

## Data Select Limited

### Conditions of Sale

The Seller agrees to sell certain goods to the Buyer under these terms and conditions of sale.

#### 1. Definitions and interpretation

In these Conditions, unless the context otherwise requires, the following definitions shall apply:

**"Buyer"** means the person whose order for the Goods is accepted by the Seller.

**"Conditions"** means the standard terms and conditions of sale set out in this document and including any special terms and conditions agreed in writing between the Buyer and the Seller in accordance with clause 2.4.

**"Contract"** means the contract for the sale and purchase of the Goods under and incorporating these Conditions.

**"Goods"** means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with the Conditions.

**"Insolvency Event"** means any one or more of the events listed at clauses 15.1(a) to 15.1(d).

**"Intellectual Property Rights"** means copyright, database rights, design rights, patents, trade marks, rights in software, service marks, domain names (whether or not any of the same are registered and including applications for registration of the same) and confidential information, know-how and all other intellectual property or forms of protection of similar nature or having equivalent effect to any of the same, which may subsist in any part of the world, now or in the future, including the right to register and enforce the same.

**"Seller"** means Data Select Limited (company number: 03662640) whose registered office is at Network House, Third Avenue, Globe Park, Marlow, Bucks, SL7 1LY.

#### 2. Basis of the sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with a written order of the Buyer (in a form specified by the Seller) which is accepted by the Seller subject to these Conditions. These Conditions shall govern all Contracts to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.
- 2.2 Quotations issued to the Buyer by the Seller may be withdrawn or varied at any time and unless otherwise specified shall only be valid for the business day on which they are provided. No binding contract between the parties shall in any event arise until the Buyer's written order has been accepted by the Seller and confirmed in writing by the Seller's authorised representative by issue of an order confirmation (each such order when so confirmed being a Contract).
- 2.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 Seller as a result of cancellation.
- 2.4 No variation of these Conditions shall be binding on the parties unless agreed in writing between the authorised representative of the Seller and the Buyer.
- 2.5 Sales literature, price lists, websites, and other documents and promotional material issued by the Seller or a manufacturer of the Goods in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into a Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not set out in a Contract. Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction

without any liability on the part of the Seller

2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.7 Any samples, illustrations or descriptive material and other information contained in the Seller's brochures, advertising material or elsewhere shall not form part of a Contract and shall be treated as approximate and for guidance only unless specifically stated otherwise. The Seller may at its discretion from time to time vary the design of the Goods from that advertised without notice to the Buyer provided that any such variations do not constitute material alterations to the Goods. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements which do not materially affect their quality or performance.

### 3. **Orders and specifications**

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform a Contract in accordance with its terms.

3.2 The quantity, type (e.g. new, refurbished, customer return etc) and description of the Goods shall be those set out in the Buyer's order (if accepted by the Seller in accordance with clause 2.2).

3.3 The Seller shall be entitled to reject any orders from the Buyer.

### 4. **Price of the Goods**

4.1 Unless otherwise agreed in writing between the Seller and the Buyer, the price of the Goods shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the order by the Seller.

4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for Goods which is requested by the Buyer, or any delay caused by instructions of the Buyer or failure of the Buyer to give the Seller accurate or timely information or instructions.

4.3 Unless otherwise agreed in writing between the Buyer and the Seller, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance in respect of delivery of the Goods. All prices are exclusive of such charges.

4.4 Where under a Contract any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.

4.5 The Seller may at its discretion allow the Buyer quantity discounts subject to and in accordance with the conditions set out in the Seller's published price list for the Goods current at the date of acceptance of the Buyer's order.

4.6 Any settlement discount specified by the Seller in the Contract will be allowed by the Seller to the Buyer in respect of Goods for which payment is received by the Seller on or before the due date and otherwise in accordance with the payment terms set out in these Conditions and provided that no other amounts owed by the Buyer to the Seller under any Contract are overdue or unpaid.

