



# Scarlet Zebra Business Solutions

## Terms and Conditions

### **PART I : DEFINITIONS**

In this agreement the following expressions have the meanings given below:

#### **1. 'COMPANY'**

Scarlet Zebra Business Solutions or any person or party to whom the Agreement and/or any Agreed Variations may from time to time be assigned

#### **2. 'CUSTOMER'**

The addressee stipulated in the Proposal Letter.

#### **3. 'AGREEMENT'**

The Company's Proposal and the Customer's accepted Request for the Project as evidenced and effected by:

##### **3.1 the Proposal Letter to the Customer from the Company endorsed with:**

3.1.1 the Customer's signed acknowledgement of receipt and acceptance of its terms and enclosures and the Customer's request for the Work ("the Customer's Acknowledgement and Request")

##### **3.1.2 the Company's signed acceptance of the Customer's Request ("the Company's Acceptance")**

##### **3.2 the documents referred to in the Proposal Letter consisting of**

###### **3.2.1 the Specification**

###### **3.2.2 the Quotation,**

3.2.3 all and any written variations or revisions to 3.1 and 3.2 above which may from time to time be duly and properly agreed to in writing between the Customer and the Company ('Agreed Variations')

#### **4. 'CUSTOMERS' WEBSITE'**

The website to which the Project relates as referred to in the Specification.

#### **5. 'PROJECT'**

The constituent parts of the Project including the website and domain or domain name to be provided and/or designed and written by the Company as detailed in (and therefore excepting any items excluded from) the Specification.

#### **6. 'PROPOSAL LETTER'**

The letter from the Company to the Customer referred to in clause 3 above

#### **7. 'SPECIFICATION'**

The technical constituents and performance expectations of the Project as detailed in the Specification and any Agreed Variations to the Specification agreed to between the Customer and the Company.

#### **8. 'QUOTATION'**

The Company's written quotation for the price of designing, writing, supplying, commissioning and/or hosting the Project enclosed with the Proposal Letter and any variations or revisions to the Quotation agreed to in writing by the Customer and the Company

#### **9. 'OFFER'**

Any written communication from the Customer to the Company in the form of an acknowledgement, request, specification or other order which is placed with the Company in response to a quotation, tender, estimate, proposal or other similar communication from the Company and by the terms of which the Company is required to or does carry out and commission the Project.

#### **10. 'PROJECT COSTS'**

The price to the Customer for the Company designing and/or supplying and commissioning the Project as detailed in the Quotation

#### **11. 'SUPPORT COSTS'**

The charge agreed by the Company for the Support Service and any recurring cost charged to the Company by any third party and payable by the Company and arising from the commissioning and continued provision and/or hosting of the Project which shall become due for payment 14 days prior to the commencement and subsequent anniversary of each Support Period

#### **12. 'SUPPORT SERVICE'**

Any continued provision of support for and/or hosting of the Project after the Commissioning Date provided for under the Specification

#### **13. 'COMMISSIONING DATE'**

The date on which the Project is finally provided and commissioned by the Company at which time the Company will present a Commissioning Acknowledgement for signature by the Customers' representative.

#### **14 'SUPPORT PERIOD'**

The period as detailed under the specification from the Commissioning Date and continuing after that date from year to year unless terminated by not less than three months notice in writing

14.1 given by either party to the other

14.2 expiring not earlier than the end of the first year of the Agreement

14.3 after that date not earlier than each anniversary of the Commissioning Date.

### **PART II : THE CUSTOMER'S OBLIGATIONS**

The Customer shall:

#### **1. CONSENTS & APPROVALS**

Be responsible for obtaining all prior consents, permits and approvals required for the use of all text, images and copy which is or may be copyrighted material to be incorporated into the Project

#### **2. FREE ACCESS**

8.1 2.1 Permit the Company and its employees (and any third party representing any regulatory organisation by which the Installer is for the time being recognised) with free continuous and uninterrupted access to and usage of the Company's Website and any related computerised systems to enable the Company to carry out its obligations under the Agreement.

