

Astra Signs Limited
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Terms and conditions:

For the supply of goods and services



Astra Signs Limited – Terms and conditions for the supply of goods and services
The Customer’s attention is particularly drawn to the provisions of clause 12.

1 Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

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

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

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 the Goods and/or Services from the Supplier.

Delivery Location: has the meaning set out in clause 4.1.

Force Majeure Event: has the meaning given to it in clause 14.1.

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

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

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

Order: the Customer’s order for the supply of Goods and/or Services, as set out in the Customer’s purchase order form, or the Customer’s written acceptance of the Supplier’s quotation, or overleaf, as the case may be.

Services: the services, including installation of the Goods, supplied by the Supplier to the Customer.

Supplier: Astra Signs Limited registered in England and Wales with company number 3115547 whose registered office is situated at 204 Dantzic Street, Manchester M4 4DD.

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

1.2 Construction. In these Conditions, the following rules apply :

(a) **a person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) a reference to a party includes its successors or permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory 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;

(d) 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

(e) a reference to **writing** or **written** includes e-mails.

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2 Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or 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 or (if earlier) the Supplier delivers the Goods to the Customer at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate (including any terms or conditions which the Customer purports to apply under its Order or any other document), 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 60 days from its date of issue provided that the Supplier has not previously withdrawn it.
- 2.6 No Order which has been accepted by the Supplier may be varied or cancelled by the Customer except with the agreement in writing of the Supplier’s account manager for the Customer and then only on terms that the Customer indemnifies the Supplier in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such variation or cancellation.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 Goods

- 3.1 The Goods are described in the Supplier’s written acceptance of the Order. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations of the Goods or 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 or have any contractual force. The Customer acknowledges in particular that variances in colour may apply dependent on the material used in and location of the Goods.
- 3.2 The Customer is solely responsible for ensuring the accuracy of the terms of its Order (including any applicable specification) and any design sheet presented to the Customer for sign-off and for giving the Supplier any necessary information and signing off any designs relating to the Goods within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 3.3 The Customer must satisfy itself as to the specification, quality and fitness for purpose of the Goods before taking delivery, and the Customer shall not in any way rely upon the Supplier’s skill or judgement in this respect except to the extent that the Supplier has expressly agreed in writing to provide structural design services so that the Goods are suitable for a specific purpose as agreed in writing by the Supplier.
- 3.4 To the extent that the Goods are to be manufactured or any process is to be applied to the Goods in accordance with a name, logo, design or specification supplied or proposed by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the Supplier’s use of such name, logo, design or specification. This clause 3.4 shall survive termination of the Contract.
- 3.5 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

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4 Delivery of Goods

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location).
Where the Delivery Location is the Supplier’s place of business, the Customer shall collect the Goods within 30 days of the Supplier notifying the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods’ arrival at the Delivery Location or (where the Delivery Location is the Supplier’s place of business) upon the completion of loading of the Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any failure to deliver or delay in delivery of the Goods that is caused by a Force Majeure Event or 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.
- 4.4 Where the Supplier is liable for any delay in delivery of the Goods, the delay shall only entitle the Customer to terminate the Contract if it exceeds 60 days, and the Customer’s liability shall be limited to issuing a credit note for the pro rata price against any invoice raised for such Goods.
- 4.5 The Supplier shall not be liable for any non-delivery of Goods unless written notice is given to the Supplier within 48 hours of the time when the Goods would in the ordinary course of events have been received.
- 4.6 If the Customer fails to accept delivery of the Goods when they are ready for delivery or (where applicable) fails to collect the Goods within 30 days of being notified that they are ready, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
 - (a) delivery of the Goods shall be deemed to have been completed at the time the Supplier makes the Goods available or (where applicable) upon expiry of the 30 day period for collection;
 - (b) risk in the Goods will pass to the Customer; and
 - (c) the Supplier may store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 The Customer shall inspect the Goods upon delivery and shall within 48 hours of delivery given written notice to the Supplier, and (where applicable) to the carrier, of any damage.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

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5 Quality of Goods

- 5.1 The Supplier warrants that on delivery the Goods shall conform in all material respects with their description, and that for a period of 12 months from the date of delivery (warranty period) the Goods shall be free from material defects in material and workmanship;
- 5.2 Subject to clause 5.3, if:
 - (a) the Customer gives notice in writing during the warranty period and within a period of 7 days of discovery that some or all of the Goods do not comply with the warranty 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, repair or replace any Goods found to be defective, or refund the price of the defective Goods.
- 5.3 The Supplier shall not be liable for the Goods’ failure to comply with the warranty in clause 5.1 if:
 - (a) the defect arises because the Customer failed to follow the Supplier’s oral or written instructions (including those set out in the Supplier’s O&M Manual relating to the Goods) as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (b) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - (c) the Customer alters or repairs such 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 weather or environmental conditions;
 - (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods’ failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

6 Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery (or deemed delivery in accordance with clause 4.6(a)).
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier’s property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier’s behalf from the date of delivery and shall, on request, produce the policy of insurance to the Supplier;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(l); and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 In the event that the Customer affixes the Goods to a surface, the Customer shall ensure that the Goods remain separate from that surface and shall not become a fixture of the property or surface to which they are affixed.

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- 6.5 Subject to clause 6.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time it does so as principal and not as the Supplier’s agent.
- 6.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(l), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer’s right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them and charge the Customer all reasonable costs incurred in doing so.

