

# SMART WITNESS - TERMS & CONDITIONS OF SUPPLY OF EQUIPMENT AND/OR PROVISION OF 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:

**Acceptable Usage:** usage of the Services by the Customer, being usage of or below 500Mb per SIM card per month, aggregated across all SIM cards held by the Customer from the Supplier.

**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 15.8.

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

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

**Delivery Date:** the date for delivery of the Equipment, as set out in the Order and/or as agreed by the Supplier and the Customer from time to time.

**Delivery Location:** the location for delivery of the Equipment, as set out on the Order, or such other location as the parties may agree.

**Equipment:** the Supplier's equipment and the Goods (or any part of them) set out in the Order and supplied to the Customer by the Supplier in accordance with these Conditions.

**Excessive Usage:** excessive usage of the Services by the Customer, being usage in excess of the Acceptable Usage.

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

**Equipment Specification:** any specification for the Equipment, including any relevant plans or drawings that is set out in the Order and/or agreed in writing by the Customer and the Supplier.

**Finance Agreement:** means the contract between the Customer and the Finance Company.

**Finance Company:** means the business or company providing financial assistance to the Customer for the hire of the Equipment and/or Services.

**Goods:** any goods or equipment supplied by the Supplier and incorporated into the Equipment for provision of the Services, including, without limitation, any SIM card, software, middleware and/or hardware.

**Initial Term:** shall be as set out on the Order.

**Installation Services:** any services to install the Equipment to a Vehicle.

**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.

**Liability:** means any liability, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise.

**Order:** the Customer's order for the supply of Equipment and/or Services, as set out on the form overleaf.

**Services:** the services, including the Installation Services, supplied by the Supplier to the Customer as set out in the Service Specification, and the term **Service** shall be interpreted accordingly.

**Service Specification:** the description or specification for the Services (if any) set out in the Order.

**Subsequent Term:** the period of one (1) year or as the Supplier and the Customer shall agree in writing from time to time.

**Supplier:** Smart Witness EMEA Limited registered in England and Wales with company number 10284027 whose registered office is at Unit 2, Valley Point, Beddington Farm Road, Croydon, CR0 4WP.

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

**Term:** the Initial Term and any Subsequent Term for provision of the Services.

**Vehicle:** the Customer's vehicle or other goods upon which the Equipment has been or is to be installed.

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 reenacted. 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 faxes and e-mails.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Equipment 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 at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Upon the expiry of the Initial Term, the Supplier shall automatically continue to supply the Services for the Subsequent Term, and the Customer will, either:
- (a) continue to pay the Supplier for the Services; or
  - (b) commence payment for the Services directly to the Supplier, where payment for the Initial Term was to the Finance Company;
- unless the Contract has been terminated in accordance with clause 13.
- 2.4 Upon the expiry of the current Subsequent Term, the Supplier shall automatically continue to supply the Services for a further Subsequent Term, unless terminated in accordance with clause 13.
- 2.5 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.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment, 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 Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.8 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.9 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

### **3. EQUIPMENT**

- 3.1 The Equipment is described in the Supplier's catalogue, as set out in and/or modified by the Equipment Specification. For the avoidance of doubt, any details provided by the Customer for setting up and/or personalising the Goods and/or Equipment to the Customer's details, such as email addresses, shall not form part of the Equipment Specification.
- 3.2 The Supplier reserves the right to amend the Equipment Specification if required:
- (a) by any applicable statutory or regulatory requirements; or
  - (b) as part of any future product development and/or improvement by the Supplier.
- 3.3 In the event the Supplier produces any developments and/or improvements for the Equipment, Goods and/or Services, the Supplier shall contact the Customer to discuss the incorporation of such developments and/or improvements into the Equipment, Goods and/or Services, as applicable.

### **4. DELIVERY OF EQUIPMENT**

- 4.1 The Supplier shall ensure that:
- (a) the delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of the Equipment remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging material 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 deliver the Equipment to the Delivery Location .
- 4.3 Delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location. The Delivery Date is approximate only, and the time of delivery of the Equipment is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that 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 Equipment; or (c) any breach by the Customer of clause 8.1.
- 4.4 The Supplier shall have no liability for any failure to deliver the Equipment 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 for the Equipment or any relevant instruction related to the supply of the Equipment; or (c) any breach by the Customer of clause 8.1.
- 4.5 If the Customer fails to accept or take delivery of the Equipment within three (3) Business Days of the Supplier notifying the Customer that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:
- (a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the 4th Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and

- (b) the Contract shall be deemed to have commenced and the Supplier shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If, seven (7) Business Days after the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not taken or accepted delivery of it, the Supplier shall commence charging for the Equipment and/or Services in accordance with the Order.
- 4.7 The Supplier may deliver the Equipment 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.
- 4.8 All claims for delivery shortages and damages must be notified in writing by post, fax or email within 72 hrs of signing for the delivery, any claims for shortages or damages reported after this time limit will not be accepted.