2.2 pay at the Company's then prevailing charging rates for any interruptions or delays caused to the design, commissioning and/or continued hosting of the Project by virtue of any breach of clause 2.1 above within 14 days of being invoiced

#### **4. SUPPORT COSTS**

Pay the Company for all Support Costs within 14 days of being invoiced by the Company and in any event at least 14 days prior to the commencement and subsequent anniversary of each Support Period

#### **5. INDEMNITY**

Defend, indemnify, save and hold harmless the Company from any and all demands, liabilities, losses, costs and claims, together with all legal fees, that may directly or indirectly arise from or be occasioned by the contents and /or the promotion, operation, marketing, usage or accessing by the Customer or any other third party of the Customers' Website and/or Domain and/or Domain Name including but not limited to:

5.1 any electronic contracting

5.2 any service provided or performed or agreed to be performed by the Customer, its clients, agents, employees or representatives

### **PART III**

it were a direct contracting party with any such naming authority and/or hosting service company and the Customer acknowledges and accepts that it has been provided with a copy of and fully understands the provisions of all and any such terms and conditions

5.3 any injury to person or property caused by any products of the Customer sold or otherwise distributed in connection with the Company's services

5.4 any material supplied by the Customer

5.5 any copyright or other infringement of the proprietary rights of any third party;

5.6 any defective Product sold via the Customers' services

## **6. DOMAIN NAME**

### **THE COMPANY'S OBLIGATIONS**

The Company shall subject to prompt payment by the Customer of all sums due under the Agreement and any Agreed Variations

1. Design and complete the Project and provide the Support Service in accordance with the Specification
2. Use its best endeavours to procure the registration of any relevant Domain Name acting as agent for the Customer

3. Manage and administer any Domain Name required as part of the Project on the Customer's behalf Accept full responsibility for and shall do all acts or things necessary to procure and ensure

6.1 the prompt and regular renewal of any Domain Name

## **PART IV**

### **MISCELLANEOUS PROVISIONS**

registered by or for the Customer

### **7. LAWFUL USAGE**

7.1 not use any back up of any code supporting the Customers' Website otherwise provided as part of the Project unless any such code has been specifically licensed to the Customer for that purpose

7.2 not transmit on or through the Customer's Website or the services of any naming authority or hosting service company any material that is, in the Company's sole discretion, unlawful, obscene, threatening, abusive, libellous, or encourages conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any local, state, national or international law

7.3 not otherwise use the Customer's Website or the services of any naming authority or hosting service company for any unlawful purpose

7.4 not otherwise conduct itself or endeavour to secure custom or revenue in any way that would constitute a breach of any UK or European statute including but not limited to the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) and The Consumer Protection (Distance Selling) Regulations 2000

7.5 not transmit, distribute, or store any information, data or material in violation of UK, European, or other International regulation or law, or which is prohibited by common law, including, but not limited to, material protected by copyright, trademark, trade secret, or any

## **8. Copyright**

The Customer shall at its own expense obtain all necessary permission and consents required to facilitate the use of any copyrighted material in the Project

## **9. THIRD PARTY TERMS & CONDITIONS**

Observe and perform the terms and conditions of any naming authority with or by which any domain name is to be registered and/or any hosting service company with or by which the Customers Website is to be hosted including but not limited to hosting, network guarantees and any relevant privacy policy as if

## **1. OPTIONS**

Any options outlined in the Specification are part of the overall recommendations put forward by the Company.

If the Customer chooses not to have any option offered by the Company the Customer acknowledges and accepts that although this may result in an initial cost saving to the Customer this may reduce the effectiveness of the Specification.

## **2. VARIATION TO SPECIFICATION**

2.1 The Specification has been prepared on information made available to the Company immediately before the submission of the Quotation or, as appropriate, concluding the Agreement and any Agreed Variations and any alteration to any such information may make it necessary for the Quotation or as appropriate the Agreement and any Agreed Variations to be varied.

2.2 The Company shall not be deemed to have notice of any such alteration unless their attention is drawn to it in writing, in which case the Company shall submit a revised Quotation in writing or alternatively and if appropriate a formal written proposed variation to the Agreement and any Agreed Variations for acceptance and signature by the Customer and the Company.

