

DNA WORKPLACE LTD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES IN RELATION TO SCIENTIFIC TESTING

LEGAL DISCLAIMER RELATED TO COVID-19 TESTING

DNA Workplace provide indicative screening for both the active COVID-19 virus via Antigen/PCR (present infection of COVID-19) and COVID-19 antibodies (past infection to COVID 19).

Antigen testing can be carried out at point of care through the use of a Rapid Screening test and PCR testing is offered as a back to laboratory testing service.

Antibody testing can be carried out at point of care through the use of a Rapid Screening test or with the test sample being sent back to a laboratory for testing.

Rapid Antigen and back to Lab PCR Testing

The Rapid COVID-19 Antigen Screening Kit is intended for the indicative (not conclusive) detection of a present infection of COVID-19. It is a screening device and should be used a part of an overall COVID-19 testing program. It is designed for professional use.

The Back to Lab PCR Test is indicative (not conclusive) as to whether a person currently has COVID-19. As such, while the test is believed to be an effective indicator of infection, no assurance can be given as to its accuracy.

A positive PCR test confirms present infection. A negative Antigen or PCR result does not exclude current infection and should be repeated inline with instructions provided and government guidelines.

COVID-19 - Antibody testing

The Rapid COVID-19 IgM/IgG Screening Kit and the Back to Lab Antibody Testing Kit are intended for the detection of antibodies related to COVID-19. They are not intended for, nor should they be used for, testing whether a person has COVID-19. In addition, in the case of the Rapid COVID-19 IgM/IgG Screening Testing Kit, this is for professional use only as advised by the Medicines and Healthcare products Regulatory Agency

The antibody tests look at both IgM and IgG antibodies. By determining if a person has such antibodies, the tests are indicative (not conclusive) as to whether a person currently has COVID-19 or has had it in the past. As such, while the tests are believed to be an effective indicator of past infection, no assurance can be given as to their accuracy.

A positive test for antibodies confirms antibodies are detected. A negative result does not exclude the presence of antibodies and should be repeated in line with the instructions provided.

Generally

Regardless of the test results and even if the test detects antigens, the virus or antibodies related to COVID-19, all individuals subjected to the test should strictly follow government guidelines regarding hygiene, self-isolation and other measures.

The accuracy of the results for antibody and antigen/PCR testing depends on when and how the person takes the sample. For rapid antibody testing it is advised that that the test is carried out at least 14 days after the symptoms have appeared and for back to lab antibody testing it is advised that the test is carried out at least 21 days after the symptoms have appeared. For antigen/PCR testing it is essential to collect the sample within the first 5 days of symptoms and ideally by the third day. In all cases it is very important that the samples carried out correctly. Failure to carry out the sampling correctly can result in a failed or invalid test.

1. Interpretation

1.1 Definitions:

Appointment: any agreed time and date when the Supplier shall provide all or some of the Services at the Customer's site (or such other agreed location).

Back to Lab Testing Kits: Back to Lab Antigen/PCR Testing Kits, Back to Lab Antibody Testing Kits, Back to Lab Drug & Alcohol Testing and Back to Lab Health Testing or any other tests listed in the Goods Specification or the Services Specification.

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 9.

Commencement Date: has the meaning given in clause 2.5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.5.

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

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

Customer Default: has the meaning set out in clause 8.2.

Customer personal data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

Delivery Date: the date specified for delivery of an Order in accordance with clause 2.6.

Delivery Location: the address for delivery of Goods as set out in an Order.

MHRA: Medicines and Health Care Products Regulatory Agency.

Force Majeure Event: has the meaning given to it in clause 15.1.

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

Goods Specification: any specification for the Goods provided by the Supplier to the Customer. Provided either as an Appendix to these terms and/or listed on the quotation.

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

Order: an order for Goods and/or Services submitted by the Customer in accordance with clause 2.

Price: the price for the Goods as set out in an Order.

Quotation: a quotation generated by the Supplier in respect of the provision of Goods and/or Services to the Customer and to which includes or the Supplier shall attach, if applicable, its Goods Specification and/or Service Specification.

Services: the services supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification of the Services provided by the Supplier to the Customer provided either as an Appendix to these terms and/or as part of the Quotation.

Supplier: DNA Workplace Ltd (company number **11036947** whose registered office is at G1, Frome Business Park, Manor Road, Marston Trading Estate, BA11 4FN).

Supplier Materials: has the meaning set out in clause 8.1(f).

