

Naked Energy Limited's Terms and Conditions

Naked Energy Limited is a company incorporated and registered in England and Wales with company number 07013158 whose registered office is at The White House, High Street, Dereham, Norfolk, NR19 1DR

1. Definitions and Interpretation

1.1 Definitions:

Agreement: means this agreement for the provision of Goods and/or Services comprising of the Order and these Conditions and any documents referred to in either of them.

Affected Party: has the meaning given in clause 16.2

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

Claim: has the meaning given in clause 11.6

Charges: means the amount payable for the Goods and Services (or part thereof).

Commencement Date: the date of the signed Order.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 17.3.

Confidential Information: any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.

Delivery: completion of delivery of Goods specified in the Order in accordance with clause 5.3 or clause 6.1(a).

Delivery Date: the date for delivery of Goods as agreed between the parties in accordance with clause 5.

Delivery Location: the location as agreed between the parties (or, if no location is specified, the Customer's registered office).

End User: meaning the end user of the Goods.

Force Majeure Event: has the meaning given in clause 16.1.

Goods: the products supplied as set out in the Order together with any additional reasonable products used in connection with the Services.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Holding Company: has the meaning given in clause 1.2(d).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

Naked Energy's Schedule of Maintenance: the Supplier's maintenance policies as provided to the Customer from time to time as set out within Naked Energy's Installation Manual.

Naked Energy Installation Manual: the Supplier's installation guidelines as provided to the Customer from time to time.

Month: a calendar month.

Order: the order for the Goods and the Services together with the attached quotation.

Order Number: the reference number to be applied to an Order by the Supplier.

Representatives: has the meaning given in clause 14.2.

Services: means the services to be provided by the Supplier set out in the Order and/or as agreed between the Supplier and Customer throughout the Term.

Specification: the confidential "Product Datasheet" for the Goods (amended from time to time) provided to the Customer together with the confidentiality agreement immediately signed by the Customer upon receipt of the documents.

Subsidiary: has the meaning given in clause 1.2(d).

Term: the term of the Agreement, as determined in accordance with clause 2.3.

VAT: value added tax chargeable in the UK or other local taxes.

1.2 Interpretation:

- (a) Clause and paragraph headings shall not affect the interpretation of this Agreement.
- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (c) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the UK Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act

2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

- (e) Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- (f) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (g) This Agreement shall be binding on, and ensure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- (h) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- (i) A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (j) A reference to **writing** or **written** includes fax and email. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- (k) References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by or on their behalf for identification.
- (l) A reference to **this Agreement** or to any other agreement or document referred to in these Conditions is a reference to the Conditions, Order and/or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- (m) References to clauses are to the clauses of this Agreement.
- (n) 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.

2. Basis of contract, commencement and term

- 2.1 These Conditions apply to the Agreement 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 (including but not limited to any standard terms and conditions of purchase).
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 This Agreement shall begin on the Commencement Date and shall continue, until supply of the Goods and/or Services are complete, subject to any right of earlier termination under this Agreement.

3. Provision of Goods and Services

The Supplier shall supply the Goods and provide the Services to the Customer on the terms of this Agreement.