## 5. **Payment terms**

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer with the price of the Goods on or at any time after delivery of the Goods, unless the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Goods.
- 5.2 Save as may have otherwise been agreed by the Seller and the Buyer in writing in the accordance with the terms of any credit account authorised by the Seller for the Buyer from time to time, the Buyer shall pay the price of the Goods not later than thirty days following the date of the invoice relating to the Goods. The time of payment shall be of the essence of each Contract. All payments shall be made in full without deduction in respect of any set-off or counterclaim.
- 5.3 If the Buyer fails to make any payment to the Seller on the due date then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- (a) cancel each and any unperformed or part performed Contract between the Seller and the Buyer and/or suspend any further deliveries of Goods to the Buyer;
  - (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate equivalent to that set out in section 6 of the Late Payments of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue day to day from the due date and being compounded on the last day of each calendar month) until payment is made.
- 5.4 The Seller may at any time set off any liability of the Buyer to the Seller howsoever arising and whether such liability is present or future. Any exercise of the Seller's rights under this clause shall be without prejudice to any other rights or remedies available to the Seller under a Contract.

## 6. **Delivery**

- 6.1 Delivery of the Goods shall be made to the place for delivery in the United Kingdom agreed between the Seller and the Buyer.
- 6.2 The Seller shall endeavour to deliver the Goods by the date quoted for delivery but such date is not guaranteed nor shall the time for delivery be of the essence. The date quoted for delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of the Seller. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat any Contract as a whole as repudiated.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions, documents, licences, consents or authorisations at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) that are required to enable the Goods to be delivered then without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the relevant Contract or charge the Buyer for any shortfall below the price under that Contract,

and then notwithstanding the provisions of clause 7.1 risk in the Goods shall pass to the Buyer

and delivery shall be deemed to have taken place.

- 6.5 The Seller (and its employees, agents and subcontractors) may decline to deliver Goods if the Seller (its employees, agents and/or subcontractors (as the case may be)) believe, acting reasonably, that it would be unsafe, unlawful or unreasonably difficult to deliver the Goods; and/or the premises at which the Goods are to be delivered (or the access to them) is unsuitable for the relevant delivery vehicle. In such circumstances the provisions of clause 6.4 shall apply.
- 6.6 If the Seller fails to deliver the Goods or any part thereof on the delivery date specified in the Contract other than for reasons outside the Seller's reasonable control or the Buyer's or its carrier's fault:
- (a) if the Seller delivers the Goods at any time thereafter the Seller shall have no liability in respect of such late delivery; or
  - (b) if the Buyer gives written notice to the Seller of the failed delivery, within 7 days after such delivery date and the Seller fails to deliver the Goods within 30 days after receiving such notice the Buyer may cancel the order and the Seller shall have no liability in respect thereof.

## 7. Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- (a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - (b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of a Contract, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall:
- (a) hold the Goods as the Seller's fiduciary agent and bailee;
  - (b) keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Seller's property; and
  - (c) be entitled to resell or use the Goods in the ordinary course of its business (unless the Seller revokes such entitlement) provided always that in the event that the Buyer sells or transfers any Goods supplied by the Seller to a third party before legal and beneficial title in such Goods have passed to the Buyer under these Conditions, the proceeds of the sub-sale or transfer (or such proportion as is due to the Seller in relation to the Goods sold) shall be held by the Buyer on the Seller's behalf and delivered up by the Buyer to the Seller immediately upon demand. The Buyer's right to sell or transfer any Goods supplied by the Seller to a third party before legal and beneficial title in such Goods has passed to the Buyer under these Conditions shall automatically cease and terminate upon the Buyer breaching any terms of these Conditions and/or the occurrence of any Insolvency Event. On any such sale or use of the Goods the Buyer shall sell or use those Goods as have been longest in its possession.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled:
- (a) on three days' notice to the Buyer to enter upon any premises where the Goods are stored to inspect them; and
  - (b) at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so immediately, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) immediately become due and payable.

