

1. INTERPRETATION

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, 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 4* (Charges and payment).

Commencement Date: the date on which the Supplier will begin providing the Services in accordance with the Specification.

Conditions: these terms and conditions as amended from time to time in accordance with *Clause 9.5*.

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 Default: has the meaning set out in *Clause 3.2*.

Data Protection Legislation: all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, (for so long as and to the extent that the law of the European Union has legal effect in the UK) (ii) the General Data Protection Regulation ((EU) 2016/679) and (iii) any other directly applicable European Union regulation relating to privacy.

Services: the services supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer within the Contract.

Supplier: 4FACILITIES LIMITED registered in England and Wales with company number 09442426.

1.2 INTERPRETATION:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. THE CONTRACT & SUPPLY OF SERVICES

- 2.1** The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 2.2** The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.3** The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 2.4** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

- (a) ensure that the Services described within the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, Suppliers and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) warrants that they have the authority to enter into this Agreement and have obtained all necessary approvals to do so.

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

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall 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 in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this *Clause 4.2*; and

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

4. CHARGES AND PAYMENT

4.1 The Charges for the Services shall be calculated on a time and materials basis:

- (a) the Charges shall be calculated in accordance with the Supplier's daily or hourly fee rates, as set out in within the Specification;
- (b) the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 4.00 pm worked on Business Days;
- (c) 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 travelling expenses and for the cost of services provided by third parties and required by the Supplier for the performance of the Services

4.2 The Customer shall pay each invoice submitted by the Supplier within 14 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer.

4.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**) and the Supplier will apply VAT to all charges at the prevailing rate.

4.4 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this *Clause 4.4* will accrue each day at 8% per calendar month above the Bank of England's base rate from time to time.

4.5 The Supplier is also entitled to recover any expenses incurred by them in obtaining payment from the Customer where any payment due to the Supplier is late.

4.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.7 Where the scope of the Services is varied and/or further additional work or time is requested, required or performed by the Supplier on behalf of the Customer, for and/or on their behalf, the Supplier will be entitled to be paid based on the Supplier's rates as set out within the Specification.

6. DATA PROTECTION AND DATA PROCESSING

6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this *Clause 6*, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means any Data Protection Legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

6.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

6.3 Without prejudice to the generality of *Clause 6.1*, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the Contract.

6.4 Without prejudice to the generality of *Clause 6.1*, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Personal Data;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this *Clause 6*.

6.5 The Customer does not consent to the Supplier appointing any third party processor of Personal Data under the Contract unless otherwise agreed to in writing.

6A. CONFIDENTIALITY, INTELLECTUAL PROPERTY AND PROPOSAL DOCUMENTATION

(6A.1) All quotations, proposals, specifications, asset registers, equipment schedules, maintenance schedules, surveys, reports, drawings, photographs, technical data, pricing structures, recommendations and supporting documentation supplied by the Supplier shall remain the intellectual property of the Supplier unless expressly agreed otherwise in writing.

(6A.2) The Customer shall use such information solely for the purpose of evaluating the Supplier's proposal and administering the Services provided under the Contract.

(6A.3) The Customer shall not, without the Supplier's prior written consent:

(a) reproduce, copy, distribute or disclose any such information to any third party;

(b) provide any asset registers, equipment schedules, serial number records, survey data, technical reports, maintenance schedules, drawings, photographs or other proprietary information supplied by the Supplier to any third party for the purpose of pricing, tendering, benchmarking or carrying out equivalent services;

(c) permit any third party to rely upon or use information prepared by the Supplier for the purpose of providing competing quotations or tenders.

(6A.4) Nothing in this Clause shall prevent the Customer from obtaining alternative quotations or conducting a competitive tender process, provided that the Customer does not disclose proprietary information prepared by the Supplier.

(6A.5) The Supplier reserves the right to withhold detailed asset registers, serial number records, survey information, technical reports, maintenance schedules and supporting documentation unless expressly included within the agreed scope of works.

(6A.6) Any information supplied by the Supplier pursuant to this Contract shall be treated as confidential by the Customer and shall not be disclosed to any third party except where required by law or with the prior written consent of the Supplier.

(6A.7) The obligations contained within this Clause shall survive termination or expiry of the Contract.

7. LIMITATION OF LIABILITY

7.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

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

7.2 Subject to *Clause 7.1*, the Supplier's total liability to the Customer shall not exceed the amount that the Supplier is charging for the Services or the amount paid by the Customer for the Service (whichever is lower). The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

7.3 This *Clause 7.3* sets out specific heads of excluded loss:

(a) Subject to *Clause 7.2*, the Supplier shall not be liable under any circumstances to the Customer for the following types of loss;

- (i) Loss of profits
- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

8. TERMINATION

8.1 The Agreement shall continue until the Services have been provided in accordance with the Specification or to any subsequent date mutually agreed in writing by both parties or until terminated by either party in accordance with this *Clause 8*.

8.2 The Customer may terminate this Agreement if the Supplier fails to comply with the terms and conditions set out and this failure continues for a period of 28 days after the Customer has notified the Supplier in writing about the non-compliance. .

8.3 Either party may terminate the Agreement by notice in writing to the other if;

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so; or
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.4 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) there is a change of control of the Customer.

8.5 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in *Clause 8.4(b)* to *Clause 8.4(d)*, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

8.6 On termination of the Contract:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the Supplier's materials. 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 the Contract.

8.7 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

8.8 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

8.9 If the Customer terminates this Agreement before the end date of the initial term or any renewal term, the Customer shall pay the remaining balance of the Contract in full. The remaining balance is calculated as the total fees due for the remainder of the Contract term.

8.10 The Contract will automatically renew for successive one-year terms unless either party gives written notice of termination at least 30 days before the end of the current term.

9. GENERAL

9.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

9.2 Assignment and other dealings.

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

9.3 Deliverable documents and authority.

(a) Where the Customer is a limited liability company, or alternatively a publicly listed company, the Supplier shall report to the Directors of the Customer or, in the alternative, any senior employee to whom responsibility has been delegated on behalf of the

Directors. Save as referred below ordinarily all reports and any deliverable items forming part of the Contract or outcome of the Services provided by the Supplier shall be delivered to the Directors, or the member of Customer staff nominated to receive the same by the Customer;

9.4 Entire agreement.

- (a)** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b)** Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the

Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

9.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

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

9.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); sent by email to the address specified in the Contract or Specification.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this *Clause 9.8(b)(iii)*, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

9.9 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

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

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

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