

**VETERINARY BUSINESS DEVELOPMENT LIMITED**  
**TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES**

**The Customer's attention is particularly drawn to the provisions of clause 14.**

**1. Definitions**

In these Conditions, the following definitions apply:

**Advertising:** the placement, by the Customer, of an advert including classifieds, recruitment, product features, CPD diary entries, or advertisement features, either in print or online.

**Artwork Specifications:** as detailed in the media pack on the website [www.vbd.co.uk](http://www.vbd.co.uk) as amended and notified to the Customer from time to time.

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

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 11.

**Commencement Date:** has the meaning set out in clause 3.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.8.

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

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

**Customer Materials:** materials provided by the Customer and required by the Supplier in order to be able to carry out the Services.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Design and Print Services:** provided by the Supplier including but not limited to marketing services, design, image development, logo design, creating corporate identity, brochures, photography, self-promotional items and large format digital printing.

**Direct Mail:** the delivery, by the Supplier, of the Customers communications, direct to the target audience selected by the Customer.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**List:** a list created and maintained by the Supplier containing names, addresses and other details of potential purchasers or subscribers for the products or services sold or provided by the Customer

**Market Research:** qualitative or quantitative market research carried out by the Supplier on behalf of the Customer.

**Order:** the Customer's order for Services as booked over the telephone or as set out in email correspondence between the Customer and Supplier, the Customer's purchase order form, or the Customer's written acceptance of a quotation by the Supplier, or overleaf, as the case may be.

**Recipient:** any person who the Customer intends receive the products of the Supplier's Services.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Order.

**Supplier:** Veterinary Business Development Limited registered in England and Wales with company number 02185105 and whose registered office is c/o Peachey & Co LLP, 95 Aldwych, London, WC2B 4JF.

**Supplier Materials:** has the meaning set out in clause 6.1.4.

## 2. Interpretation

In these Conditions, the following rules apply:

- 2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 2.3 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;
- 2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 2.5 a reference to **writing** or **written** includes faxes and e-mails.

## 3. Basis of contract

- 3.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 3.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("Commencement Date").
- 3.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 3.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 3.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

## 4. Supply of Services

- 4.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects and in accordance with the terms of this agreement.
- 4.2 Subject to clause 4.3, the Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 The Supplier shall not be required to provide any Services to the Customer until payment of the Charges are received in full by the Supplier.
- 4.4 The Supplier reserves the right to withhold dispatch of the Deliverables if payment of the sums due under clause 11 is not received by the date they fall due.
- 4.5 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 4.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 4.7 All Services will be targeted at individuals in the UK unless otherwise stated at the time of Order. Where non-UK targeting is required, the Supplier will endeavour to target the Services at individuals in the country or countries specified at the time of Order.

## **5. Customer Materials**

- 5.1 Customer Materials must be provided no later than the deadline specified in the Order.
- 5.2 The Supplier may, without any responsibility to the Customer, reject, cancel or require any Customer Material to be amended that it considers unsuitable or contrary to these terms.
- 5.3 The publication or use of any Customer Material by the Supplier does not mean that the Supplier accepts that the Customer Material has been provided in accordance with these terms or that the Supplier has waived its rights under these terms.
- 5.4 The Customer guarantees to the Supplier that:
  - 5.4.1 any materials or information supplied in connection with the Services is accurate, complete, true and not misleading;
  - 5.4.2 it has obtained the consent of any person whose name or image (in whole or in part) is contained in any Customer Material;
  - 5.4.3 the Customer Materials are legal, decent, honest and truthful, are not contrary to the provisions of any applicable law, regulation or code of practice, are not libellous or obscene and do not infringe the rights of any person (including any person's intellectual property rights);
  - 5.4.4 any material or information supplied complies with all laws, regulations and requirements, in place from time to time, of any country from which it can be accessed
  - 5.4.5 the Customer Material will not be prejudicial to the image or reputation of the Supplier or the websites or publications run and/or owned by the Supplier; and
  - 5.4.6 all Customer Materials submitted for publication or use online will be free of any viruses and will not cause an adverse effect on the operation of the website(s).
- 5.5 The Customer agrees to waive any moral rights it may have in the Customer Materials for the purposes of its use by the Supplier.
- 5.6 Where the Customer submits Customer Material to the Supplier (including without limitation any text, graphics, video or audio) the Customer is required by such submission to grant to the Supplier a perpetual, royalty-free, non-exclusive, sub-licensable right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and exercise all copyright and publicity rights with respect to any such work worldwide.
- 5.7 The Customer accepts that it is responsible for dealing with and responding appropriately to any complaints of whatever nature made by any Recipient to the Supplier and the Supplier does not accept and shall have no responsibility, or liability, for any such complaints made.
- 5.8 The Supplier accepts no responsibility for any interruption or delay the Customer experiences in delivering any Customer Materials to the Supplier or any loss or damage to any Customer Materials. The Customer guarantees that it has retained sufficient quality and quantity of all materials supplied to the Supplier.

