

# SEVENHILLS FABRICATION LIMITED

## TERMS AND CONDITIONS OF SALE

### Rev 2018



**SevenHills**  
FABRICATION

engineering excellence  
since 1926

**0114 345 2222**

sevenhillsfabrication.com

#### 1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

- Affiliate** means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
- Business Day** means a day other than a Saturday, Sunday, bank or public holiday;
- Conditions** means the Supplier's terms and conditions of sale set out in this document;
- Confidential Information** means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
- Contract** means the agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order;
- Control** means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
- Controller** shall have the meaning given to it in applicable Data Protection Laws from time to time;
- Customer** means the person who purchases the Deliverables from the Supplier and whose details are set out in the Order;
- Data Protection Laws** means, as binding on either party or the Services:
- (a) the Directive 95/46/EC (Data Protection Directive) and/or Data Protection Act 1998 or the GDPR;
  - (b) any laws which implement any such laws; and
  - (c) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
- Data Subject** shall have the meaning given to it in applicable Data Protection Laws from time to time;
- Deliverables** means the Goods or Services or both as the case may be;
- Force Majeure** means an event or sequence of events beyond any party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;



Sub-Contract Fabrication | Laser Cutting | CNC Bending | Tube Manipulation

<b>GDPR</b>	means the General Data Protection Regulation (EU) 2016/679;
<b>Goods</b>	means the goods and related accessories, spare parts and documentation and other physical material set out in the Order or understood by the parties to be included in the Goods and to be supplied by the Supplier to the Customer;
<b>Intellectual Property Rights</b>	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: <ul style="list-style-type: none"> <li>(a) whether registered or not</li> <li>(b) including any applications to protect or register such rights</li> <li>(c) including all renewals and extensions of such rights or applications</li> <li>(d) whether vested, contingent or future</li> <li>(e) to which the relevant party is or may be entitled, and</li> <li>(f) in whichever part of the world existing;</li> </ul>
<b>International Organisation</b>	shall have the meaning given to it in the GDPR;
<b>Location</b>	means the address for delivery of the Goods and performance of the Services as set out in the Order;
<b>Order</b>	means the Customer's order for the Deliverables in substantially the same form as set out in the Customer's order form;
<b>Personal Data</b>	shall have the meaning given to it in applicable Data Protection Laws from time to time;
<b>Personal Data Breach</b>	shall have the meaning given to it in the GDPR;
<b>Price</b>	has the meaning given in clause 3.1;
<b>Processor</b>	shall have the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processed</b> , <b>processing</b> , and <b>processes</b> shall be construed accordingly);
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;
<b>Services</b>	means the services set out in the Order and to be supplied by the Supplier to the Customer;
<b>Specification</b>	means the description or specification of the Deliverables set out or referred to in the Order;
<b>Sub-Processor</b>	means any agent, subcontractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
<b>Supplier</b>	means PCT Limited t/a SevenHills Fabrication;
<b>Supplier Personnel</b>	all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time; and
<b>VAT</b>	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables.

- 1.2 In these Conditions, unless the context otherwise requires:
- 1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
  - 1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
  - 1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
  - 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## **2 Application of these Conditions**

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Customer.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.
- 2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
  - 2.6.1 the Supplier's written acceptance of the Order; or
  - 2.6.2 the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.
- 2.9 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract.

## **3 Price**

- 3.1 The price for the Deliverables shall be as set out in the Order.
- 3.2 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.3 The Supplier may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing.

## **4 Payment**

- 4.1 The Supplier shall invoice the Customer for the Deliverables at any time.
- 4.2 The Customer shall pay all invoices:
  - 4.2.1 in full without deduction or set-off, in cleared funds within 14 of the date of each invoice; and
  - 4.2.2 to the bank account nominated by the Supplier.
- 4.3 Time of payment is of the essence.

## **5 Credit limit**

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

## **6 Delivery and performance**

- 6.1 The Goods shall be delivered by the Supplier to the Location on the date specified in the Order. The Services shall be performed by the Supplier at the Location on the date specified in the Order. The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.
- 6.2 The Supplier may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.3 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only.
- 6.4 The Supplier shall not be liable for any delay in or failure of performance caused by:
- 6.4.1 the Customer's failure to: (i) make the Location available, (ii) prepare the Location as required for the Deliverables or (iii) provide the Supplier with adequate instructions for performance or delivery;
  - 6.4.2 Force Majeure.

## **7 Risk**

Risk in the Goods shall pass to the Customer on delivery.

## **8 Title**

- 8.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall:
- 8.2.1 hold the Goods as bailee for the Supplier;
  - 8.2.2 store the Goods separately from all other material in the Customer's possession;
  - 8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
  - 8.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
  - 8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
  - 8.2.6 not remove or alter any mark on or packaging of the Goods;
  - 8.2.7 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

## **9 Indemnity and insurance**

- 9.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 9.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## **10 Limitation of liability**

- 10.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 10.
- 10.2 Subject to clauses 10.5 and 10.6, the Supplier's total liability shall not exceed the Price
- 10.3 Subject to clauses 10.5 and 10.6, the Supplier shall not be liable for consequential, indirect or special losses.
- 10.4 Subject to clauses 10.5 and 10.6, the Supplier shall not be liable for any of the following (whether direct or indirect):
- 10.4.1 loss of profit;
  - 10.4.2 loss or corruption of data;

- 10.4.3 loss of use;
  - 10.4.4 loss of production;
  - 10.4.5 loss of contract;
  - 10.4.6 loss of opportunity;
  - 10.4.7 loss of savings, discount or rebate (whether actual or anticipated);
  - 10.4.8 harm to reputation or loss of goodwill.
- 10.5 The limitations of liability set out in clauses 10.2 to 10.4 shall not apply in respect of any indemnities given by either party under the Contract.
- 10.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 10.6.1 death or personal injury caused by negligence;
  - 10.6.2 fraud or fraudulent misrepresentation;
  - 10.6.3 any other losses which cannot be excluded or limited by applicable law;
  - 10.6.4 any losses caused by wilful misconduct.