7.6 The provisions set out in this clause shall be without prejudice to the obligation of the Buyer to purchase the Goods. The Seller shall have the right to commence debt recovery and other legal proceedings to recover any sum outstanding from the Buyer to the Seller notwithstanding the provisions of this clause 7.

## 8. **Warranties and notification of claims**

8.1 The Buyer must inspect the Goods at the time of their delivery or collection (as the case may be). Any claim for non-delivery (including, but not limited to, short shipment, transit damage, or dead on arrival) of any Goods shall be notified in writing by the Buyer to the Seller within forty eight hours of the date of the scheduled delivery. Subject to clause 10, the Seller shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the provisions of this clause 8 are not complied with and, in any event, will be under no liability if a written complaint is not delivered to the Seller within 48 hours of delivery detailing the alleged damage or shortage. In all cases where the Buyer complains of defects or shortages, the Seller shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to the Seller before any use is made of the Goods or if any alteration or modification is made to the Goods by the Buyer. Subject to the remainder of this clause 8 and to clause 10, the Seller shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

8.2 Any claim which is based on any defect in the quality or condition of the Goods shall (whether or not delivery is refused by the Buyer) be notified to the Seller within thirty days from the date of delivery (or as otherwise specified in the Seller's returns policy from time to time). If the Goods develop a fault or other defect within thirty days of the date of their delivery to the Buyer, the Buyer must:

- (a) inform the Seller providing full details of the fault or defective within five days of discovering the same;
- (b) comply with the provisions of clause 8 (and where applicable clause 9), and in so doing give the Seller (and, if relevant, the manufacturer of the Goods in question) a reasonable period of time to inspect and examine the Goods to determine if they are faulty or defective in any way.

If a fault in any Goods comes apparent after the date that is thirty days after the date of delivery of the Goods to the Buyer, then the Buyer must rely on the terms of any manufacturer's warranty that applies to the Goods and the Seller shall have no liability in respect of any such fault or defect.

8.3 If delivery is not refused, and the Buyer does not notify the Seller of any claim in accordance with clauses 8.1 and/or 8.2 (as the case may be), the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the relevant Contract.

8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods is notified to the Seller in accordance with clause 8.2, the Seller shall, at its sole discretion, replace the Goods (or the part in question) free of charge within a reasonable period or refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.5 The Seller shall be under no liability in respect of:

- (a) any defect arising from fair wear and tear;
- (b) any wilful damage caused by the Buyer or any third party (or their respective agents, sub-contractors or employees);