1.2 Interpretation:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (c) a reference to **writing** or **written** includes emails.

2. Basis of contract

- 2.1 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 law, trade custom, practice or course of dealing.
- 2.2 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified,
- 2.3 Orders in respect of Goods and/or Services shall, depending on the nature of the Goods and/or Services to be supplied and as the Supplier determines from time to time, be either given in writing using the Supplier's purchase order form or by the Customer's written acceptance of the Supplier's Quotation.
- 2.4 Each Order shall be deemed to be a separate offer by the Customer to purchase goods and/or Services on the terms of this Contract and any Quotation given by the Supplier shall not constitute an offer. The Supplier may, at its discretion, accept an amendment to an Order by the Customer.
- 2.5 An 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**).
- 2.6 Unless the Supplier in its sole discretion accepts amendments to an Order, the Customer may not amend or cancel an Order after its acceptance.
- 2.7 In respect of the supply of Goods, at the same time as confirming an Order or as soon as practicable thereafter, the Supplier shall inform the Customer of the Supplier's estimated delivery date for the Goods ordered (**Delivery Date**).
- 2.8 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.

3. Goods

- 3.1 The Goods as described in the Goods Specification.
- 3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery

- 4.1 The Supplier shall ensure that:
 - (a) each delivery of Goods is accompanied by a delivery note that shows the order number, the type and quantity of the Goods, special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of the Goods remaining to be delivered; and

- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
 - 4.2 The Supplier shall on the relevant Delivery Date either:
 - (a) where the Order states that the Supplier is to deliver the Goods to the Delivery Location, endeavour to deliver the Goods to the Delivery Location on the Delivery Date; or
 - (b) where the Order states that the Customer is to collect the Goods from the Delivery Location, endeavour to have the Goods ready for collection from the Delivery Location on the Delivery Date (in which case the Customer shall collect the Goods within three Business Days of the Supplier notifying the Customer that they are ready).
 - 4.3 Delivery is completed when the Supplier delivers the Order to the Delivery Location or has the Goods ready for collection at the Delivery Location (as the case may be).
 - 4.4 Delivery Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by:
 - (a) a Force Majeure Event;
 - (b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or
 - (c) independent courier firms and postal services.
 - 4.5 If the Supplier fails to deliver the Goods or have the Goods ready for collection by the relevant Delivery Date, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Goods of similar description and quality in the cheapest market available, less the Price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by:
 - (a) a Force Majeure Event; or
 - (b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
 - 4.6 If 5 Business Days after the day on which the Supplier attempted to make delivery of the Goods or notified the Customer that the Goods were ready for collection (as the case may be) the Customer has not taken delivery of or collected the Goods, the Supplier may resell or otherwise dispose part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods, or charge the Customer for any shortfall below the price of the Goods.
 - 4.7 If the Supplier delivers up to and including 5% more or less than the quantity of the Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of the Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
 - 4.8 The Supplier may deliver Orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.
- 5. Quality and fitness for purpose**
- 5.1 The Supplier warrants that on delivery the Goods shall:
 - (a) conform with their description;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
 - 5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier promptly after discovery that some or all of the Goods do not comply with the warranties set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, replace any Goods that are found to be defective or refund the price of such defective Goods in full.

- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods;
 - (c) the Customer alters or repairs the Goods without the written consent of the Supplier;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 5.1 is as set out in this clause 5.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

- 6.1 Risk in the Goods shall pass to the Customer on completion of delivery of the Goods at the Delivery Location.
- 6.2 Title to the Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (c) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1 (b) or clause 13.1 (c); and
 - (d) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 6.3, and to recover any Goods in which property has not passed to the Customer.
- 6.5 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to the Seller.

7. Supply of Services

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in its Quotation or Service Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 The Supplier provides no representation or warranty, express or implied, that the results derived from the Services are fit for any particular purpose.

8. Customer's obligations

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - (d) prepare the Customer's premises for the supply of the Services;
 - (e) comply with all applicable laws, including health and safety laws;
 - (f) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - (g) use the information derived from the Services solely for its own purposes;
 - (h) comply with any additional obligations as set out in the Service Specification; and
 - (i) For Back to Lab Testing;
 - (i) where required, appoint a "Qualified Person" to receive the test results;
 - (ii) ensure that all documentation in relation to testing is correctly completed and all relevant and necessary consents obtained unless the Supplier provides a sample collector who is responsible for completion of the documentation; and
 - (iii) ensure that all test samples are properly packed and secured in accordance with Public Health England's guidance and in such manner, and sent by commercial courier or post, so as to enable them to reach the laboratory nominated by the Supplier (and as notified to the Customer) in good condition and within the necessary period from the date of the relevant test (unless the Supplier provides a sample collector and courier who are responsible for their relevant services or the Customer uses the Supplier's onsite testing service).
- 8.2 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**):
- (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;

- (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 clause 8.2; 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.

