

ILEX NE LTD - TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Business Hours: the period from 8.00 am to 4.30 pm on any Business Day.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time.

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

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.

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

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 20.

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 by the Customer and the Supplier.

Maintenance: machine maintenance including but not limited to the servicing of machines, routine checks, repair work and replacement of worn or nonfunction parts.

Order: the Customer's order for the supply of machines or machine moves, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, as the case may be.

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

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: ILEX NE Ltd registered in England and Wales with company number 13415553.

Supplier Goods: the goods (or any part of them) set out in the Order which are manufactured by the Supplier.

Supplier Materials: has the meaning given in clause 9.1(i).

Third Party Goods: the parts set out in the Order which have been supplied via a third party.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Interpretation:

- (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 personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 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 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, brochures or adverts are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.

- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. Goods

- 3.1 The Goods are described in the Goods Specification.
- 3.2 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 costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or 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 the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1 The Supplier shall endeavour to supply each delivery of the Goods with an accompanied delivery note where possible, which shows the date of the Order, a brief description of the Goods and the quantity of the Goods
- 4.2 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**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

- 4.4 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 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.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a 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.
- 4.6 If 5 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 4.7 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.

5. Collection of Goods

- 5.1 The Customer may collect the Goods from the Supplier's premises at 67c Dukesway, Teesside Industrial Estate, Stockton-on-Tees TS17 9LT or such other location as may be agreed with the Customer before delivery (**Collection Location**) within three Business Days of the Supplier notifying the Customer that the Goods are ready.
- 5.2 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Collection Location.
- 5.3 If the Customer fails to facilitate collection of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are 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 Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 8.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5.4 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for collection the Customer has not facilitated collection of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

6. Quality of Goods

6.1 The Supplier warrants that on delivery, the Supplier Goods shall:

- (a) conform in all material respects with their description and the Goods Specification; and
- (b) be free from material defects in design, material and workmanship.

6.2 Subject to clause 6.3, if:

- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Supplier Goods do not comply with the warranty set out in clause 6.1;
- (b) the Supplier is given a reasonable opportunity of examining such Supplier Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Supplier Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its absolute discretion, repair or replace the defective Supplier Goods, or refund the price of the defective Supplier Goods in full.

6.3 The Supplier shall not be liable for the Supplier Goods' failure to comply with the warranty set out in clause 6.1 if:

- (a) the Customer makes any further use of such Supplier Goods after giving a notice in accordance with clause 6.2;
- (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 Supplier Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- (d) the Customer alters or repairs such Supplier Goods 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; or

- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Supplier Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5 These Conditions shall apply to any repaired or replacement Supplier Goods supplied by the Supplier.
- 6.6 The Supplier gives no warranty as to the condition of any Third Party Goods.
- 6.7 The Supplier shall have no liability to the Customer in respect of any Third Party Goods supplied or used. The Supplier is merely acting as agent. The Customer must inspect any Third Party Goods and ensure that they are compatible with the Service Specification.
- 6.8 Should the Customer have any concerns regarding any Third Party Goods they should give notice to the Third Party Supplier directly. The Supplier will act reasonably to assist the Customer by supplying contact information for the Third Party Supplier and any other information reasonably requested.
- 6.9 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

7. Title and risk of Goods

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery or collection.
- 7.2 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.
- 7.3 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;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 18.1(b) to clause 18.1(d); and
 - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:

- (i) the Goods; and
- (ii) the ongoing financial position of the Customer.

7.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession or irrevocably incorporated into another product and 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.

8. Supply of Services, machine moves and commissioning

8.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

8.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in Service Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

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

8.5 The Customer acknowledges and warrants to the Supplier that any goods used in connection with the Services which are not purchased directly from the Supplier shall not be the responsibility of the Supplier.

8.6 The Customer warrants that any goods supplied by them or by a third party and used in connection with the Service Specification will be the responsibility of the Customer.

8.7 The Customer warrants that they have ensured that any goods supplied by the Customer or a third party are compatible with the Service Specification. The Customer agrees that the Supplier is not liable for any issues in connection with any goods which are not purchased directly from the Supplier.

9. Customer's obligations

9.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in both the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;

- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises 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) comply with all applicable laws, including health and safety laws;
- (h) ensure that any goods or services supplied from third parties or themselves are compatible with the Service Specification;
- (i) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (j) comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.

9.2 The Supplier recommends that a surge protection device is utilised in relation to all Services provided. The Customer acknowledges this is recommended and accepts any liabilities whereby it is not utilised.

9.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; 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 including any administration fees charged by Supplier.

10. Charges and payment General

10.1 The price for Goods:

- (a) shall be the price set out in the Order at the date of delivery;
- (b) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (c) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

10.2 The Supplier may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (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
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

10.3 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Order;
- (b) the Supplier shall be entitled to charge an overtime rate of 200% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the daily rates; and
- (c) 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 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.

10.4 The Supplier reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

11. Charges and payment Delivery

- 11.1 In respect of Goods delivered, the Supplier shall invoice the Customer on or at any time after completion of the Order. Only after the Goods are paid for in full shall the Goods be delivered.

12. Charges and payment Collection

In respect of Goods for collection, the Supplier shall invoice the Customer on or at any time after completion of the Order. Only after the Goods are paid for in full shall the Goods be made available for collection.

13. Charges and payment machine moves

In respect of machine moves, the Supplier shall invoice the Customer for 10% of the full price at any time after completion of the Order. The Supplier shall then invoice the Customer a further 80% of the full invoice, prior to moving the machinery. Only after 90% of the machinery move invoice has been paid shall the Supplier attend to move the machine. Following completion of the machine move, the Supplier shall then invoice the Customer for the remaining 10%, which shall be payable in accordance with clause 16 below.

14. Charges and payment services

In respect of Services, the Supplier shall invoice the Customer for 10% of the full price at any time after completion of the Order. The Supplier shall then invoice the Customer a further 80% of the full service costs prior to carrying out the agreed services. Following completion of the Services the Supplier shall invoice the remaining 10%, which shall be payable in accordance with clause 16 below.

15. Charges and payment for Maintenance

- 15.1 In respect of Maintenance services, the Supplier shall invoice the Customer in full completion of the Order, which shall be payable in accordance with clause 16 below.

16. Payment conditions

- 16.1 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; 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.

- 16.2 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.
- 16.3 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 18, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 16.3 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 16.4 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

17. Limitation of liability

- 17.1 References to liability in this clause 17 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 17.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987.

17.3 Subject to clause 17.2, the Supplier's total liability to the Customer shall not exceed the amount of the Order.

17.4 Subject to clause 17.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

17.5 This clause 17 shall survive termination of the Contract.

18. Termination

18.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of seven days after being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

18.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

18.3 Without affecting any other right or remedy available to it, 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 the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 18.1(b) to clause 18.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

19. Consequences of termination

19.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

19.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

19.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

20. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 28 days, the party not affected may terminate the Contract by giving 28 days' written notice to the affected party.

21. General

21.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

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

21.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to an email address agreed in writing by the party to be served.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21.3 Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 21.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

21.4 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

21.5 No partnership or agency.

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

21.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.7 Third party rights.

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

21.8 Variation.

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

21.9 Governing law.

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

21.10 Jurisdiction.

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