## **6. Customer's obligations**

- 6.1 The Customer shall:
  - 6.1.1 co-operate with the Supplier in all matters relating to the Services;
  - 6.1.2 provide the Supplier with such information and Customer Materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information complies with the Artwork Specifications;
  - 6.1.3 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;

6.1.4 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.

6.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):

6.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

6.2.2 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 6.2; and

6.2.3 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.

## **7. Services relating to the provision of Direct Mail**

7.1 The terms within this clause 7 only relate to Services provided for an order relating to or including Direct Mail.

7.2 The delivery or receipt of Direct Mail to or by any Recipient cannot be guaranteed. Whilst the Supplier will provide the Service in accordance with the terms of the Contract, the Supplier makes no representations or warranties whatsoever about the speed or proportion of Direct Mail sent that will be delivered.

7.3 Both parties shall notify the other party if they become aware of any interruptions or any other problems with the Service. The Company shall use reasonable endeavors to respond to the interruptions or other problems with the Service and to rectify any problems with reasonable diligence and within a reasonable timescale.

7.4 The Service is for Direct Mail and should be used for 'opt in' marketing only (for the avoidance of doubt, the term 'opt in' shall mean where the Recipient has formally agreed and consented to receiving any Direct Mail).

7.5 The Customer shall not use the Service for the purposes of 'SPAM', junk mail, unsolicited or unauthorised advertising.

7.6 If the Supplier in its sole discretion believes that:

7.6.1 the Service is being used for SPAM, junk mail, unsolicited or unauthorised advertising, or

7.6.2 the Customer is breaching these terms and conditions in any other way,  
then the Supplier may decide (in its sole discretion) to suspend or terminate the Service and no refund of any service fee or other payments to the Supplier will be made.

7.7 The Supplier has the right, at its sole discretion, to remove the details of any Recipient from their List, for whatever reason (including, if the Supplier should receive any complaint from a Recipient in respect of any Direct Mail received by them).

- 7.8 The Customer agrees to undertake the following, from time to time, in relation to the Direct Mail Service:
- 7.8.1 to supply, in a timely manner, Customer Materials, including images, designs and any other information the Customer reasonably requires to be sent by the Supplier in the Direct Mail; and
- 7.8.2 to instruct the Supplier as to when the Direct Mail are to be sent to the Recipients.

**8. Services relating to the provision of Advertising services (online or print)**

- 8.1 The terms within this clause 8 only relate to Services provided for an order relating to or including Advertising.
- 8.2 The Supplier reserves the right to remove, not print, suspend or change the position of any Advertising.
- 8.3 The Supplier will not be responsible for any additions to, changes in, deletions from, delays in publication or withdrawal of any Customer Material required by any authority having responsibility for the regulation of online or press advertising (including the Advertising Standards Authority).
- 8.4 The Supplier cannot guarantee the time, dates and/or position of any Advertising and all such decisions will be at the sole discretion of the Supplier. However, the Supplier will use reasonable efforts to comply with the Order and wishes of the Customer.
- 8.5 If any Customer Material is not published at all solely due to a mistake on the Supplier's part, the Supplier will endeavour to offer an alternative publication date(s). If the alternative date(s) is not accepted, the original booking will be cancelled and the Customer shall be entitled to a full refund if the Customer has paid in advance. This shall be the Customer's sole remedy for failure to publish the Customer Material.
- 8.6 If the Customer Material as reproduced by the Supplier contains a substantial error solely due to a mistake on the Supplier's part, the Supplier shall, on request, re-publish the Customer Material at no additional cost to the Customer. This shall be the Customer's sole remedy for such substantial error. The Supplier shall not be responsible for repetition of errors and it is the Customer's responsibility to inform the Supplier of any errors and provide any necessary assistance to the Supplier to prevent a repeat of the error.
- 8.7 In respect of on-line Advertising, the Supplier does not guarantee continuous, uninterrupted access by users of the websites but will use reasonable efforts to provide this (except for websites where the Supplier has no control). In addition, the Supplier will not be responsible for any failure or delay affecting production or publication of any publication or the transmission of the websites and any Advertising contained in them, in any manner where such failure or delay results from any act, omission, interruption, fault or other condition beyond the reasonable control of the Supplier.
- 8.8 The amendment and cancellation period for any Advertising is shown in the media pack on the website [www.vbd.co.uk](http://www.vbd.co.uk). The Customer may amend or cancel the ordered Advertising provided that notice in writing is received by the Supplier within the relevant cancellation period. Cancellation will only be effective on confirmation of receipt of your notice. If a cancellation is validly made, the Customer shall receive a refund. If the cancellation is not made in time, the Supplier is entitled to receive (if not already received) or retain all of the Charges. If an amendment is made which results in an increase or decrease in the Charges applicable the Supplier will refund or invoice the Customer accordingly. If the Customer fails to provide Customer Material required for any Advertising by the deadline specified in the Order, the Supplier is entitled to receive (if not already received) or retain all of the Charges.
- 8.9 The Supplier will send an email to the Customer with a proof copy of any Advertising in advance of the date that the Advertising is due to be published for approval. If the Customer does not reply by the deadline date given in the email confirming whether or not any changes are required, the Customer will be deemed to have approved the proof copy for publishing.

