



## Midland Steel Reinforcement Supplies GB Limited

### Terms and Conditions for the supply of Goods and Services

The Customer's attention is particularly drawn to the provisions of clause 11.

#### 1. INTERPRETATION

##### 1.1 Definitions. In these Conditions, the following definitions apply:

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

**Commencement Date:** has the meaning set out in clause 2.3.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.7.

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

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

**Debt:** the price to be paid in respect of the Goods which are resold or used in accordance with clause 6.4, which is outstanding from time to time.

**Deliverables:** the deliverables set out in the Order Acknowledgment.

**Delivery Location:** has the meaning set out in clause 4.2.

**Force Majeure Event:** has the meaning given to it in clause 13.1.

**Goods:** the goods (or any part of them) set out in the Order Acknowledgement.

**Goods Specification:** any specification for the Goods, including any relevant plans, designs or drawings, that is agreed by the Customer and the Supplier and reflected in the Order Acknowledgement.

**Order:** the Customer's written purchase order for the supply of Goods and/or Services from the Supplier following the Quotation.

**Order Acknowledgement:** the written acknowledgement from the Supplier confirming acceptance of the Order.

**Quotation:** a quotation in response to the written enquiry from the Customer regarding Goods and/or Services.

**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 as set out in the Order Acknowledgement or as subsequently agreed in writing between the Supplier and the Customer.

**Supplier:** Midland Steel Reinforcement Supplies GB Limited (registered in England and Wales with company number 07199280).

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

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
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. **BASIS OF CONTRACT**

2.1 The Quotation shall be provided by the Supplier following a written enquiry from the Customer in respect of the Goods and/or Services.

2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer shall be responsible for ensuring that the Order is accurate in all respects.

2.3 The Order shall only be deemed to be accepted when the Supplier issues the Order Acknowledgement at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

- 2.5 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 or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 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.
- 2.7 The Quotation shall not constitute an offer, and is only valid for a period of 28 days from its date of issue (prices being subject to reconfirmation following receipt of the Order).
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.9 Once an Order Acknowledgement has been issued by the Supplier, the Contract (or any Order accepted under the Contract) may not be cancelled by the Customer, other than in accordance with clause 3.4 or as otherwise agreed in writing by the Supplier subject always to the Customer indemnifying the Supplier in full against all losses (including loss of profit), costs (including but not limited to costs of labour and materials used), damage, charges and expenses (including legal fees) incurred by the Supplier as a result of such cancellation.
- 2.10 The Customer acknowledges and accepts that where the Order Acknowledgement specifies certain quality and tonnage of material, the Customer will be obliged to buy that type and tonnage at the price and within the timeframe stated in the Order Acknowledgement or in accordance with clause 12.4(c) of these Conditions. Following an Order Acknowledgement, the Supplier will place an order on its suppliers for the Goods and therefore the volumes and pricing in the Order Acknowledgement are binding on the Customer and are non-negotiable following issue of the Order Acknowledgement.

### 3. **GOODS**

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be sourced or manufactured in accordance with, or have any process applied to them to accord with, a Goods Specification supplied by the Customer, 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 and other reasonable professional costs and expenses) awarded against or suffered or incurred

by the Supplier 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 such Goods Specification. This clause 3.2 shall survive termination of the Contract.

- 3.3 The Supplier reserves the right to amend the Goods Specification or Order Acknowledgement including the price before delivery if required by any applicable statutory or regulatory requirements or due to the availability or cost of raw materials, transport, components, labour, currency fluctuations or increase in alloy surcharges or any change in delivery dates, quantities or specification of Goods required by the Customer and shall notify the Customer in writing of any changes to the Contract.
- 3.4 The Customer shall have no right of cancellation by virtue of the amendment to the Contract in accordance with clause 3.3 unless such increase exceeds 15% of the originally quoted price, in which case cancellation shall be the only remedy available to the Customer and the Supplier accepts no responsibility for any losses arising from such cancellation.
- 3.5 Any Goods ordered in respect to which clause 3.2 applies or which are modified specifically for a Customer are non-returnable or cancellable after the Order Acknowledgement has been issued by the Supplier.

#### 4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order Acknowledgement or such other location as the parties may agree in writing (**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 Goods' arrival at the Delivery Location. The Customer shall procure that the Goods can be offloaded upon arrival at the Delivery Location. If there is any delay in offloading the Goods the Customer shall pay the Supplier's current demurrage charge as set out in the Order Acknowledgement.
- 4.4 Any dates or times 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 the Customer's failure to provide the Supplier with access to site to deliver the Goods adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 5 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 9.00 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 delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 5 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted 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, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 10 per cent more or less than the quantity of Goods ordered but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 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. QUALITY OF GOODS**

5.1 The Supplier warrants that on delivery the Goods shall conform in all material respects with their description in the Order Acknowledgement and the Goods Specification and relevant construction and use regulations as stated therein.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing immediately following delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,  
the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such 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;
- (f) the Goods differ from the Order Acknowledgement and the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 5.2.