4. Supplier's undertakings

- 4.1 The Supplier agrees that at all times during the Term it shall:
 - (a) perform the Services with reasonable care, skill and diligence;
 - (b) ensure that the Goods conform to the Specification at the point of manufacture;
 - (c) ensure the Goods are free from defects in design, material and workmanship and remain so for the Warranty Period as set out in Schedule A: Naked Energy Limited's Warranty;
 - (d) obtain and at all times, maintain during the Term of this Agreement, all necessary licences and consents and comply with applicable laws in relation to the provision of the Goods and the Services;
 - (e) that this Agreement is binding and enforceable against it in accordance with its terms;
 - (f) that it has the necessary authority to enter into this Agreement.
- 4.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this Agreement.
- 4.3 The Customer acknowledges that the Supplier's warranty protection in clauses 4.1(b), 4.1(c) and 4.1(d) is provided by the Goods' manufacturer to the Supplier, and that any claim brought under the warranty will have to be notified to the Supplier.
- 4.4 The Supplier shall make written recommendations of third party equipment such as cables tubes pipes etc. in Naked Energy's Schedule of Maintenance (**Recommendations**) to be used in connection with the Goods. The warranties present in this clause 4 will not apply if the Customer or the End User of the Goods does not operate the Goods in accordance with the Recommendations and, in such an instance, the Supplier shall have no liability to the Customer. The supplier will consider any input and local market knowledge provided by the customer.
- 4.5 The Supplier shall be responsible only for the supply of the Naked Energy Product(s) only and shall not be responsible for other services and materials including but not limited to the design, installation, construction, commissioning or the performance of the system.

5. Delivery

- 5.1 The Supplier or its Representatives shall ensure that the delivery of Goods is accompanied by a delivery note which shows the Order Number, the type and quantity of Goods and, if the parties have agreed for the Order to be delivered in instalments, that the outstanding balance of Goods remaining be delivered.
- 5.2 The Supplier or its Representatives shall deliver Goods to the Delivery Location on the relevant Delivery Date.
- 5.3 Delivery is completed on the completion of unloading the Order at the Delivery Location.
- 5.4 Delays in the delivery of the Order shall **not** entitle the Customer to:
 - (a) refuse to take delivery of the Order; or
 - (b) claim damages; or
 - (c) terminate this Agreement, subject always to clause 16.
- 5.5 The Supplier shall not be liable for any delay in delivery of any Goods or Services that is caused by:
 - (a) a Force Majeure Event including any impacts arising from a pandemic; or
 - (b) changes to customs and other regulations or associated processes outside of the Supplier's control
 - (c) the direct result of the Customer's failure to provide the Supplier with adequate delivery instructions that are relevant to the delivery of Goods.
- 5.6 If the Customer fails to take delivery of the Order on the Delivery Date, then, except where that failure or delay is caused by the Supplier's failure to comply with its obligations under this Agreement:

- (a) delivery of the Order shall be deemed to have been completed at 9.00 am on the Delivery Date; and
- (b) the Supplier or its Representatives shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

6. Acceptance and defective products

6.1 The Customer may reject any Goods delivered to it that do not comply with clause 4.1, provided that:

- (a) notice of rejection is given to the Supplier within five (5) Business Days; and
- (b) none of the events listed in clause 6.3 apply.

6.2 If the Customer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted these Goods.

6.3 The Supplier shall not be liable for a Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events:

- (a) the Customer makes any further use of those Goods after giving notice in accordance with clause 6.1;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the Customer alters or repairs those Goods without the written consent of the Supplier;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) If the Goods differ from the Specification as a result of changes made

6.4 If the Customer rejects Goods under clause 6.1 then the Customer shall be entitled to:

- (a) require the Supplier to repair or replace the rejected Goods; or
- (b) require the Supplier to repay the price of the rejected Goods in full.
- (c) Once the Supplier has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Goods' failure to comply with clause 4.1.

6.5 The terms of this Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

7. Title and risk

7.1 Risk in Goods shall pass to the Customer on Delivery at the Delivery Location.

7.2 Title to Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and all other sums that are or that become due to the Supplier from the Customer for sales of Goods, in which case title to these Goods shall pass at the time of payment of all such sums.

7.3 Until title to Goods has passed to the Customer, the Customer shall:

- (a) store those Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to those Goods; and
- (c) maintain those Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement.

7.4 If before title to Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 16.3 inclusive, then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to install or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been installed, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Goods are stored to recover them.

8. Terms of payment

8.1 The Customer shall pay to the Supplier the Charges in consideration of the provision of the Goods and the Services under this Agreement.

8.2 The Customer will provide payment in accordance with any specific payment terms contained in the Order. The Supplier shall invoice the Customer and the invoice shall quote the relevant Order Number.