7 Supply of Services

- 7.1 The Supplier shall use all reasonable endeavours to meet any performance dates quoted for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8 Customer’s obligations

- 8.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide the Supplier, its employees, agents, consultants and subcontractors, with safe, free and unencumbered access to the Customer’s or any third party’s premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - (c) provide the Supplier with such information as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - (d) prepare the Customer’s or (where applicable) third party’s premises for the supply of the Services;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - (f) keep and maintain all materials, equipment, tools, documents and other property of the Supplier (**Supplier Materials**) at the Customer’s or (where applicable) third party’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.

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- 8.2 If the Supplier’s performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (including its obligations under clause 3.2) (**Customer Default**):
- (a) the Supplier shall without limiting its other rights or remedies 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 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.

9 Charges and payment

- 9.1 The price for Goods shall be the quoted price or, if no price is quoted, the price set out in the Supplier’s published list price as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2 The charges for Services shall be the charges set out in the Supplier’s quotation or, if no price is quoted, shall be on a time and materials basis calculated in accordance with the Supplier’s standard daily fee rates and overtime rates applicable from time to time.
- 9.3 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.4 The Supplier reserves the right to increase the price of the Goods or charges for the Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods or Services to the Supplier that is due to:
- (a) 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);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification or the performance dates for the Services; or
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods or Services.
- 9.5 Unless agreed otherwise in writing:
- (a) in respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery; and
 - (b) in respect of Services, the Supplier shall invoice the Customer monthly in arrears.
- 9.6 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
 - (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.
- 9.7 The Supplier may carry out credit checks from time to time against the Customer and may at any time require the Customer to pay a deposit or provide other security against payments due or which may become due under the Contract.

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- 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. Should any other tax duty or levy or other payment whatsoever be imposed by the European Union or governmental authority relating to the Goods or Services before delivery of such Goods or performance of such Services, the Customer shall bear the burden of such tax, duty or levy or other payment and any associated costs arising.
- 9.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Royal Bank of Scotland plc’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Please note that the erection and installation of static signs is not covered by the Construction Industry Scheme and therefore the deduction of tax is not required is not required or permitted in such cases. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10 Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 10.2 All specifications, brochures, catalogues, price lists and all advertising matter are the copyright of and shall remain the property of the Supplier and must not be copied, reproduced or divulged directly or indirectly to any other person without the Supplier’s prior written permission and may be void, withdrawn or cancelled by the Supplier at any time.
- 10.3 All Supplier Materials are the exclusive property of the Supplier.

11 Confidentiality

A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party’s business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party’s obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party’s confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

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12 Limitation of liability: THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude the Supplier’s liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- (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, or any indirect or consequential loss arising under or in connection with the Contract;
- (b) 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 the pro-rata Contract price in respect of the defective Goods and/or Services.

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 The Customer shall indemnify the Supplier against all and any liabilities, costs, expenses, damages and losses arising out of or in connection with:

- (a) any claim made against the Supplier at common law or under the Consumer Protection Act 1987 or otherwise under statute as a result of the Customer failing to identify or notify the Supplier of any defect in the Goods or Services within a reasonable time or as required by the Contract and/or by any statutory obligation;
- (b) any claim made against the Supplier arising out of or in connection with any resale of the Goods to a third party or use of the Goods by a third party in a manner not previously agreed in writing by the Supplier to be suitable or in a manner not in accordance with the Contract.

12.5 This clause 12 shall survive termination of the Contract.

13 Termination

13.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer suspends, or threatens to suspend, 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 or limited liability partnership) 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;

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- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of Customer;
 - (d) the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - (e) 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;
 - (f) an application is made to court, or 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 (being a company);
 - (g) the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(a) to clause 13.1(h) (inclusive);
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - (k) the Customer financial position deteriorates to such an extent that in the Supplier’s opinion the Customer’s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (l) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.2 Without limiting its other rights or remedies, 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 this Contract on the due date for payment or fails to provide any deposit or other security in accordance with any request made by the Supplier pursuant to clause 9.7.
- 13.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, if the Customer fails to provide any deposit or other security in accordance with any request made by the Supplier pursuant to clause 9.7, if the Customer becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(l), or if the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 13.4 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 yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

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- (b) the Customer shall return all of the Supplier Materials 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;
- (c) the accrued rights and remedies of the parties as at 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
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14 Force majeure

- 14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials, act of God, war, national emergency, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, epidemic or default of suppliers or subcontractors.
- 14.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 30 days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15 Dispute resolution

- 15.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the account manager of the Supplier and a manager of the Customer shall attempt in good faith to resolve the Dispute;
 - (b) if the account manager of the Supplier and the manager of the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a director of the Supplier and a director of the Customer who shall attempt in good faith to resolve it; and
 - (c) if the director of the Supplier and the director of the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 21 days later the date of the ADR notice.
- 15.2 Neither party may commence any court proceedings under clause 16.10 in relation to the whole or part of the Dispute until 21 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

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The Customer’s attention is particularly drawn to the provisions of clause 12.

16 General

16.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 Notices.

- (a) Any notice given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) 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 prepaid first-class post or other next working day delivery service, or by commercial courier or e-mail.
- (b) A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a) 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 by e-mail, 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

16.3 **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.

16.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 **Cumulative rights and remedies.** Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

16.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

16.7 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by a director of the Supplier.

16.9 **Governing law.** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

16.10 **Jurisdiction.** Each party irrevocably agrees that, subject to clause 15, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).