

# Envirogen Water Technologies Ltd. - Terms and Conditions of Supply

## 1. General.

(a) The following terms and conditions (the "**Conditions**") shall apply to all contracts for the supply of Goods and/or Services (including any software) by Envirogen Water Technologies Ltd or any of its subsidiary companies to their customers. With the exception of supplies made under a separate long form written agreement that has been signed by Envirogen, these Conditions shall apply to all Orders placed by customers, including any Orders that are placed offline and any that are placed online via any of the Envirogen group websites (including [www.envirogen.com](http://www.envirogen.com) ("our site")).

(b) In these Conditions: "**Company**" means the Envirogen group company entity with whom the Order is placed. In the case of Orders placed via our site, it shall mean Envirogen Water Technologies Limited; "**Contract**" means the contract between the Company and the customer who purchases the Goods or Services from the Company (the "**Customer**"); "**Goods**" means the goods (or any part of them as the context requires) supplied or to be supplied by the Company under the Contract and shall include any equipment, software and any other items supplied or to be supplied by the Company; "**Order**" means the Customer's order for the supply of Goods and/or Services; and "**Services**" means any services provided or to be provided by the Company under the Contract, including any periodic maintenance schedules, training programmes, remote data monitoring and emergency call-out support.

(c) In these Conditions words following the terms '**including**', '**include**' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms:

## 2. Basis of Contract.

(a) When the Customer wishes to place an Order, it may first request a quotation from the Company.

(b) Any Order submitted by the Customer (whether online or offline) constitutes an offer by the Customer to purchase the Goods and/or Services upon and subject to these Conditions.

(c) The Order shall only be deemed to be accepted and a binding Contract shall only come into existence when the Company issues a written acceptance of the Order or commences the provision of Goods and/or Services, whichever is earlier. To be clear, any acknowledgement the Company sends in response to any online Order is not an acceptance of the Customer's Order and the Company shall still be entitled to reject Orders for any reason following the sending of any acknowledgement of Order including where there are errors in the pricing quoted on our site.

(d) Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or websites are produced for the sole purpose of giving an approximate idea of the Goods or Services referred to in them. They shall not form part of the Contract, nor have any contractual force.

(e) A quotation for the Goods and/or Services given by the Company shall not constitute an offer and acceptance of a quotation will not create a binding contract. A quotation shall only be valid for a period of 30 (thirty) days from its date of issue and the Company shall be entitled to withdraw quotations at any time before the end of their validity period by notice to the Customer.

## 3. Prices.

(a) Subject to the rest of this Condition, the price of the Goods or Services shall be the price set out in the Company's quotation, or if no price is quoted, the Company's standard list price in force at the date of delivery of Goods, or performance of Services. Prices are based on the cost to the Company of components, materials, fuel & power, transport, tooling & labour and other costs at the date of acceptance of the Order or quotation (whichever is earlier). However if at the date of despatch of the Goods or performance of the Services there has been any increase in all or any of such costs, the Company reserves the right to increase the price payable for the Goods or Services by such reasonable amount as the Company specifies to reflect the increase in costs.

(b) Where the price for the Goods and/or Services is varied in accordance with this condition, the prices as varied shall be binding on both parties and shall not give either party any option of cancellation.

(c) The price of the Goods and/or Services and all amounts quoted by the Company are exclusive of value added tax (VAT) and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods or performance of the Services (whether initially charged on or payable by the Company or the Customer). Unless otherwise specified by the Company, prices are also exclusive of any costs, taxes, duties and charges in connection with the packaging, insurance and transport of Goods and/or Services. The Company shall be entitled to invoice the Customer for such taxes, duties, costs and charges in addition to the price for Goods and/or Services and the Customer shall pay such invoices in accordance with these Conditions together with the price for the Goods and Services.

(d) All Goods are sold "ex works" unless otherwise stated by the Company. If the Company arranges or undertakes the carriage, freight, insurance and any other transport or shipping costs beyond the point of delivery, such costs shall be for the Customer's account and shall not affect the provisions of the Contract as to the passing of risk.

## 4. Terms of Payment.

(a) For online sales, unless otherwise agreed, payment shall be made via our site in full at the time the Order is placed.