- (c) Buyer's or end consumer's negligence and/or failure to follow the Seller's or manufacturer's instructions (whether given orally or in writing);
  - (d) Buyer's or end consumer's misuse or alteration of the Goods without the Seller's prior written approval;
  - (e) any other act or omission on the part of the Buyer or the end consumer their respective employees or agents; or
  - (f) any Good(s) returned by the Buyer to the Seller which are alleged to have been faulty and/or defective in any way ("**Alleged Faulty Good(s)**") but following testing and/or inspection by the Seller or the relevant manufacturer (or their authorised agents, employees or contractors), are determined by the such person(s), in their absolute discretion, not to be faulty or defective in any way (a "**No Fault Found Return**").
- 8.6 The Buyer shall be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Seller.
- 8.7 Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.8 The Buyer shall be responsible for ensuring that, except to the extent that instructions as to the use or sale of the Goods are contained in the packaging or labelling of the Goods, any use or sale of the Goods by the Buyer is in compliance with all applicable statutory requirements and that handling and sale of the Goods by the Buyer is carried out in accordance with directions given by the Seller or any competent governmental or regulatory authority. The Buyer shall observe all reasonable directions and instructions given to it by the Seller in relation to the promotion and advertisement of the Goods and shall not make any written statement as to the quality or manufacture of the Goods without the prior written approval of the Seller. The Buyer will indemnify the Seller against any liability loss or damage which the Seller might suffer as a result of the Buyer's failure to comply with this condition.
- 8.9 The warranties contained in this clause 8 may be assigned by the Buyer to end customers (where the Buyer re-sells the Goods), subject to compliance by the end customers with the provisions of this clause and subject to any limitations on the warranties specified in this clause and the Contract. The Seller shall have no other liability to end customers except as set out in these warranties.
- 9. Returns**
- 9.1 All returns of the Goods shall be subject to the returns policy of the Seller or the relevant manufacturer or supplier.
- 9.2 The Buyer shall not be entitled to return any Goods to the Seller without the Seller's prior written consent. Such consent may be conditional on the payment of a handling charge (unless the Goods were defective when delivered) and the Goods being as fit for sale on their return as they were on delivery.
- 9.3 The Seller will sometimes, pursuant to clause 8.4 as a gesture of goodwill, refund, credit back or replace an Alleged Faulty Good prior to determination as to whether or not such is faulty or defective in any way. In the event that the Seller has refunded, credited back or replaced an Alleged Faulty Good and such is determined to have been a No Fault Found Return the Buyer irrevocably and unconditionally undertakes to repay to the Seller on demand any amount refunded, credited back or the value of any replacement Good supplied pursuant to this clause 9.3.
- 9.4 The Seller shall have no liability to the Buyer in the event that a Good supplied by the Seller to the Buyer is faulty or defective at any time after the date that is 30 days after the date of delivery of such Good to the Buyer and the Buyer will need to deal directly with the original equipment manufacturer of the Good and rely upon the terms of any manufacturer warranty supplied (if any) with the Good.
- 10. Liability and remedies**
- 10.1 The Buyer acknowledges that it has entered into each Contract in reliance only on the representations, warranties promises and terms contained in that Contract and, save as

expressly set out in that Contract, the Seller shall have no liability in respect of any other representation, warranty or promise made prior to the date of that Contract unless it was made fraudulently. The Seller will accept unlimited liability for:

- (a) death or personal injury caused by the negligence of the Seller;
  - (b) any breach of its obligations implied by Section 12, Sale of Goods Act 1979 or Section 2, Supply of Goods and Services Act 1982; and
  - (c) anything else for which the Seller cannot at law limit or exclude its liability.
- 10.2 The Seller will accept liability for physical damage to the Buyer's tangible property resulting from the negligence of the Seller. The Seller's aggregate liability under this clause 10.2 shall be limited to an amount equal to £1,000,000.
- 10.3 Except as provided in clauses 10.1 and 10.2, the Seller will not be liable for the following loss or damage however caused and even if foreseeable by the Seller:
- (a) economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;
  - (b) loss arising from any claim made against the Buyer by any other person; or
  - (c) loss or damage arising from the Buyer's failure to fulfil its responsibilities or any matter under the control of the Buyer.
- 10.4 Except for the liabilities accepted by the Seller under clauses 10.1 and 10.2, the Seller's entire liability in respect of each of the Goods, whether arising in tort (including negligence), contract or breach of statutory duty or otherwise, is limited to the price of the relevant Good.
- 10.5 The Seller may recall any of the Goods if there is a defect in the Goods and in such circumstances the Buyer shall co-operate fully with the Seller with respect to the recall and to ensure that the impact on the brands and reputation of the Goods and the Seller is minimised.

## 11. **Force majeure**

The Seller shall not be liable to the Buyer or be deemed to be in breach of a Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- (a) Act of God, explosion, flood, tempest, fire or accident;
- (b) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or third parties);
- (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (d) import or export regulations or embargos;
- (e) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (f) power failure or breakdown in machinery.