## **9. Services relating to the provision of Market Research**

- 9.1 The terms within this clause 9 only relate to Services provided for an Order relating to or including Market Research.
- 9.2 The Supplier shall endeavour to ensure the accuracy of the Market Research, but cannot guarantee the results information reported. The Customer hereby acknowledges that the information contained in the results is derived from questionnaires carried out in accordance with accepted market research practice and as such may be liable to statistical error. The Supplier does not accept responsibility for any loss, damage or expense whatsoever arising from the use of or reliance upon research results and survey findings and analysis.
- 9.3 Where products, samples or Customer Materials are supplied to the Supplier for use in connection with the Services, the Customer agrees that the Customer shall be solely liable for any damage, loss, expense, injury or inconvenience caused by such products, samples or Customer Materials whether to the Supplier or any third party.
- 9.4 In the event of an error caused by the negligence or otherwise of the Supplier in any reports or results supplied, the Supplier will use its best endeavors to correct the error at its own expense, but will not be held liable for the consequences of the error beyond the provision of corrected reports and results.
- 9.5 If predictions are involved on any aspect of consumer behaviour, it must be recognised that such predictions, while made in good faith, are intended only as an aid to the Customer's judgment and that the Supplier cannot be held responsible for any damage or loss suffered by the Customer for any error in such predictions.
- 9.6 Customers will need to 'sign off' questionnaires, topic guides or interviewer script (as appropriate) prior to the commencement of the fieldwork. The onus is on the Customer to thoroughly check and validate the questionnaire. A Customer 'sign off' is legally binding and care must be given at this stage of a project as frequently sample data is 'single use' only. Fieldwork will not commence until the Supplier has received the client 'sign off' to ensure the client is fully satisfied with the design of the questionnaire.
- 9.7 Customers are themselves requested to use data and information supplied to them by the Supplier in accordance with the Code of Conduct of the Market Research Society.
- 9.8 The Supplier reserves the right to pilot any survey in order to ensure that the proposed length of any questionnaire meets with the original specification. The Supplier reserves the right to charge additional fees or negotiate changes to the questionnaire where there is a variation in length greater than 15%.
- 9.9 The Charges quoted by the Supplier for Market Research Services are estimated based on the specific project requirements, the agreed timescale and any assumptions detailed in the Order. As such, the Charges may be subject to change if there is any alteration to the timescale, project objectives or requirements, the assumptions or research approach as set out in the Order. The Supplier reserves the right to make additional Charges for any additional work that results from any alterations to the Order.
- 9.10 If the Order is altered by the Customer after the project has commenced, the Supplier reserves the right to amend any proposed completion date.
- 9.11 In connection with any Market Research Services supplied, the Supplier will submit an invoice to the Customer in respect of 50% of the agreed fee at the outset of the project. The Supplier will submit an invoice for the balance of the agreed fee, together with any additional charges payable, upon completion of the project.

9.12 If the Customer cancels any Order for Market Research project after work has commenced, the Supplier is entitled to receive (if not already received) payment for all work carried out up to and including the date of cancellation together with any and all direct and indirect costs and expenses it has incurred in provision of the Services. The Supplier shall submit an invoice for payment by return in respect of such work, costs and expenses.

#### **10. Services relating to the provision of Design and Print Services**

10.1 The terms within this clause 10 only relate to Services provided for an order relating to or including Design and Print Services.

10.2 The method of print production (eg. digital, litho, web offset, screen) may not necessarily be made known to the Customer and the Customer accepts the manufacturing tolerances inherent within each method of production and their possible consequences or effects on the finished job. The Supplier is not obliged to state the method of production.

10.3 All weights measurements and specifications quoted by the Supplier are nominal and subject to manufacturing tolerances. Exact conformity with submitted samples cannot be guaranteed. Pigmented materials are subject to colour variation.

10.4 It is the Customer's responsibility to check the proof and/or specification thoroughly and inform the Supplier of any changes required. The Supplier cannot be held liable for any errors in the printed job where the said errors were included in the proof and/or specification and not communicated in writing to the Supplier. Where a proof and/or specification is amended in any way by or at the request of the Customer then all additional costs incurred will be borne by the Customer. When style, type or layout is left to the Supplier's judgement, changes therefore made by the Customer shall be charged extra.