For offline sales (including periodic maintenance services), subject to credit being approved, and unless otherwise agreed, accounts are due for payment within 30 days of the date of invoice. Unless otherwise agreed by the parties, the Company may issue invoices for amounts payable under the Contract any time after formation of the Contract. The Company may withdraw any credit terms at any time on notice to the Customer and the Customer shall then make payment immediately following the Company's invoice.

(b) The Company shall be entitled to deliver by instalments. When deliveries are spread over a period, each consignment may be invoiced separately, and each invoice will be treated as a separate account and be payable accordingly. Failure to pay for any Goods or Services or for any delivery or instalment of them on time shall entitle the Company to suspend further deliveries or work or both on the same Order and on any other order from the Customer without liability and without prejudice to any other rights the Company may have. The Company also reserves the right to charge interest on overdue accounts at the rate of 8% per annum above the Bank of England Base Rate (or the maximum rate permitted by law if lower), which shall accrue daily from the date for payment until payment is received in full.

(c) The Company reserves the right where it has genuine doubts as to a Customer's financial position or in the case of failure to pay for any Goods or Services or any delivery or instalment as

aforsaid to suspend delivery or performance of any Order or any part of instalment, or amend any payment terms in place, without liability until payment or satisfactory security for payment has been provided.

(d) All amounts due from the Customer to the Company 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).

## 5. Non-Standard Orders.

Where the Customer orders Goods or materials of a type size or quality not normally produced by the Company, the Company will use reasonable endeavours to execute the Order but, if it proves impossible, impracticable or uneconomical to carry out or complete the Order, the Company reserves the right to cancel the Contract or the uncompleted balance thereof without liability, in which event the Customer will only be liable to pay for the part thereof actually delivered.

## 6. Customer responsibilities.

(a) The Customer shall:

(i) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services;

(ii) ensure that the terms of the Order and any information it provides to the Company is complete and accurate. For the avoidance of doubt, the Company shall not have any liability for any failure or reduction in performance of or other defects or errors in the Goods or Services that is caused or contributed to by any information or materials provided by the Customer or the Company's reliance on it (including any inaccuracy or incompleteness of information and any defects or errors in materials);

(iii) co-operate with the Company in all matters relating to the Goods and/or Services;

(iv) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;

(v) appropriately prepare the Customer's premises for the supply of the Services and ensure that they (and all equipment and other items at the premises) are safe and compliant with all applicable laws and regulations when accessed and used by the Company in the performance of the Services;

(vi) 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;

(vii) comply with all applicable laws, including health and safety laws;

(viii) keep all materials, equipment, documents and other property of the Company ("**Company Materials**") at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and

(b) comply with any additional obligations as set out in any Service specification or description document agreed by the parties. If the Company's performance of any of its obligations under the Contract is prevented or delayed or otherwise adversely affected by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

(i) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services or supply of the Goods 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 Company's performance of any of its obligations;

(ii) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay in perform or defective performance of any of its obligations as set out in this Condition 6(b); and

(iii) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## 7. Delivery and Completion Dates.

(a) The delivery and performance dates specified in the Contract are approximate only and, unless otherwise stated by the Company, time is not of the essence for delivery or performance. The Company will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform if the duration of the delay is not substantial or if the Company has used reasonable efforts to meet them.

(b) No delay shall entitle the Customer to reject any delivery or Services or any further instalment or part of the Order from the Customer or to repudiate the Contract.

(c) The Company cannot undertake to meet any schedule of Customer's requirements supplied after the Order has been accepted and will have no liability whatever for delay in meeting or failure to meet all or any of such requirements (howsoever such failure or delay may arise) unless and to the extent that the Company expressly agrees to meet such requirements.

## 8. Delayed Delivery.

(a) If for any reason the Customer is unable to accept delivery of the Goods, when the Goods are due and ready for delivery the Company may arrange storage of the Goods and the Customer shall be liable to the Company for the reasonable costs (including, but not limited to insurance) of such storage. This provision is without prejudice to any other rights which the Company may have in respect of the Customer's failure to take delivery of the Goods or to pay for them in accordance with the Contract.

(b) If 10 (ten) working days after the day on which the Company notified the Customer that the Goods were ready for delivery, the Customer has not accepted delivery of them, the Company 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.