### **3. IMPROVEMENTS TO SPECIFICATION**

The Company's policy is one of constant improvement and the Company reserves the right to alter the technical profile of the Specification and to substitute or replace any component part or parts of the System (including using equipment and materials other than those stipulated in the Specification) at any time without notice if the Company in its sole discretion considers this to be necessary or desirable in order to ensure that the System functions satisfactorily.

### **4. VARIATIONS AND REVISIONS TO THE AGREEMENT**

The Project is designed to allow for variations or revisions if required.

Any variations or revisions in the Specification, agreed to by the Customer after the Company's Acceptance will be effected exclusively in accordance with these terms and conditions and charged and paid for by the Customer on a time and materials basis at the Company's then prevailing charging rates for such items or matters.

### **5. DOMAIN NAME REGISTRATION**

The Customer acknowledges and accepts that:

- 5.1 the contract for registration is and shall remain between the Customer and the appropriate naming authority
- 5.2 the Company is at all times acting as the Customer's agent in the process of securing registration of the relevant Domain for and on behalf of the Customer
- 5.3 until the Company has given the Customer specific written confirmation of the successful registration of any domain name required as part of the Project the Customer cannot and will not assume or act to its detriment upon the assumption that any such registration has been effected or procured on its behalf.
- 5.4 Customer will be and remain the owner of any relevant Domain Name registered as part of the Project but the Domain will be transferred to the Company for the proper management and administration of the Domain.

### **8. CUSTOMERS RIGHT OF CANCELLATION**

Where the Customer is an individual acting for purposes which are outside his business (i.e., where the customer is a "natural person" acting as a consumer) but not otherwise, then any rights variously reserved by the Company in these Terms and Conditions to charge an increased amount for the commissioning of the Project or the Support Service shall be subject to the Customer's right to cancel the commissioning of the Project by notice to the Company if received by the Company prior to the Company's Acceptance (as to which see Clause 3.1.2 of Part 1 above) or if the Project has already been commissioned and paid for to cancel the Support Service applicable to it if the final price which it is proposed the Customer will be charged for the Project and/or as appropriate, for the Support Service is on any fair, reasonable and objective appraisal, excessive when compared with the Project Costs or the Support Costs as originally envisaged in the Quotation and/or the Agreement and any

Agreed Variations

## **PART V**

### **GENERAL TERMS OF SALE**

#### **1. BINDING AGREEMENT**

- 1.1 Any quotation, tender, estimate or Proposal given or provided by the Company is only an invitation to the Customer to make an offer.
- 1.2 No such offer from the Customer whether in the form of an acknowledgement, request, specification or other order which is placed with the Company and whether it is offered in response to a quotation, tender, estimate, Proposal or other similar communication from the Company or not, shall be binding upon the Company unless and until it is in writing
  - 1.2.2 a duly authorised officer or employee of the Company formally accepts it in writing.
- 1.3 The Company shall be deemed to have accepted the Customer's Acknowledgement and Request, specification or other written order either where it expressly so notifies the Customer in writing or by commissioning the Project.

#### **2. APPLICATION AND ACCEPTANCE OF TERMS AND CONDITIONS**

##### **2.1 ACCEPTANCE**

Any agreement, however made, between the Company and the Customer shall incorporate and be subject to these terms and conditions, and in the absence of any express or other implied acceptance of these terms and conditions by the Customer, the commissioning of the Project by the Company shall be deemed to be conclusive proof that the Customer has accepted them.

##### **2.2 EXCLUSIVITY**

Save as otherwise expressly provided in these terms and conditions all other terms and conditions are expressly excluded (whether or not they are endorsed upon delivered with or referred to in any other document delivered or sent by the Customer to the Company) except

2.2.1 those implied by statute or any nationally binding directive or regulation in favour of a seller or private consumer.

2.2.2 any other terms and conditions which are the subject of an express written variation to the Agreement between the Customer and the Company and which are not inconsistent with these Terms and Conditions.

2.2.3 the Customers statutory rights and entitlements if acting as a private consumer which shall not be in any way affected or prejudiced by and which will override any inconsistent terms or conditions of the Agreement.