## 12. **Intellectual Property Rights**

- 12.1 All Intellectual Property Rights in the Goods including any designs shall remain the property of the Seller or its licensors.
- 12.2 The Buyer agrees that any Intellectual Property Rights in the Goods may not be reproduced or used in any way except for the purposes of using the Goods in accordance with the instructions or with the prior written consent of the Seller.
- 12.3 The Seller has not knowingly infringed any Intellectual Property Rights of any third party but does not warrant or give any assurance to the Buyer that the Goods do not infringe the Intellectual Property Rights of any third party.
- 12.4 The Buyer shall not:
- (a) use any trade marks or trade names so resembling any trade mark or trade names of the Seller or its group companies as to be likely to cause confusion or deception; or

- (b) register or apply to register any trade marks of the Seller, or any trade marks that are confusingly similar to the Seller's trade marks, in any fashion.

### 13. **Indemnity**

The Buyer shall indemnify and keep the Seller indemnified against all costs, expenses, damages and demands incurred by the Seller in respect of:

- (a) any breach by the Buyer of its obligations under these Conditions;
- (b) any alleged infringement of the patents, trade marks, copyright, design or other Intellectual Property Rights used by the Seller at the request of the Buyer; and
- (c) any alleged breach or infringement of any applicable statute or regulation concerning the preparation, marketing and distribution of the Goods.

### 14. **Credit security and Credit Terms**

- 14.1 The Buyer shall provide to the Seller all financial information reasonably requested by the Seller from time to time for the purpose of establishing or continuing any credit limit (if any) offered by the Seller to the Buyer from time to time. The Buyer acknowledges and agrees that the Seller shall have the right to decline to extend credit to the Buyer and require that the price for any Goods to be paid in advance of delivery of such Goods.
- 14.2 Should credit facilities be provided by the Seller to the Buyer, the Buyer undertakes to the Seller to promptly notify the Seller of any material change in the Buyer's financial position, its finances, structure, ownership and/or value of assets. The Buyer undertakes to promptly notify the Seller of all changes to the Buyer's name, address, or of the sale of substantially all of the Buyer's assets. In addition to any other remedy available at law, failure by the Buyer to notify any change as required by this clause 14.2 shall entitle the Seller to revoke or otherwise withdraw or amend the terms of any trade credit facilities advanced by the Seller to the Buyer.
- 14.3 The Seller shall have the right from time to time, without notice, to change or revoke the Buyer's credit limit on the basis of changes in the Seller's credit policies and/or the Buyer's financial condition and/or payment record. If credit facilities made available by the Seller to the Buyer are revoked or withdrawn all amounts due from the Buyer to the Seller shall become immediately due and payable.
- 14.4 Unless otherwise agreed by the Seller, it is a condition precedent to the acceptance of any order and the delivery of any Goods by the Seller that the Buyer shall provide to the Seller such financial security (including without limitation references) as, at the discretion of the Seller, the Seller deems appropriate as security against the Buyer's non-compliance with or non-observance of any provision of these Conditions (including without limitation failure to pay monies to the Seller). The provision of any such security or the failure of the Seller to require any such security shall be without prejudice to the Seller's rights under clause 14.6 subsequently to require any or any other security.
- 14.5 The Seller shall carry out credit assessments of the Buyer from time to time as reasonably required by the Seller to assess the Buyer's risk profile. The Seller may at its sole discretion decide whether the Buyer's credit status is acceptable. Each credit assessment shall entitle the Seller to set a maximum limit on the amount of monies outstanding from the Buyer to the Seller at any time (whether such monies are outstanding pursuant to any Goods supplied pursuant to the terms of these Conditions or otherwise) and/or refuse to supply or limit the supply of Goods to the Buyer, and/or to demand that all amounts owed by the Buyer to the Seller be immediately paid in cash.
- 14.6 The Seller may at any time require the Buyer to enter into bank or other guarantees or to provide some other form of financial security which in the opinion of the Seller is appropriate as security against the Buyer's non-compliance with or non-observance of any of the provisions of these Conditions (including without limitation failure to pay monies to the Seller). Refusal by the Buyer to provide such security or failure to do so within 10 days of the date of request by the Seller shall be deemed to be a repudiatory breach of each and every Contract by the Buyer.
- 14.7 In the event that the Buyer is or becomes the subject of an Insolvency Event and/or the Buyer in breach of these Conditions and/or the Seller has reasonable grounds to suspect that the Buyer;

