

Generic Service Agreement Terms & Conditions

The Customer's attention is particularly drawn to the provisions of clauses 3 and 9.

1. INTERPRETATION

- 1.1 Definitions. In these Conditions, the following definitions apply:
- Additional Charges: the charges which the Customer may incur where applicable pursuant to clause 5(1) (b) to (e). Business Day: a day (other than a Saturday, Sunday or public holiday) when the Supplier's offices are open for business.
- Charges: all sums payable by the Customer under this Contract, including (without limitation) the charges for the Services as set out in the Order, Additional Charges, Emergency Call Out Charges, and charges for Deliverables
- 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 12.9.
- Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
- Customer: the person or firm who purchases Services from the Supplier.
- Customer Equipment: The lift installation(s) situated at the Customer Premises, for which the Supplier will have no liability for pre-existing defects or any misuse by the Customer.
- Customer Premises: the premises of the customer where the Customer Equipment is located referred to in the Order. Deliverable(s): parts, equipment, machinery and consumables provided by the Supplier for the Customer.
- Emergency Call-out Charges: the charges which the Customer will incur for requiring the Supplier to attend its premises outside of Normal Working Hours at the rate set out in the Order.
- Excluded Services: the services that the Supplier will not provide under these Conditions as set out in the Specification and clause 3.2.
- Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- Normal Working Hours: Monday to Friday from 8:00am to 5.00 pm (except bank or statutory holidays).
- Order: the Customer's order for Services as set out overleaf or as otherwise communicated whether in writing, via email or facsimile transmission or verbally. Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.
- Specification: the description or specification of the Services set out in the Order or as otherwise provided in writing by the Supplier to the Customer. Supplier: the Supplier whose details are set out in the Order.
- Supplier's Charges: the charge for the provision of the Services as set out in the Order. Supplier Materials: has the meaning set out in clause 5.
- Term: The Supplier shall provide the Services for the terms set out in clause 3.1 unless terminated in accordance with clause 10.
- 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 personal representatives, successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The subsequent provision of the Services by the Supplier shall be deemed to be an acceptance of the Customer's offer to purchase the Services subject to these Conditions at which point and on the date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 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.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of thirty Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 This Contract will take effect from the Commencement Date and shall continue for an initial period of one year from the Commencement Date and shall automatically renew for successive periods of one (1) year (each a 'Renewal Period'), unless cancelled in writing by either party, not less than ninety (90) days prior to the prior written notice of the then current Term.
- 3.2 The Supplier shall supply the Services to the Customer during the Term in accordance with the Order and Specification in all material respects.
- 3.3 The Supplier shall use all reasonable endeavours to meet any performance dates and times specified in the Specification and the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. The Supplier shall not be liable for any loss arising from delay except to the extent caused by its negligence. Where monthly inspections are due, we reserve the right to attend the due visit after 21 days from the last attendance, which means there could be two visits in one calendar month.
- 3.4 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.
- 3.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

- 3.6 Subject to Clause 6 Deliverables and the Specification, the Supplier shall be under no obligation to provide the Excluded Services detailed in this clause::
- (a) Any work or replacement, repairing or finishing whatsoever of major parts, car enclosures, shaft enclosure, landing doors, door frames, casings, sills, inverters/drive units, main hoist ropes/belts and sheaves/diverters or main wiring.
 - (b) Cleaning of doors and bottom tracks, steps and car/shaft enclosures.
 - (c) Any work or replacement whatsoever caused other than by ordinary and reasonable use of the plant.
 - (d) Changes in working conditions of the Plant.
 - (e) Modifications of technical features to comply with new statutory regulations.
 - (f) Major modules including but not limited to the complete controller, machine and gearbox, main hoist ropes and sheaves/diverters and the cylinder/piston and buried or sunken pipework for hydraulic lifts are excluded from the contract.
 - (g) Any work required identified by the Supplier by reason of the plant not being in a good and safe condition at the commencement of this contract or prior to and including the first three months.
 - (h) Replacement of equipment, which in the judgement of the Supplier has since become obsolete, at the end of its working life cycle and/or uneconomical to repair.
 - (i) The Customer remains fully responsible for statutory thorough examinations and reports required under the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER).
 - (j) Any work resulting from misuse, incorrect use or vandalism of the lift(s).
 - (k) Anything caused by interruption to or variation in the incoming power supply
 - (l) Any specialist and lift specific test tools for parameter adjustment or fault finding

