaustive as the Customer will specify what Customer Personal Data is processed

## 11 GENERAL

- 11.1 The Supplier will endeavour, but does not guarantee, to make a donation to the charitable organisation selected by the Customer as set out in the Contract Details. The Supplier reserves the right to make a charitable donation in the same amount to a different charity.
- 11.2 The Supplier shall not be liable or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform the Service or any of the Supplier's obligations under the Contract if the delay or failure was due to a Force Majeure Event.
- 11.3 If any dispute arises in connection with the Contract then the parties will attempt to settle it. If the parties are unable to reach an agreement then the Customer may refer the dispute to any recognised dispute resolution service. Details of these and how to refer a dispute are set out in the Supplier Code of Practice.
- 11.4 The Supplier reserves the right to change any term of the Contract (including the charges) at any time. This includes the ability to separately charge for services which may be currently included in the Service as free. The Supplier will provide not less than 30 days' written notice to the customer before introducing any proposed change which may have a material detriment to the Customer.
- 11.5 Any variation to the Terms and Conditions and any representations about Services shall have no effect unless expressly agreed in writing and signed by a director of the Supplier or a duly authorised signatory.

- 11.6 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. The Terms and Conditions set out the entire and complete agreement between the Supplier and the Customer and supersede all prior arrangements and understandings whether written or oral regarding the subject matter of the Contract. Nothing in this condition shall exclude or limit the Supplier's liability for fraudulent misrepresentation.
- 11.7 If the Supplier, in an effort to comply with any statute, regulation or British Standards Institution requirement deems it necessary to vary any terms of the Contract, then the Supplier may do so.
- 11.8 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Contract, or such other address as may have been notified by that party for such purposes.
- 11.9 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 11.10 Conditions 11.8 and 11.9 shall not apply to the service of any proceedings or other documents in any legal action.
- 11.11 No delay or failure by the Supplier in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.
- 11.12 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severed and the remainder of such provision and the remaining provisions of the Contract shall continue in full force and effect.
- 11.13 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Agreements (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.14 The Supplier may assign its rights under the Contract or any part of it to any person, firm or company. References to the Supplier in the Contract shall include its successors and assigns.
- 11.15 The Customer shall not be entitled to assign its rights under the Contract or any part of it without the prior written consent of the Supplier.
- 11.16 The Contract and any dispute arising under or in connection with it shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.