(c) If for any reason the Customer is unable to provide access to its premises, or information required for Services to be performed when the Company is due to perform them, the Customer shall be liable to the Company for the Company's reasonable costs incurred, including travel costs and the prevailing day rate of any Company personnel due to perform the Services and the Customer shall use all reasonable endeavours to reschedule the performance promptly.

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## 9. Risk and Title.

- (a) The risk in the Goods shall pass to the Customer:
- At the point when Goods are dispatched from the Company's premises; or
  - At the point of appropriation to the Contract, if the Goods are appropriated to the Customer but kept at the Company's premises at the request of the Customer.
- (b) The Company accepts no responsibility for any damage, shortage or loss in transit. Claims for any damage, shortage or loss in transit should be made on the carrier, and any conditions imposed by the carrier in relation to claims for damage shortage or loss in transit must be complied with by the Customer.
- (c) Notwithstanding Condition (a) above, legal and equitable ownership (title) of the Goods shall remain with the Company until payment for the Goods (and any other payments for goods and services supplied prior to the delivery of the Goods), has been received by the Company in full or until the Customer sells the Goods to its customers by way of a bona fide sale at full market value, whichever shall first occur.
- (d) Until title to the Goods has passed to the Customer, the Customer shall:
- hold them as the bailee of the Goods on behalf of the Company;
  - store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
  - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf;
  - notify the Company immediately if it becomes subject to any of the events listed under Condition 15; and
  - give the Company such information as the Company may reasonably require from time to time relating to:
    - the Goods; and
    - the ongoing financial position of the Customer.
- (e) At any time prior to full payment (whether or not payment is then overdue) the Company may (without prejudice to any of its other rights) require the Customer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product and if the Customer fails to do so, promptly retake possession of the Goods or any part thereof and may enter on the Customer's premises by its employees or agents for that purpose.
- (f) At any time before title to the Goods passes to the Company, the Customer is entitled to use the Goods in the normal course of its business or to sell the Goods to third parties in the normal course of its business. Where the Customer sells the Goods, it shall do so as principal and not as the Company's agent and title shall pass to the Customer immediately prior to such sale.
- (g) The Customer's right to use the Goods or to resell them prior to full payment may be terminated forthwith by written notice given by the Company to the Customer.
- (h) Where the Company supplies any software (including any supplied as part of the Goods or provision of Services) the software is licensed to the Customer only and not sold (and the provisions relating to transfer of title above shall not apply to any software). The terms of any licence provided by the Company to the Customer for that software (including any licence terms provided in any click-through screen) shall apply to its use but if no express licence is provided by the Company for the use of the software then: (i) subject to payment of the price, the Customer is licensed to use that software solely in conjunction with and only as necessary to operate the specific Goods with which or for which it is supplied; (ii) the Customer shall not adapt, modify, translate, reverse engineer, decompile or disassemble the software except as and to the extent required to be permitted by applicable law; (iii) the Customer shall not make any copies of the software except as necessary for its lawful use (and the terms of the licence shall apply to all copies); and (iv) the licence is non-exclusive, non-transferrable (other than to any subsequent lawful user of the Goods with which the software is supplied), does not include any right to grant sublicences, may only be used for the Customer's own internal business purposes and is subject to such other usage restrictions (including limits on numbers of users) as may be specified by the Company. The Customer shall comply with the terms of the licence. For the avoidance of doubt the licence is limited to the object code of the software supplied to the Customer and no licence is granted to use any source code to the software.