2.2.4 any terms which it would be unfair or unreasonable to exclude under or by virtue of the Unfair Contract Terms Act 1977 and/or the Unfair Terms in Consumer Contracts Regulations 1999 and any statutory provisions for the time being replacing, amending or supplementing them.

2.3 Any reference in the Agreement to the Customer's acceptance, request, specification, order or like document will not be deemed to imply or otherwise have the effect that any terms or conditions endorsed upon, delivered with or referred to in any such document (other than these Terms and Conditions) are to be incorporated into any agreement between the Company and the Customer.

## **2. ENTIRE AGREEMENT**

To the extent permitted and deemed reasonable by any applicable statutory authority, rule, provision, regulation or directive and subject to Clauses 2.2.1, 2.2.3 and 2.2.4 above but not further or otherwise this Agreement and any Agreed Variations

2.4.1 constitutes the entire agreement between the parties

2.4.2 supersedes and excludes for all purposes any other agreements, warranties or representations of any kind made by or on behalf of either the Customer or the Company relating to or affecting the design, supply, commissioning and/or support of the Project

## **2.5 VARIATIONS AND REVISIONS**

No variation to the Agreement (other than annual increases in the Recurring Charges applicable to the Agreement as provided for below) shall be effective or binding upon the Company or the Customer whether agreed verbally or not unless confirmed and agreed to in writing by the Customer and a duly authorised officer or employee of the Company.

## **3. COMMISSIONING AND OTHER CHARGES**

Unless otherwise provided in the Agreement:

3.1 If after the Company has accepted an offer from the customer but before the Commissioning date any increase occurs in the costs incurred by the Company in supplying or commissioning the System, then the amount of any such increase may in the Company's reasonable discretion be charged for at the Company's prevailing charging rates for such items in addition to the Commissioning Cost or any Recurring Charges. An initial payment of 50% of quoted prices is required upon Commission, this cost is non-refundable in the event of the client withdrawing from the agreement.

## **4. CONSEQUENCES OF DELAY**

4.1 The Quotation does not include or provide for any extra cost or expenses incurred by the Company if through no fault of the Company it is delayed or prevented from fulfilling its obligations under the Agreement by any act or omission on the part of the Customer or any authorised third party acting on the Customers behalf.

4.2 The following provisions shall apply if performance of the whole or any part of the Agreement is suspended or delayed for a period of up to 28 days through any such act or omission on the part of the Customer including without limitation incomplete or incorrect instructions or any refusal to accept or facilitate a final commissioning of the Project or to permit or facilitate the carrying out of any continued support or hosting of the Project by the Company.

4.3 The Company shall in that event be entitled to payment for any costs incurred by the Company with third parties and at which ever is the higher of the Agreement rate or the Company's then prevailing charging rates for any additional work undertaken by the Company in designing, commissioning and/or supporting the Project over and above any such work anticipated and provided for in the Specification and Quotation.

4.4 If the Customer fails to accept or unreasonably obstructs or prevents the commissioning or continued support or hosting of the Project within 28 days of written notification from the Company that it is in a position to supply the same the Company shall be entitled (without prejudice to its other remedies under the Agreement for such breach) to terminate this Agreement on 7 days written notice to the Customer.

## **5. EXPENSE OF VARIATIONS, REVISIONS OR INTERRUPTIONS**

The Customer shall be liable to pay at the Company's then prevailing charging rates for

5.1.3 5.1 the cost of any agreed to the Specification and also for any increased cost of the commissioning or support of the Project to the Company attributable to any changes to or interruption in any services used by the Project or upon which it depends arising in either case after the date of the Company's acceptance of the Customers' offer and which are required or imposed by the Customer any supplier to the Company any statutory authority or other similar body

5.2 The certification of the Company's accountants of the amount of any such increases shall be conclusive and binding on both the Customer and the Company.

## **6. SUPPORT COSTS**

6.1 The Company shall in the event of any increases from time to time in the amount for which the Company is charged by any third party for Support Costs be entitled to charge the Customer to provide for and recover such increases at the Company's then prevailing charging rates for such items.

6.3 The Agreement shall, (notwithstanding any inconsistent provisions of this Agreement governing variations to it), be deemed to have been varied by Agreement on the occasion of each and every such increase.