## **11 Intellectual property**

- 11.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use of the Deliverables infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Supplier shall have no such liability if the Customer:
- 11.1.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
  - 11.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
  - 11.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
  - 11.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
  - 11.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.
- 11.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
- 11.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Deliverables; or
  - 11.2.2 modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Deliverables remain in material conformance to their Specification.
- 11.3 The Supplier's obligations under clause 11.1 shall not apply to Deliverables modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

## **12 Confidentiality and announcements**

- 12.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 12.1.1 any information which was in the public domain at the date of the Contract;
  - 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 12.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
  - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

except that the provisions of clauses 12.1.1 to 12.1.3 shall not apply to information to which clause 12.4 relates.

12.2 This clause shall remain in force for a period of *five* years from the date of the Contract and, if longer, *three* years after termination of the Contract.

12.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

12.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any provisions of clause 13.

### **13 Processing of personal data**

13.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws.

13.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.

13.3 The Supplier shall:

13.3.1 only process (and shall ensure Supplier Personnel only process) the Protected Data as required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and

13.3.2 if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

13.4 Taking into account the state of technical development and the nature of processing, the Supplier shall implement and maintain technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

13.5 The Supplier shall:

13.5.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior specific written authorisation of the Customer;

13.5.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 13 that is enforceable by the Supplier and ensure each such Sub-Processor complies with all such obligations;

13.5.3 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and

13.5.4 ensure that all persons authorised by the Supplier or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

13.6 The Supplier shall (at the Customer's cost):

13.6.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier; and

13.6.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

- 13.7 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written consent of the Customer.
- 13.8 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 13 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 13.8).
- 13.9 The Supplier shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.
- 13.10 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 13 shall survive termination or expiry of the Contract.

#### **14 Force Majeure**

- 14.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 14.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
  - 14.1.2 uses best endeavours to minimise the effects of that event.
- 14.2 If, due to Force Majeure, a party:
- 14.2.1 is or shall be unable to perform a material obligation; or
  - 14.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days;
- the other party may, within 30 days, terminate the Contract on immediate notice.

#### **15 Termination**

- 15.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- 15.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
  - 15.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
  - 15.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
  - 15.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 15.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 15.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 15.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
  - 15.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 15.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 15.2.5 has a resolution passed for its winding up;
  - 15.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

- 15.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
- 15.2.8 has a freezing order made against it;
- 15.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
- 15.2.10 is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.9 in any jurisdiction;
- 15.2.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 15.2.1 to 15.2.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

- 15.3 The Supplier may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control.
- 15.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 15, it shall immediately notify the Supplier in writing.
- 15.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## **16 Dispute resolution**

- 16.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 16.
- 16.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 16.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
  - 16.3.1 Within seven days of service of the notice, the *contract managers* of the parties shall meet to discuss the dispute and attempt to resolve it.
  - 16.3.2 If the dispute has not been resolved within seven days of the first meeting of the *contract managers*, then the matter shall be referred to the *chief executives* (or persons of equivalent seniority). The *chief executives* (or equivalent) shall meet within seven days to discuss the dispute and attempt to resolve it.
- 16.4 The specific format for the resolution of the dispute under clause 16.3.1 and, if necessary, clause 16.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 16.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executive (or equivalent) under clause 16.3.2 then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 16.6 Until the parties have completed the steps referred to in clauses 16.3 and 16.5, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

## **17 Notices**

- 17.1 Any notice or other communication given by a party under these Conditions shall:
  - 17.1.1 be in writing and in English;
  - 17.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - 17.1.3 be sent to the relevant party at the address set out in the Contract
- 17.2 Notices may be given, and are deemed received:
  - 17.2.1 by hand: on receipt of a signature at the time of delivery;
  - 17.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;



17.2.3 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission;

17.2.4 by email: on receipt of a read receipt email from the correct address.

17.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 17 and shall be effective:

17.3.1 on the date specified in the notice as being the date of such change; or

17.3.2 if no date is so specified, 5 Business Days after the notice is deemed to be received.

17.4 All references to time are to the local time at the place of deemed receipt.

17.5 This clause does not apply to notices given in legal proceedings or arbitration.

## **18 Cumulative remedies**

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

## **19 Time**

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Customer's obligations only.

## **20 Further assurance**

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## **21 Entire agreement**

21.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

## **22 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Supplier.

## **23 Assignment**

23.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld or delayed OR which it may withhold or delay at its absolute discretion.

23.2 Notwithstanding clause 23.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

## **24 Set off**

24.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

24.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **25 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **26 Equitable relief**

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **27 Severance**

- 27.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 27.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **28 Waiver**

- 28.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 28.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

## **29 Compliance with law**

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **30 Costs and expenses**

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

## **31 Third party rights**

- 31.1 Except as expressly provided for in clause 31.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 31.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

## **32 Governing law**

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

## **33 Jurisdiction**

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