## 5. QUALITY OF EQUIPMENT

- 5.1 The Supplier warrants that on delivery, and:
  - (a) where the Equipment has been purchased, for a period of twenty-four (24) months from the date of delivery; or
  - (b) where the Equipment is the subject of a Finance Agreement and/or has been leased from the Supplier, for the Initial Period; (**warranty period**), the Equipment shall:
    - (i) conform in all material respects with its description and the Equipment Specification;
    - (ii) be free from material defects in design, material and workmanship;
    - (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and (iv) be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.2(c)(ii), if:
  - (a) the Customer gives notice in writing during the warranty period and within a reasonable time of discovery, that some or all of the Equipment does not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Equipment; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Supplier's cost; and at its option:
    - (i) the Supplier shall repair or replace the defective Equipment; or
    - (ii) the Supplier shall, where the Customer has purchased the Equipment, refund the price of the defective Equipment in full;
- 5.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty in clause 5.1 if:
  - (a) the Customer makes any further use of such Equipment after giving a notice 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, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Equipment Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Equipment without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - (f) the Equipment differs from its description and/or the Equipment Specification as a result of changes made to ensure it complies with applicable statutory or regulatory standards;
  - (g) the Equipment has been used together with products not supplied by the Supplier.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Equipment's 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 Equipment supplied by the Supplier under clause 5.2.

## 6. TITLE AND RISK

- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Title to the Equipment shall not pass to the Customer:
  - (a) if the Equipment is purchased by the Customer, until the Supplier receives payment in full (in cash or cleared funds) for the Equipment; and
  - (b) if the Equipment is the subject of a Finance Agreement and/or rented from the Supplier, in which case title shall remain with the Supplier and/or be subject to the terms of the Finance Agreement; and
  - (c) if the Equipment is rented from the Supplier, until the expiry of the Initial and/or Subsequent Period.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
  - (a) ensure that the Equipment remains on the Vehicle as installed by the Supplier;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - (c) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m); and
  - (e) give the Supplier such information relating to the Equipment as the Supplier may require from time to time.

6.4 If applicable and before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell Equipment or use it in the ordinary course of its business ceases immediately; and (b) the Supplier may at any time:
  - (i) require the Customer to deliver up the Equipment; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer, or of any third party where the Equipment is stored, or in order to recover it.

## **7. SUPPLY OF SERVICES**

7.1 The Supplier shall, for the Term, provide 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 for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 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.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7.5 The Customer accepts that:

- (a) the Supplier is not able to provide a fault-free Service, due to the nature of the technologies that deliver the Service; and
- (b) the Supplier shall have no Liability for provision of those parts of the Services that are subject to technologies that are outside of the Supplier's direct control.

## **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 Vehicle, the Delivery Location, the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's Vehicle for the supply of the Services;
- (f) 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;
- (g) keep and maintain 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;
- (h) where the Supplier is not providing any Installation Services, ensure that the Supplier's installation instructions and/or any manuals relating to such installation, are fully and accurately implemented and complied with; and
- (i) in the event that the Equipment is leased or rented, either from the Supplier or a Finance Company, or subject to a Finance Agreement:
  - (i) use their best endeavours to protect the Equipment from damage;
  - (ii) insure the Equipment against all types of potential damage from third parties and/or of an accidental nature;
  - (iii) ensure that the Equipment is regularly maintained in accordance with the Supplier's specifications and/or warranty conditions;
  - (iv) at all times comply with the terms of the Finance Agreement; and
  - (v) promptly inform the Supplier in writing of any breach and/or termination of the Finance Agreement; (j) ensure that the Goods are only used for provision of the Service by the Supplier; and (k) promptly notify the Supplier if any part of the Goods is damaged, lost or stolen.