**6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for:
  - (i) the Goods; and
  - (ii) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment ; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4(b).

6.3 Until title to the Goods has passed to the Customer, the Customer shall hold the Goods as bailee for the Supplier and:

- (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 12.1(b) to clause 12.1(m); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent;
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs;
- (c) the Customer shall itemise the Goods as a separate entry on its invoice to its customer and supply a copy of the same to the Supplier;

- (d) any monies received by the Customer from its customer in respect of the Goods shall be held on trust solely for the Supplier pending payment to it of the price;
  - (e) the Supplier may require immediate payment of the price or in consideration for the Supplier transferring title, the Customer shall immediately on demand assign to the Supplier the Debt and the right to seek payment of the same from its customer directly and give notice to its customer accordingly.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(m), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately;
  - (b) the Supplier may at any time:
    - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) 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.
- 6.6 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the price of such Goods to the Supplier.
- 7. SUPPLY OF SERVICES**
- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in writing of any such changes.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.



## 8. CUSTOMER'S OBLIGATIONS

### 8.1 The Customer shall:

- (a) ensure that the terms of the Order Acknowledgement and the Goods Specification and/or Service Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods and/or Services;
- (c) operate within agreed credit terms and limits as per the credit limit notification and terms report supplied to the Customer by the Supplier;
- (d) 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 or deliver the Goods;
- (e) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and/or Services, and ensure that such information is accurate in all material respects;
- (f) prepare the Customer's premises for the supply of the Services or delivery of the Goods;
- (g) 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;
- (h) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

### 8.2 If the Supplier's performance of any of its obligations in respect of the Goods and/or Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend delivery of the Goods or performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and

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

9. **CHARGES AND PAYMENT**

9.1 The price for Goods shall be the price set out in the Order Acknowledgement subject to reconfirmation following inspection of schedules. The price of the Goods is exclusive of all costs and charges for packaging, insurance, transport of the Goods including any express delivery fees or demurrage charges, part-load surcharges, call off charges outside the minimum notice periods or any extra costs for radius and s/c 99 bending, which shall be paid by the Customer when it pays for the Goods.

9.2 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.

9.3 In respect of Goods, the Supplier shall invoice the Customer on or prior to delivery.

9.4 Unless otherwise agreed in writing, the Customer shall pay each invoice submitted by the Supplier in full in cleared funds on delivery of the Goods or provision of the Services.

9.5 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.

9.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay both statutory compensation

and interest on the overdue amount pursuant to the Late Payment. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the statutory compensation and interest together with the overdue amount.

- 9.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. **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, its products and services including any quotation and prices which the receiving party is given or may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

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

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

- 11.2 Subject to clause 11.1:

- (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 loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid for the Goods and/or Services.

11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

## 12. **TERMINATION**

12.1 Without limiting its other rights or remedies, 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 its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;

- (f) a creditor or encumbrancer of the Customer 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 seven 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 Customer (being a company);
- (h) the holder of a qualifying charge over the assets of the Customer (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 Customer or a receiver is appointed over the assets of the other party;
- (j) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(i) (inclusive);
- (k) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 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 fails to pay any amount due under this Contract on the due date for payment or refuses to collect or accept delivery of any Goods.

12.3 Without limiting its other rights or remedies, 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 this Contract on the due date for payment, refuses to collect or accept delivery of any Goods, the Customer becomes subject to any of the events listed in clause 12.1(a) to clause 12.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12.4 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;

- (b) in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (c) in respect of Goods yet to be delivered, the Supplier shall notify the Customer when such Goods are ready for collection/delivery and such collection/delivery shall be effected within six months of the Termination Date with payment being made by the Customer to the Supplier in full at the point of delivery or collection as applicable. If the Customer has not taken delivery or paid such sums in full within six months of the Termination Date, the Supplier shall be entitled to, but not obliged to, sell the Goods at such price as it can and charge the Customer for the difference between the price that would have been paid under the Contract plus storage costs plus any other costs incurred in selling the Goods to a third party less the sum actually received from the third party in respect of the Goods or demand payment from the Customer in full if it does not sell the Goods to a third party regardless of whether or not the Customer takes delivery of the Goods. Such sum shall be immediately payable by the Customer upon demand by the Supplier and is recoverable as a debt;
- (d) 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;
- (e) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (f) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

### 13. **FORCE MAJEURE**

13.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

13.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

13.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 12 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.

## 14. GENERAL

### 14.1 Assignment and other dealings

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

### 14.2 Notices

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

### 14.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- (b) If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- 14.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 14.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).