- (a) has or is about to become the subject of an Insolvency Event; and/or
- (b) has, or is about to, breach these Conditions,

then the Seller may withdraw, reduce or otherwise vary the terms of any agreed credit limit with the Buyer and under such circumstances all monies owed by the Buyer to the Seller shall at the Seller's discretion become immediately due and payable.

- 14.8 The Buyer must inform the Seller immediately if it is the subject of an Insolvency Event or it reasonably anticipates that an Insolvency Event will occur in relation to the Buyer.

## 15. **Insolvency of Buyer**

- 15.1 This clause applies if:

- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Seller) goes into liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction);
- (b) an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Buyer;
- (c) the Buyer ceases, or threatens to cease, to carry on business; or
- (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 15.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to do any one or more of the following:

- (a) cancel each and every Contract yet to be performed (in whole or in part);
- (b) suspend any further deliveries under each and every Contract without liability to the Buyer,
- (c) immediately revoke and any all credit extended to the Buyer on such terms as the Seller shall in its sole and absolute discretion determine;
- (d) reduce or cancel all quantity and other discounts offered to the Buyer; and
- (e) if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 16. **General**

- 16.1

- (a) Save as set out in 16.1(b), any notice to either party under these Conditions shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at or sent by prepaid first class post, prepaid recorded delivery, fax or e-mail to the address of the party as notified in writing from time to time.
- (b) E-mail shall not apply to the service of any proceedings or to the service of any other documents in any legal action.

- 16.2

- (a) Either party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it under any Contract by the other party without in any way prejudicing or affecting its rights in respect of any other liability or right not so released, compounded, compromised, waived or postponed.
- (b) No single or partial exercise or failure or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of, or impair or preclude any further exercise of that or any right, power or remedy arising under a Contract or otherwise.

- 16.3 The Buyer shall not be entitled to assign, transfer or deal in any manner with any of its rights, benefits or interest under a Contract, or to sub-contract any of its obligations under the Contract, without prior consent in writing of the Seller.
- 16.4 To the extent that any provision of these Conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of these Conditions, it shall not affect the enforceability of the remainder of these Conditions nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 16.5 Each party acknowledges that it has entered into each Contract in reliance only on the representations, warranties, promises and terms contained in that Contract (as the case may be) and, save as expressly set out in any Contract, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the date of the relevant Contract unless it was made fraudulently.
- 16.6 Nothing in any Contract or in any arrangement contemplated by it shall create a partnership or joint venture between the parties or render a party the agent of the other, nor shall a party hold itself out as such (whether by oral or written representation or by any other conduct) and, save as expressly provided in a Contract, neither party shall enter into or have authority to enter into any engagement, or make any representation or warranty on behalf of, or pledge the credit of, or otherwise bind or oblige the other party.
- 16.7 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 16.8 The headings in these Conditions are for convenience only and shall not affect their interpretation. A reference to a clause is to a clause of these Conditions. References to any gender shall include the other gender and words imparting the singular number shall include the plural and vice versa.
- 16.9 Any termination or expiry of a Contract shall not affect the continued existence and the validity of the rights and obligations of the parties under clauses 7, 8, 10, 11, 12, 13, 16, 17, 18, 19 and any provisions of the Contract necessary for the interpretation and enforcement of the Contract.
- 16.10 Each Contract sets out the entire agreement and understanding between the parties supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of that Contract.
- 16.11 Unless expressly provided in the relevant Contract, no term of that Contract (as the case may be) is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## 17. **Anti-Bribery**

The Buyer acknowledges and agrees that the Seller will not tolerate bribery in any form in connection with the conduct of its business. In dealing with the Seller and entering into commercial agreements, arrangements and Contracts with it the Buyer agrees to comply in full and without exception to, and continue to adhere to and be bound by, the provisions set out in this clause 17.