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the 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 Premises, office accommodation and other facilities as reasonably required by the Supplier. The Customer shall ensure that access to, egress from and the working conditions satisfy the requirements of all applicable health and safety legislation;
- (d) to permit the Supplier to cease the operation of the Customer Equipment at such times and for such periods as reasonably required by the Supplier;
- (e) 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 accurate in all material respects;
- (f) prepare the Customer Premises for the supply of the Services;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (h) keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer 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
- (i) to keep under review and to report immediately any unsatisfactory running or irregular performance of the Customer Equipment;
- (j) undertake to keep clear and accessible any moving parts associated with the Customer Equipment;
- (k) Not to carry out any repairs, modifications, additions, adaptations or adjustments to the Customer Equipment without the prior written permission of the Supplier.
- (l) permit servants or agents of the Supplier to enter upon the premises and shall make the Plant available to them at such time and for such periods as may be necessary for the performance of this Contract.
- (m) ensure access/egress and working conditions that satisfy the requirements of the Health and Safety at Work etc Act, and all other relevant legislation, are in place
- (n) provide an electricity supply meeting all applicable codes and not containing levels of interference, harmonic distortion or voltage or frequency variation that would cause damage to the Equipment or it's malfunction.
- (o) provide environmental conditions which allow the proper operation of the Equipment and provide an acceptable working environment for the Supplier.
- (p) ensure that the Equipment is used in accordance with its original specification and that no material change is made in the use or usage, including the use of equipment for loads beyond which it has been certified.
- (q) ensure the Equipment is not subjected to accidental damage, nor is it misused, abused or vandalised.
- (r) ensure the Equipment is not exposed to water or other potentially damaging material, it is kept clean and that no act of omission by the Customer causes either the cost of or the ability to provide the Services to be adversely affected.

The Supplier shall not be liable in the event of not being able to carry out work as a result of the Customer's failure to provide the above services.

4.2 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) 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 4.2; 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 all legal costs and expenses incurred on an indemnity basis.

5. CHARGES AND PAYMENT

- 5.1 (a) The Customer shall pay the Supplier's Charges in the manner and on the dates set out in the Order
- (b) the Supplier shall in addition be entitled to charge the Emergency Call-out Charges for any time worked by individuals whom it engages on the Services outside Normal Working Hours; and
- (c) the Supplier shall in addition be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

- (d) The Supplier shall in addition be entitled to charge the Customer for the Deliverables.
- (e) The Supplier in addition shall be entitled to charge the Customer for any additional time spent and Deliverables provided as a result of the failure of the Customer complying with the Customer Obligations set out in clause 4 above.
- 5.2 The Charges shall be calculated according to the Supplier's standard scale of charges applicable as at the Commencement Date. The Charges may be adjusted during the Term as a result of variations in the index determined and produced by the Lift and Escalator Industry Association.
- 5.3 Charge adjustments: The Charges may also be varied in respect of any additional costs, taxes or other expenditure arising by virtue of any statute, regulation or order issued by any government department or other duly constituted authority.
 - (a) The Supplier reserves the right to adjust the Charges at any time to reflect increases in operating costs, including (but not limited to) fuel, materials, labour, and transportation.
 - (b) Any increases in material costs shall be reflected in all quotations and repair works issued following such increase.
 - (c) The Supplier may apply a fuel surcharge to any Services, including call-outs, repairs, and minor works, which shall be identified in the relevant quotation or invoice.
 - (d) The Supplier reserves the right to revise its hourly rates to reflect increases in operating costs, including fuel price increases.
 - (e) In respect of ongoing service contracts, the Supplier may implement such increases either immediately or at the next contract anniversary date.
 - (g) The Supplier shall use reasonable endeavours to notify the Customer of any such adjustments.

5.4 The Supplier shall invoice the Customer as detailed in the attached agreement .

5.5 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.

All sums payable under this Agreement shall be paid in full and without any retention, set-off, counterclaim, deduction or withholding (other than any deduction or withholding required by law).

5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (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 at the same time as payment is due for the supply of the Services.

5.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (Due Date), the Supplier shall have the right to charge interest and claim compensation on the overdue amount at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

5.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. 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.

5.9 Where attendance to breakdowns is included in the annual fee, this excludes breakdowns where the root cause is an Excluded Service, listed under clause 3.2. Where breakdowns and call-outs have a limited value and the total value of the work falls within this limit there will be no charge except where it is an Excluded Service. Where the total value of works exceeds the limit then an excess amount will be charged. Where attendance to breakdowns are chargeable, we will charge travelling time at the prevailing hourly rate to and from site if during normal working hours and travelling time to and from site at the prevailing hourly rate if out-of-hours, with the basis of charging to be applied in accordance with the relevant regional or branch charging practice.