## **7. RISK**

All usual risks attributable to or connected with the use or ownership of any Website and/or Domain Name created or developed as part of the Project shall pass to the Customer upon the signing off of the Project by the Customer on the Commissioning Date

## **8. TITLE**

8.1 Legal title to any intellectual property, software, text, copy, images or other material written for or comprised within the Project shall not vest in the Customer and shall accordingly

remain vested in the Company until the Commissioning Cost and all other money due from the Customer to the Company on any other account has been paid or satisfied in full.

8.3 The Company may at any time without prior notice to the Customer resell any such intellectual property, software or material written for or comprised within the Project if any of the events entitling the Company to regard the Agreement as terminated under these Terms and Conditions shall occur, or if any sum owed by the Customer to the Company under the Agreement or on any other account is not paid on the due date for payment.

8.8 Upon the exercise by the Company of any right or remedy reserved to it by this provision, any license or right granted to the Customer in relation to any intellectual property software or other materials shall immediately determine and the Company shall be entitled to the immediate delivery up of all materials in which any such licence or right subsists.

8.9 The Customer shall have no entitlement to or right to use any back up of any code supporting the Customers' Website otherwise provided as part of the Project unless any such code has been specifically licensed to the Customer for that purpose

8.9 The rights and remedies conferred upon the Company by this Clause are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Agreement.

## **9. LIEN**

9.1 Without prejudice to any other rights or remedies which the Company may have under the Agreement the Company shall in respect of all debts of the Customer to the Company have and be entitled to a general lien on all property in its possession or control and which belong to the Customer whether they are the subject of services provided by the Company or not

9.2 The Company shall be entitled on the expiry of 14 days notice to the Customer to dispose of such property as it shall reasonably think fit and to apply any proceeds of such sale towards the payment of such debt.

## **10. PERFORMANCE**

10.1 Unless the Agreement otherwise expressly provides any date or dates stipulated for the Company to commission and/or support the Project, shall only amount to statements of expectation and shall not be binding upon the Company.

10.2 If the Company, despite reasonable endeavours to do so fails to deliver, complete or commission or to supply support for the Project by any such stipulated date or dates such failure shall not constitute a breach of the Agreement, nor entitle the Customer to treat the Agreement as repudiated, or to rescind it or any related agreement in whole or in part, or to claim compensation or any consequential loss or damage arising from or attributable to any such failure.

10.3 Further performance of the Agreement shall be suspended for so long as the Company is prevented or hindered from performing the Agreement or any part of the Agreement by any circumstances beyond its reasonable control, including but without limitation,

10.3.1 strikes,

10.3.2 lock-outs

10.3.3 industrial action

10.3.4 fire

10.3.5 flood

10.3.6 civil commotion

10.3.7 any other reasonably unforeseeable cause of whatever kind and whenever occurring

10.4 If for whatever reason however the performance of the Agreement is suspended for more than six consecutive calendar months, the Customer shall be entitled by notice in writing to the Company to terminate the Agreement or to cancel any outstanding part of the Agreement with immediate effect.

10.5 The Company shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform its obligations under the Agreement by reason of any such circumstances.

10.6 Where any part of the System is to be designed, supplied, delivered or commissioned by the Company by instalments in accordance with periodic schedules or periodic notification of the Customers' requirements,

10.6.1 the Customer shall not be entitled to cancel or vary any such schedule or requirement or to accept some parts of the Project and reject other parts without the Company's prior written consent and

10.6.2 the Customer shall be liable to pay for any reasonable additional costs and expenses incurred or suffered as a result of any such cancellation or variation at the Company's then prevailing charging rates

10.7 When the Company agrees to supply, commission or provide support for the Project on an expedited basis and this reasonably necessitates overtime or other additional costs, the Customer shall pay the Company for such overtime payment or other costs at the Company's then prevailing rates.

10.8 Where the Company agrees at the Customer's request to postpone the supply, commissioning or support for the Project, the Customer shall, if required by the Company, pay interest at the Interest Rate on the Commissioning Cost or the Support Costs as appropriate.