17.1 The Buyer shall:

- (a) comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("**Anti-bribery Laws**"), including without limitation the Bribery Act 2010 (including any subordinate or amending legislation);
- (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) not do, or omit to do, any act that will cause the Seller to be in breach of the Anti-bribery Laws;
- (d) promptly report to the Seller any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of any contractual agreements or arrangements between the Seller and the Buyer;

- (e) maintain throughout the term of the Seller's dealings with the Buyer its own anti-bribery policies and procedures including without limitation adequate procedures under the Bribery Act 2010 to ensure compliance with the Anti-Bribery Laws, and shall provide a copy of such policies and procedures to the Seller on request, and shall enforce such policies and procedures where appropriate. For the purpose of this clause 17, the meaning of adequate procedures shall be determined in accordance with section 7(2) and any guidance issued under section 9, Bribery Act 2010; and
  - (f) within five (5) business days of receipt of a request from the Seller, certify to the Seller in writing the Buyer's compliance with this clause 17.
- 17.2 In the event that the Buyer's sub-contracts the provision of any element of any agreement or arrangement between the Seller and the Buyer to any person, or receive any services in connection with the Buyer's performance of the same from any person, (each such person being an "**Associated Person**"), the Buyer shall impose upon such Associated Person anti-bribery obligations that are no less onerous than those imposed upon the Buyer as set out in this clause 17. The Buyer shall be liable to the Seller for the acts and omissions of each Associated Person in relation to compliance with such anti-bribery obligations (or, where the Buyer has failed to impose such obligations, the obligations that the Associated Person would be under if the Buyer had complied with the obligation under this clause) as if such acts or omissions were those of the Buyer itself.
- 17.3 The Buyer warrants and represents to the Seller that neither it nor any of its officers, employees or any Associated Person has been convicted of any offence involving bribery, corruption, fraud or dishonesty or, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Anti-Bribery Laws.
- 17.4 Breach of this clause 17 shall be deemed a material breach of each and every agreement between the Seller and the Buyer entitling the Seller to terminate all agreements and dealings with the Buyer without any liability to the Buyer.
- 17.5 The Buyer shall indemnify the Seller against any losses, liabilities, damages, costs and expenses incurred by, or awarded against, the Seller as a result of any breach of this clause 17 by the Buyer (including any liability that the Buyer has to the Seller by virtue of the acts or omissions of any Associated Person under this clause 17).
- 17.6 The Buyer shall keep and maintain throughout the period of all of the Buyer's dealings with the Seller detailed, accurate and up to date records showing all payments made and received by the Buyer in connection with its dealings with the Seller. The Buyer shall ensure that such records and books of accounts are sufficient to enable the Seller to verify its compliance with its obligations under this clause 17.
- 17.7 The Buyer shall permit the Seller and its third party representatives, on reasonable notice during normal business hours, but without notice in the event of any reasonably suspected breach of this clause 17, to access and take copies of the Buyer's records, books of account and any other information held by or on behalf of the Buyer and to meet with the Buyer's personnel in order to audit the Buyer's compliance with its obligations under this clause 17. Such audit rights shall continue for six years after the Seller and the Buyer ceasing to have any dealings with each other. The Buyer shall give all necessary assistance to the conduct of any such audits.
- 18. **Confidentiality, Publications and Endorsements**
- 18.1 The Buyer will, and will ensure that its employees, servants and agents will, regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default.
- 18.2 The Buyer will not, and will ensure that its employees, servants and agents do not, use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.

19. **Governing law and jurisdiction**

19.1 Each Contract shall be governed by and construed in accordance with English law.

19.2 Each of the parties irrevocably submits for all purposes in connection with each Contract to the exclusive jurisdiction of the courts of England.