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 (**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 the Equipment shall be the price set out in the Order' 9.2  
The charges for the Services shall be as set out in the Order and:
- (a) in respect of the Installation Services, the Supplier's standard fee rates apply to each Equipment installation taking place Monday to Friday between 8.00 am to 6.00 pm; and
  - (b) the Supplier shall charge additional rates for any part of any Equipment installation carried out by individuals outside the hours specified in clause 9.2(a).
- 9.3 The Supplier reserves the right to:
- (a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. increase the price of the Equipment and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment and/or Services 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 Equipment ordered, or the Equipment Specification;
    - (iii) any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Equipment; or
    - (iv) any delay in provision of the Installation Services caused by any breach by the Customer of clause 8.1; and
  - (b) increase the price of the Services, by giving notice to the Customer, where there is any usage of the Services above the Acceptable Usage;
  - (c) charge the Customer for any Excessive Usage of the Services, at the rate of a further £5 plus VAT for every one (1) Gb or part thereof;
  - (d) charge the Customer for any and/or all costs of replacement of any part of the Goods that are damaged, lost or stolen at any time; and
  - (e) change these Conditions. The Supplier shall exercise reasonable endeavours to notify the Customer of any such changes.
- 9.4 In respect of the Equipment and/or Installation Services:
- (a) if purchased from the Supplier, the Supplier shall invoice the Customer on or at any time after completion of delivery; and
  - (b) if the Equipment is rented from the Supplier, the Supplier shall invoice the Customer on or at any time after completion of delivery; and
  - (c) if leased in accordance with a Finance Agreement, upon expiry of the Initial Period, the Supplier shall invoice the Customer on or at any time after expiry of the Initial Period in accordance with the terms of these Conditions.
- 9.5 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.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**), and all such VAT shall also be payable by the Customer.
- 9.7 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 5% per annum above Barclays Bank 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.
- 9.8 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. 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 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional
- 10.3 All Supplier Materials are the exclusive property of the Supplier.

## 11. CONFIDENTIALITY

- 11.1 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.

## **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 Equipment and Services Act 1982 (title and quiet possession); (d) breach of the terms implied by section 12 of the Sale of Equipment 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 have any Liability to the Customer for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total Liability to the Customer in respect of all other losses arising under or in connection with the Contract, shall in no circumstances exceed the price paid by the Customer in the three (3) months immediately prior to notification of the Supplier of the claim.

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 Supplier may from time to time perform a credit search on the Customer in order to fully assess any risks presented.

12.5 The Customer shall be liable to the Supplier for any Liability arising or incurred prior to any notification in accordance with clause 8.1(k).

12.6 This clause 12 shall survive termination of the Contract.

## **13. TERMINATION**

13.1 Without limiting its other rights or remedies either party may terminate the Contract after expiry of the Initial Term by giving the other party not less than three (3) months' prior written notice, such notice to expire on the Initial Term or any Subsequent Term.

13.2 Without limiting its other rights or remedies, the Supplier 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 its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within fourteen (14) days after receipt of notice in writing to do so;
- (b) the other party 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;
- (c) the other party 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;
- (d) 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 other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
- (g) 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 other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(b) to clause 13.2(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's 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
- (m) the other party (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.

- 13.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer:
- (a) if the Customer fails to pay any amount due under this Contract on the due date for payment; or (b) if the Customer fails to pay any amount due to the Finance Company under the Finance Agreement: or
  - (c) if the Finance Company notifies the Supplier of any breach by the Customer of the Finance Agreement.
- 13.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and the Supplier:
- (a) if the Customer fails to pay any amount due under this Contract on the due date for payment; or
  - (b) the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 13.2(m); or
  - (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 13.2(b) to clause 13.2(m); or
  - (d) if the Customer fails to pay any amount due to the Finance Company under the Finance Agreement: or (e) if the Finance Company notifies the Supplier of any breach by the Customer of the Finance Agreement.
- 13.5 In the event the Services are suspended in accordance with clause 13.4, the Customer shall continue to make all payments for the Services during such period of suspension, and the Supplier may agree in writing to re-instate provision of the Services. Any such reinstatement shall be subject to payment of a reconnection charge by the Customer.
- 13.6 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Supplier all of the payments already due 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;
  - (b) the Customer shall return all of the Supplier Materials and any Deliverables 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, act of God, war, 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 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 Equipment for more than four (4) weeks, 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. GENERAL**

##### **15.1 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.

##### **15.2 Notices.**

- (a) Any notice or other communication 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, fax or e-mail.
- (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 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 11.00 am on the third 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 fax or 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.

##### **15.3 Severance.**

- (a) 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 partprovision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 15.4 **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.
- 15.5 **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.
- 15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7 **Data Protection.** Each party shall comply with its obligations under the applicable data protection legislation.
- 15.8 **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 the Supplier.
- 15.9 **Governing law.** This agreement 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.
- 15.10 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).