10.5 Additional charges may be made to cover any work involved where Customer artwork requires alteration or where additional time is involved recreating artwork at the Customers request. The Customer will be notified of any artwork charges incurred over and above artwork time included in the quotation.

10.6 Owing to the nature of the printing processes the Supplier shall deliver plus or minus 5% of the quantity ordered by the Customer and the quantity delivered must be paid for in full. No compensation will be paid, however, in the event of an under-run irrespective of the size of the under-run. If additional "top-up" quantities are subsequently required to be printed then these shall be paid for in full by the Customer. If an exact quantity is required then this must be clearly stated in writing by the Customer at the time of order.

10.7 If The Supplier still holds any artwork, transparencies, plates, film setting, negatives or positives which is the property of a Customer after the expiration of two years from the date upon which it was last used in relation to an order for the Customer the Supplier shall then be at liberty to dispose of it in any way they think fit and be under no further responsibility whatsoever in relation to it.

10.8 The Supplier may reject any artwork, paper, plates or other materials supplied or specified by the Customer which appear to him to be unsuitable. Additional cost incurred if materials are found to be unsuitable during production may be charged to the Customer.

10.9 Where materials are so supplied or specified the Supplier will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified.

#### **11. Charges and payment**

11.1 The Charges for the Services shall be as set out in the Supplier's written acceptance of the Order.

11.2 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to,

travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

- 11.3 The Supplier reserves the right to increase its rate cards at any time provided that such charges cannot be increased more than once in any 6 month period. Any changes to the rates will take effect immediately. However, any changes to the applicable rates will not apply to any orders made and accepted prior to the date of such change. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving two weeks' written notice to the Customer.
- 11.4 With the exception of the provision of Market Research Services, to which condition 9.11 applies, the Supplier shall invoice the Customer on completion of the Services.
- 11.5 The Customer shall pay each invoice submitted by the Supplier:
- 11.5.1 within 30 days of the date of the invoice; and
- 11.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 11.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 11.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("Due Date"), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4% per cent per annum above the then current HSBC's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 11.8 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the Due Date, the Supplier shall also have the right to cancel/withdraw/put on hold any other Contracts until such time as the Customer makes payment of the overdue amount together with interest.
- 11.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **12. Intellectual property rights**

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

- 12.4 The Customer shall indemnify and keep the Supplier indemnified from and against the consequences of the Supplier suffering any claims of infringements of copyrights, patents, trademarks, industrial designs, database rights or other property rights arising from the provision of the Service.
- 12.5 In the event that any such infringement occurs or may occur, the Customer may request the Supplier to modify and / or amend the Customer Material or infringing part thereof so that the same becomes non-infringing and if the Supplier agrees to modify and / or amend the content the Supplier shall be entitled to charge for the additional cost for making the modifications and /or amendments which shall be chargeable at the Suppliers then current rates.

### **13. Confidentiality**

- 13.1 A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 13.2 Nothing in these terms shall prevent the Supplier from referring to the Customer by name indicating that the Customer is a customer of the Supplier, either in advertising material or proposal documents, or describing the type of service performed for the Customer. Any disclosure relating to the specific Services performed on behalf of the Customer will only be by express consent of the Customer only. Where the Supplier has undertaken work on behalf of a Customer, the Supplier reserves the right to utilise the Customer logo in marketing material unless the Customer specifically objects to this use.
- 13.3 This clause 13 shall survive termination of the Contract.

### **14. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 14.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 14.1.2 fraud or fraudulent misrepresentation; or
  - 14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2 Subject to clause 14.1:
- 14.2.1 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
  - 14.2.2 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 amount of the Charges due under the Order in question.
- 14.3 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.

14.4 This clause 14 shall survive termination of the Contract.

## 15. Termination

15.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;

15.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

15.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

15.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

15.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

15.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

15.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

15.1.8 a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

15.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

15.1.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.2 to clause 15.1.9 (inclusive);

15.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

15.1.12 the other party (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.

15.2 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 Charges due under this Contract on the due date for payment.

15.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party 2 months' written notice.

- 15.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.12, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## **16. Consequences of termination**

- 16.1 On termination of the Contract for any reason:
- 16.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 16.1.2 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;
  - 16.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - 16.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **17. General**

- 17.1 Force majeure:
- 17.1.1 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.
  - 17.1.2 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.
  - 17.1.3 If the Force Majeure Event prevents the Supplier from providing any of the Services 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.
- 17.2 Assignment and subcontracting:
- 17.2.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
  - 17.2.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.3 Notices:

- 17.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 17.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 17.3.3 This clause 17.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 17.4 Waiver:
- 17.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 17.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 17.5 Severance:
- 17.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 17.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 17.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 17.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier or its authorised representative.
- 17.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.