## **11 RIGHT OF ASSIGNMENT**

11.1 The Company shall be entitled to perform any of its obligations under this Agreement through sub-contractors.

11.1.1 11.2 The Company and the Customer shall each have the right to assign all or any of their respective rights under this Agreement subject to obtaining each others' prior written consent which must not be unreasonably withheld or delayed and to proper notice being given to the relevant party once any such assignment has taken place.

## **12 PAYMENT**

12.1 Unless otherwise agreed in writing or stipulated in these terms and conditions, any other sums payable by the Customer under this Agreement shall be payable in full within 14 days of the Customer being invoiced by the Company for any such items.

12.2 The time stipulated for payment by the Customer shall be an essential term and condition of this Agreement and payment by post shall be at the risk of the Customer.

12.3 Failure to pay on the due date shall be deemed to be a repudiation of this agreement by the Customer, upon which and without prejudice to any other remedy available to it, the Company shall be entitled

12.3.1 to suspend further performance of the Agreement pending payment, and

12.3.2 wholly or partially to cancel the Agreement or any other agreement between the Company and the Customer.

12.4 Unless otherwise agreed in writing, the Customer shall not be entitled to set off against any money due to the Company under the Agreement any amount claimed by or due to the Customer from the Company, whether under the Agreement or under or by virtue of any other claim whether in contract or otherwise or on any other account whatsoever.

### 13. INTEREST ON LATE PAYMENT

The Company shall be entitled to interest both before and after any award or Order made or arising from the determination of any dispute or disagreement under these Terms and Conditions on any part of the Commissioning Cost or Recurring Charges or any other payments for which the Customer is liable under the Agreement and which are not paid by the due date from that date until actual payment at the Interest Rate during any such period

### 13 WARRANTY

14.1 Where any software is supplied or licensed to the Customer by the Company whether as part of the Project or in the course of providing support for the Project and the quality or performance of which is warranted or supported by any third party, then the Company will use its reasonable endeavours to obtain for the Customer the benefit of any such warranty or support given by that third party.

14.2 It shall be the Customer's responsibility to prepare and submit directly or by any other appropriate medium or mechanism to any such third party any warranty registration cards, warranty claims forms, or other documentation or to attend to such registration formalities as may be required by the manufacturer as a condition of entitlement to any such warranty or to support under any such warranty.

14.3 Except as may be otherwise expressly set out in any part of these terms and conditions

no warranty of any kind, whether express or implied, is given with respect to any services supplied by the Company

14.4 Without detracting from the generality of 14.3 above the

Company does not represent or warrant that:

14.4.1 the Project is guaranteed to achieve the objectives and performance expectations for it set out in the Specification

14.4.1 the Company will be able to register any requested Internet

Domain name

14.4.3 any Internet Domain name requested and/or registered will not infringe the rights of any third party

14.5 The Company's liability for any claim or claims for direct injury, loss or damage (whether to property or otherwise) made by the Customer against the Company, whether in contract or in tort, (including negligence on the part of the Company, its servants or agents) arising out of or in connection with:

14.5.1 any defect or malfunction in the Project

14.5.2 any services provided by the Company

14.5.3 any act, omission, neglect, default (whether or not constituting a fundamental breach of the whole or any part of the Agreement), of the Company, its servants or agents in the performance of the Agreement, including without limiting the generality of the foregoing, breach of any condition or warranty whether express or implied by statute, common law or otherwise howsoever shall (without prejudice to the provisions of the above sub- paragraphs), be limited to the total of the Commission Cost and also the Support Costs for the year in which any such claim occurs or in which it is notified to the

Company (whichever is the lesser) payable under the terms of this Agreement.

14.6 The Company shall not be liable for any claims for:

14.6.1 economic loss

14.6.2 loss of protection

14.6.3 loss of turnover

14.6.4 loss of profit, revenue or sales

14.6.5 loss of opportunity

14.6.6 loss of bargain

14.6.7 defects in the Project or any other loss or damage arising from improper usage

14.6.8 other indirect, consequential or special loss, injury or damage made by the Customer against the Company, whether in contract or in tort (including negligence on the part of the Company, its servants or agents) arising out of or in connection with any defect in the System or any act, omission, neglect or default on the part of the Company.