6. DELIVERABLES

Where the Supplier supplies Deliverables:

- 6.1 The Supplier will make good, by repair or at its option replacement of any of the Deliverables supplied, any defects which arise within a period of 12 months from the date of installation or delivery (whichever is the sooner) PROVIDED THAT the Supplier will be under no obligation to repair or replace any Deliverable which it has not supplied or any Deliverable which has become defective as a result of the Customer having breached its obligations under these Conditions.
- 6.2 Where the Supplier supplied Deliverables manufactured by third parties the Supplier will give a guarantee equivalent to the guarantee (if any) which the Supplier may have received from the third party supplier but not so as to impose upon the Supplier a duty greater than that which the Supplier would otherwise have accepted under 6.1 above.
- 6.3 The Supplier shall not be liable to repair or replace any Deliverable which has been damaged, repaired, modified or adjusted by the Customer itself or a third party (regardless of whether that third party was acting on the direction of the Customer).
- 6.4 Subject to Clause 9 (Limitation of Liability), the Supplier shall not be liable for any loss or damage (including direct, indirect or consequential losses or loss of profits arising from stoppage, breakdown or failure of the Customer Equipment howsoever occasioned).
- 6.5 Title in the Deliverables shall remain with the Supplier and shall not pass to the Customer until the amount due under the invoice for them (including interest and costs) has been paid in full. The Supplier may at any time before title passes and without liability to the Customer repossess, dismantle, use and sell any of the Deliverables (even if the repossession and dismantling will involve the removal of the Deliverable from any aspect of the Customer Equipment).

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 7.3 All Supplier Materials are the exclusive property of the Supplier.

8. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are

subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.

9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Non-excludable Liability

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; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Excluded and Limited Liability

Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any business interruption, loss of revenue, loss of profit, loss of use of premises, loss of rental income, or any indirect or consequential loss arising under or in connection with the Contract; and.
- (b) the Supplier's total aggregate liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed all amounts including VAT paid by the Customer under this Contract in the 12 months immediately preceding the event giving rise to the claim.

9.3 Exclusion of implied terms.

Except as expressly set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.4 Survival

This clause 9 shall survive termination of the Contract for any reason.

10. TERMINATION

10.1 Without limiting its other rights or remedies, each party 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 the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (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) 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 that other party (being a company) other than 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;
- (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 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) a floating charge holder over the assets of that 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 10.1(b) to clause 10.1(k)(inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

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

- (a) fails to pay any amount due under this Contract on the due date for payment;
- (b) prevents the Supplier from performing any of its obligations under these Conditions;
- (c) where, without the Supplier's consent, work or repairs are carried out on the Customer Equipment by anyone other than the Supplier;
- (d) where the Customer fails to comply with all relevant health and safety legislation and such failure materially affects the Supplier's ability to perform safely.;
- (e) where, in the Supplier's opinion the Customer Equipment is being used in a manner for which they were not designed or which prevents them from being capable of operating safely.
- (f) If the Supplier is of the opinion that the plant is likely to cause injury or damage to property then it shall have the right, but not the obligation, to immobilise the Plant temporarily and/or to take such other temporary measures as are in the circumstances necessary and reasonable providing that at the time or as soon thereafter as is practicable, the Supplier shall give a written notification to the Customer or the Customer's representative, that the Plant is in or is likely to be in such a condition

10.3 Without limiting its other rights or remedies, the Supplier shall have the right to immediately (upon written notice) suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if

- (a) the Customer fails to pay any amount due under this Contract on the due date
- (b) the Customer is in material breach of this Contract
- (c) the Customer becomes subject to any of the events listed in clause 10.1, or: the Supplier reasonably believes that the Customer is about to become subject to any of them, or if (d) the Supplier reasonably considers that the Customer Equipment poses a risk to health and safety.

Suspension shall not relieve the Customer of its obligation to pay the Charges during the period of suspension.

11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) where the Contract is terminated by the Supplier pursuant to clause 10.2, all Charges that would have become payable during the remainder of the Term shall become immediately due and payable.
- (c) 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;
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or 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
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. GENERAL

12.1 Force majeure:

- (a) 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.
- (b) 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.
- (c) If the Force Majeure Event prevents the Supplier from providing any material obligation under this contract for more than 26 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, without liability for any losses or costs incurred by the Customer as a result.

12.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, 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 or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing. It may be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission.
- (c) This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

12.4 Waiver:

- (a) A waiver of any right under the Contract 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 preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

12.7 This Contract shall not in any way be construed as a contract of insurance and the Customer shall insure and keep insured the Customer Equipment against all claims for which it is responsible.

12.8 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.9 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

12.10 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the County Court / Birmingham District Registry of the High Court of Justice (whichever shall be applicable having regard to the value and the nature of the dispute).