## 10. Warranties.

- (a) Subject to Conditions (c) and (d) and to any exceptions set out elsewhere in these Conditions, the Company warrants in relation to Goods manufactured to the Company's designs that on despatch (or completion of installation where installation is performed by the Company) of the Goods and for a period of twelve months thereafter (the "**warranty period**"), the Goods shall:
- conform in all material respects with their description and any applicable specification for them, in each case as agreed between the parties in writing; and
  - be free from material defects in design, material and workmanship.
- (b) Subject to Condition (d), if:
- the Customer gives notice in writing to the Company during the warranty period that some or all of the Goods do not comply with the warranty set out in Condition (a);
  - the Company is given a reasonable opportunity of examining such Goods; and
  - the Customer (if asked to do so by the Company) returns such Goods to the Company at the Customer's cost, the Company will (at the Company's choice) repair, replace or refund the purchase price of any Goods or an appropriate part thereof which are found to not be in accordance with the Contract. Subject to Condition 14(b), these remedies shall be the Company's sole liability and the Customers exclusive remedies for any failure to comply with the warranty set out in Condition (a).
- (c) In relation to Goods not manufactured to the Company's design and in relation to standard or proprietary components or items of equipment that form part of the Goods, the Company will so far as it is able to do so, give the Customer the benefit of any express guarantee or warranty provided by the manufacturer or supplier of such Goods, components or items of equipment to the Company and of any other rights which the Company has against the manufacturer or supplier. Subject to Condition 14(b) this shall be the Customer's sole remedy and the Company's sole liability for any defects in such Goods, components or items of equipment.
- (d) The Company shall not be liable for the Goods' failure to comply with the warranty set out in Condition (a) and/or (c), in any of the following events:
- the Customer makes further use of such Goods after giving notice in accordance with Condition (b);

- the defect arises because the Customer failure to follow the Company's instructions as to the storage, commissioning, installation, use and maintenance of the Goods, or good trading practice regarding the same;
- the defect arises as a result of the Company following any drawing, design or specification or other information supplied by the Customer;
- the Customer alters or repairs such Goods without the written consent of the Company;
- the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions or anything beyond the Company's reasonable control; or
- the Goods differ from their description or any agreed specification as a result of changes made to comply with applicable statutory or regulatory requirements.

## (e) In the event of any claim under any of the foregoing warranties:

- the Customer shall allow the Company a reasonable period of time to carry out any repair or replacement;
- the Customer shall bear all costs of dismantling, digging out, replacement and reassembly;
- the Customer shall return (at the Company's request) any Goods to be repaired or replaced, at the Customer's expense;
- the Customer shall make such facilities (such as handling equipment, tools, labour and services, etc.) as the Company reasonably requires, available to the Company for the purpose of repair or replacement; and
- any items returned to the Company in place of a replacement, will become the property of the Company.

(f) The Company warrants that it shall supply the Services to the Customer with reasonable skill and care and in accordance with the specification for the Services provided by the Company in all material respects. The Company reserves the right to amend the Services 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. Subject to Condition 14(b), the Company shall have no liability for breach of this warranty unless the Customer has notified the Company of the breach in writing prior to the expiry of 14 days after performance of the Services concerned. Subject to Condition 14(b), the Customer's sole and exclusive remedy for any breach of this warranty shall be for the Company to reperform the defective Services.

(g) These Conditions shall apply to any reperfomed services and shall also apply to any repaired or replacement Goods supplied by the Company for the remainder of the unexpired warranty period of the original Goods.

## 11. Packing.

The Company shall use reasonable endeavours to ensure, where necessary, the suitability of packaging before despatch, but no claim will be accepted by the Company for breakage or damage in transit, on the grounds of alleged unsuitability of packaging, or when Goods have been signed for as having been received in good condition by the Customer.

## 12. Confidentiality and Intellectual Property.

- Neither party shall use the other party's confidential information for any purpose, other than to exercise its rights and perform its obligations under or in connection with the Contract.
- Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except in the following circumstances:
  - to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information, comply with this Condition (a); and
  - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Any drawings, specifications or other technical information supplied to the Customer by the Company in connection with the Contract are provided on the express understanding that the Customer will not (and Customer undertakes that it shall not) give, loan, exhibit or sell such drawings, specifications or technical information to any third party and that the Customer will not use them in any way except in connection with the Goods or Services provided hereunder. Any copyright or other intellectual property rights in software, documents and data provided by the Company, will remain vested in the Company. All intellectual property rights generated in the course of the performance of the Contract shall belong to the Company. The Company shall provide a non-exclusive licence to use any copyright or other intellectual property rights in the Goods or Services provided, solely for the purpose of utilising the Goods and Services under the Contract.