14.6.9 direct or indirect damage or loss from theft or break in suffered by the Customer, intruders or other unauthorised persons when the System would have operated correctly but is neutralised or circumvented by intruders or other unauthorised persons or has not been operated or set correctly by the Customer

14.6.10 or for any claims notified by the Company in excess of one year after the act, omission or event prompting the claim arose.

14.7 Nothing in these Conditions shall:

14.7.1 limit or exclude the liability of the Company in respect of death or personal injury resulting from the negligence of the Company, its employees or agents, or

14.8.2 exclude or limit the conditions and warranties implied by Section

12 of the Sale of Goods Act 1979 (as amended or extended) and, where the Customer deals as a consumer, the conditions implied by Sections 13 to 15 inclusive of that Act, and by Sections 3 and

4 of the Supply of Goods and Services Act 1982 (as amended or extended).

## **16. INSOLVENCY AND BREACH OF CONTRACT**

16.1 If any of the following events occur, are threatened or in the opinion of the Company are reasonably likely to occur:

16.1.1 the Customer shall commit any breach of his, her or their obligations under the Agreement and shall fail to remedy any such breach (if it is capable of being remedied) within 7 days of receipt of notice in writing from the Company requesting such breach to be remedied, or any distress or execution is levied upon any of the goods or property of the Customer or

16.1.2 (where the Customer is a partnership) the Customer or any partner of the Customer offers to make any arrangements with or for the benefit of their creditors or suffers the making or presentation of an interim order, petition or bankruptcy order against them or

16.1.3 (where the Customer is a limited company) an administrator or an administrative receiver or a receiver and manager is appointed of the whole or any part of its undertaking, property or assets or a petition is presented or an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and when previously approved in writing by the Company)

16.1 The Company shall then be entitled, without prejudice to its other rights under these terms and Conditions,

16.2.1 to immediately suspend further performance of the Agreement and of any other contract between the Company and the Customer until the default has been made good, or

16.2.2 to determine the Agreement or any other contract between the Company and the Customer or any unfulfilled part of it or them or at the Company's option to make partial supplies of services or component parts of the Project or of continuing support for the Project

16.3 Notwithstanding any such suspension, determination or partial supply, the Customer shall:

16.3.1 pay the Company at the rate specified in the Agreement for all work done and other constituent elements of the Project completed by the Company and all services rendered by it up to and including the date of termination

16.3.2 in addition indemnify the Company against any resulting loss, damage or expense reasonably incurred by the Company in connection with the non-supply or non-performance of the Agreement, including the cost to the Company of discharging any contractual commitments entered into by the Company with third parties for the purpose of discharging the Company's obligations under the Agreement and the cost of labour and other overheads incurred by the Company including a percentage in

respect of profit.

## **17. SEVERANCE**

If at any time any one or more of these Terms and Conditions is held to be void in whole or part or otherwise unenforceable for any reason under any applicable law then any such provision shall be deemed to be omitted from these Terms and Conditions and the validity or enforceability of the remaining provisions of these Terms and Conditions shall not be affected or impaired in any way.

## **18. WAIVER**

The rights and remedies of the Company under the Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company, nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.

## **19. NOTICES**

Notices and claims shall be conclusively deemed to have been served if sent by First Class Recorded delivery Post, to the last known address of each party to the Agreement if not returned undelivered within 10 working days

## **20. STATUTORY RIGHTS**

Nothing contained in the Agreement shall affect the statutory rights of the Customer

## **21. THIRD PARTY RIGHTS**

22.1 A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

22.2 This clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.

## **22. LAW AND JURISDICTION**

These Terms and Conditions and each and every agreement made under them shall be governed by and construed in all respects in accordance with the Laws of England and the Company and the Customer irrevocably submit to the exclusive jurisdiction of the English Courts.

## **23. LEGISLATIVE PROVISIONS**

Any reference in these Terms and Conditions to any specific legislation shall be deemed to include all and any statutory or other acts, regulations, instruments or other provisions amending, extending or substituting the same for the time being in force and which are or have been passed or imposed by any body having relevant and competent jurisdiction.

END