8.3 The Customer:

- (a) confirms that they have read and understand the Legal Disclaimer on page 1 of this Contract;
- (b) understands and acknowledges that the detection rates achieved by any Goods or Services provided will differ from person to person depending on various factors including for COVID-19 how long the patient has had COVID-19 symptoms and that there is no guarantee as to the consistency of detection rates or as to the accuracy of the results provided by the Goods or Services;
- (c) in the case of antibody and antigen testing, understands and acknowledges that use of the Goods or Services may result in an infected patient providing a false negative result.

9. Charges, cancellations and payment

9.1 The Customer shall pay for the Goods in accordance with this clause 9.

9.2 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order; and
- (b) unless otherwise stated in the Order, shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which the Supplier may invoice to the Customer in addition to the Price.

9.3 The Charges for the Services shall be as set out in the Order.

9.4 The Supplier reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.5 If the Customer cancels the Contract after the Supplier has accepted the Order, all Charges remain payable in full and no refunds shall be provided in respect of amounts already paid unless the Supplier, in its sole and absolute discretion, determines otherwise.

9.6 In respect of Goods and Services, the Supplier shall invoice the Customer on or at any after it confirms the relevant Order to the Customer. In respect of Services, the Supplier shall invoice the Customer on completion of the Services or in accordance with any credit terms stated in the Quotation or otherwise agreed by the Supplier and confirmed in writing to the Customer.

- 9.7 The Customer shall pay each invoice submitted by the Supplier:
- (a) shall pay invoices in full in cleared funds upon the Order being accepted by the Supplier or in accordance with any credit terms stated in the Quotation or otherwise agreed by the Supplier and confirmed in writing to the Customer;
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 9.8 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 or Goods at the same time as payment is due for the supply of the Services or Goods.

- 9.9 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 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 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%.

- 9.10 The Customer shall pay all amounts due under the contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

- 9.11 All payments payable to the Supplier by the Customer under this Contract shall become immediately due and payable on termination of this Contract for any reason.

10. Intellectual property rights

- 10.1 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.

11. Data protection

- 11.1 The following definitions apply in this **Error! Bookmark not defined.Error! Reference source not found.**:

- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
- (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
- (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

- 11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This **Error! Bookmark not defined.Error! Reference source not found.** is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

- 11.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.

- 11.4 Without prejudice to the generality of clause 11.2, 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 the Contract.
- 11.5 Without prejudice to the generality of clause 11.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures 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 UK 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 Contract unless required by Domestic Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this **Error! Bookmark not defined.Error! Reference source not found.**
- 11.6 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.
- 11.7 Either party may, at any time on not less than 30 days' notice, revise this **Error! Bookmark not defined.Error! Reference source not found.** by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

12. Limitation of liability

- 12.1 References to liability in this clause 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in this clause 12 shall limit the Customer's payment obligations under the Contract.
- 12.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.4 Subject to clause 12.3, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap. In this clause:
- (a) **cap.** The cap is the total charges in the contract year in which the breaches occurred;
 - (b) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
 - (c) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.
- 12.5 Subject to 12.3, this clause 12.5 sets out the types of loss that are wholly excluded:
- (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information.
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 12.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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.
- 12.7 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 three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 12.8 This clause 12 shall survive termination of the Contract.

13. Termination

- 13.1 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:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so;
 - (b) 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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;
 - (c) 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.
- 13.2 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 the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.3 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:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer becomes subject to any of the events listed in clause 13.1(b) or clause 13.1(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and

14. Consequences of termination

- 14.1 On termination of the Contract:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods 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 Customer shall return all of the Supplier Materials or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 14.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

15. General

- 15.1 **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 (a **Force Majeure Event**). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 15.2 **Assignment and other dealings.**
- (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.

- (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.

15.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

15.4 Entire agreement.

- (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.
- (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 based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

15.5 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).

15.6 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.

15.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 15.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first-class post or other next working day delivery service, commercial courier or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.8(a); 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; if

delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 15.9 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 15.10 **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.
- 15.11 **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.