(d) The Customer shall indemnify the Company against all actions, liabilities, costs (including, but not limited to the cost of defending any legal proceedings), expenses, claims, proceedings, accounts, losses and damages in respect of any infringement or alleged infringement of any intellectual property or other third party rights resulting from use or sale by the Customer of any Goods or Services (or any products of the Services) except where the infringement results from drawings, specifications or other technical information originally produced by the Company and not created at the request of or in accordance with the instructions of the Customer.

## 13. Data protection.

- In this Condition 13, "**Data Protection Legislation**" means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- The parties anticipate that they shall each act as independent controllers when processing personal data in connection with the Contract. Both parties will comply with their respective obligations under Data Protection Legislation in relation to such processing.

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## 14. Limitation of Liability.

(a) The restrictions on liability in this Condition 14 shall apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

(b) Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (i) death or personal injury caused by negligence;
- (ii) fraud or fraudulent misrepresentation; and
- (iii) 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) or any other liability that it is unlawful to exclude.

(c) Subject to Condition (b);(i) the Company's total liability to the Customer in connection with any Order shall not exceed the price payable for that Order; (ii) the Company's liability to the Customer in connection with any instalment shall not exceed the price payable for that instalment; and (iii) the Company's total liability in connection with any Services to be provided on a periodic basis shall not exceed the price payable for the defective Services concerned.

(d) Subject to Condition (b), the Company shall not be liable to the Customer for any of the following types of loss( in each case whether direct or indirect):

- (i) loss of profits;
- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of use or corruption of software, data or information or any losses resulting from such loss of use or corruption; and
- (vi) loss of or damage to goodwill.

(e) Subject to Condition (b), the Company shall not be liable to the Customer for any indirect or consequential loss.

(f) The Company has given commitments as to compliance of the Goods and Services with relevant specifications. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

(g) This Condition 14 shall survive termination of the Contract.

## 15. Termination.

(a) Unless expressly otherwise agreed in writing by the parties, the Company may terminate any Contract for the supply of Services for convenience at any time by giving the Customer not less than 3 months' written notice.

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

- (i) fails to pay any amount due under the Contract (or under any other contract with the Company) on the due date for payment;
- (ii) commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- (iii) 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (iv) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (v) its 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.

(c) Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract (or under any other contract with the Company) without liability if the Customer fails to pay any amount due under the Contract (or under any other contract with the Company) by the due date for payment.

(d) Without affecting any other right or remedy available to it, the Company may also suspend the supply of Services or all further deliveries of Goods under the Contract without liability if the Customer becomes subject to any of the events listed in Conditions 15(b)(iii) to (v), or the Company reasonably believes that the Customer is about to become subject to any of them.

## 16. Consequences of termination.

(a) On termination of the Contract:

(b) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(c) the Customer shall return all of the Company Materials and, if requested by the Company, any Service deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Company 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 the Contract.

(d) Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

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

## 17. Force Majeure.

The Company will not be liable for the consequences of any delay in delivery or performance or failure to deliver or perform if the duration of the delay is not substantial. Nor shall the Company be liable for any delay in performing or failure to perform or defective performance of any obligations under the Contract as a result of any act of God, fire, inclement or exceptional

weather conditions, epidemic, pandemic, industrial action (whether at the Company's premises or elsewhere) hostilities, breakdowns, shortages of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having through force of law), viruses or other malicious code, loss of or reductions in internet connectivity or telecommunications networks or any other cause whatever beyond the Company's reasonably control or of an unexpected or exceptional nature (a "Force Majeure Event"). Where the Company is delayed in performance by a Force Majeure Event then the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

## 18. General.

### (a) Assignment and other dealings.

(i) The Company 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.

(ii) 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 Company.

### (b) Notices.

(i) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- a. 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
- b. sent by email to the address specified in the Order or quotation.

(ii) Any notice or communication shall be deemed to have been received:

- c. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- d. 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 at the time recorded by the delivery service; and
- e. 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. In this condition, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

(iii) This Condition 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.

(c) **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 Condition (c), 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.

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

(e) **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.

### (f) Entire agreement.

(i) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(ii) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(iii) Nothing in this clause shall limit or exclude any liability for fraud.

(g) **Third party rights.** 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.

(h) **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).

### (i) Applicable Law and Jurisdiction.

The Contract shall in all respects be governed by and construed in accordance with English law and the Customer hereby submits to the exclusive jurisdiction of the English Courts.