8.3 The Customer shall pay the invoice in full and in cleared funds within thirty (30) days of receipt. Payment shall be made to the bank account nominated in writing by the Supplier on the Order.

8.4 If the Customer fails to make any payment due to the Supplier under this Agreement by the due date for payment, then, without limiting the other party's remedies under clause 15, the Customer shall pay interest on the overdue amount at the rate of 4% a year above Barclay's Bank plc's base rate from time to time. This interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this clause 8.4 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date days after the dispute is resolved until payment.

8.5 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 8.3.

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

8.7 All payments payable to the Supplier by the Customer under this Agreement shall become immediately due and payable:

- (a) on termination of this Agreement for any reason; or
- (b) if the Customer becomes subject to any of the events listed in clause 16. inclusive.

This clause 8.7 is without prejudice to any right to claim for interest under the law or under this Agreement.

9. Insurance

9.1 During this Agreement the Supplier will maintain insurance of an appropriate level for the Goods.

9.2 The Supplier shall ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement.

9.3 The Supplier's liabilities under this Agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 9.1.

- 9.4 If the Customer or the End User utilise the Recommendations of the Supplier as set out in clause 4.4 and contract with the recommended third parties, the Customer or/and the End User will be solely responsible for ensuring that the third party providing the Recommendations has sufficient insurance cover in place. The Supplier will not be liable for the acts or omissions of any recommended third parties.
- 10. Compliance with laws and policies**
- 10.1 In performing its obligations under the Agreement, the Customer shall comply with:
- (a) all applicable laws, statutes, regulations and codes from time to time in force; and
 - (b) Naked Energy's Installation Guidelines
 - (c) Naked Energy's Schedule of Maintenance.
- 10.2 The Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer commits a breach of clause 10.1.
- 11. Intellectual Property Rights**
- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and Services shall be owned by the Supplier.
- 11.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Agreement for the purpose of providing the Services to the Customer.
- 11.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a licence from the relevant licensor on such terms as will title the Supplier to license such rights to the Customer.
- 11.4 Nothing in this Agreement shall grant the Customer any right or licence to exploit any copyright, patent or know how comprised in the Goods.
- 11.5 The Customer shall not:
- (a) take any action that may interfere with any of the Supplier's rights in or to the Supplier's Intellectual Property Rights;
 - (b) challenge any right, title or interest of the Supplier in or to the Supplier's Intellectual Property Rights;
 - (c) make any claim or take any action adverse to the Supplier's ownership of its Intellectual Property Rights;
 - (d) register or apply for registrations, anywhere in the world for the Supplier's trade marks or any trade mark similar to a trade mark of the Supplier;
 - (e) engage in any action that tends to disparage, dilute the value of or reflect negatively on the Supplier or the Goods or any of the Supplier's Intellectual Property Rights; or
 - (f) copy, adapt, reverse engineer, decompile, disassemble, modify or adapt the Goods in whole or in part.
- 11.6 If any third party makes a claim, or notifies an intention to make a claim, against the Customer that may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Customer shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier;
 - (c) give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense to assess the Claim); and
 - (d) be deemed to have given the Supplier sole authority to avoid, dispute, compromise or defend the Claim.
- 12. Limitation of liability**
- 12.1 This clause 12 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other for:
- (a) any breach of this Agreement however arising;
 - (b) any use made of the Goods by the Customer, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Nothing in this Agreement shall limit or exclude the liability of either party for:
- (a) death or personal injury resulting from negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by relevant local laws
- suffered by the other party that arises under or in connection with this Agreement.
- 12.3 Without prejudice to clause 12.2, the Supplier's total liability arising under or in connection with this Agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to fifty thousand pounds (£50,000) or the total value of the Order whichever is larger.
- 13. Assignment and other dealings**
- 13.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement or any contract and may subcontract or delegate in any manner any or all of its obligations under a contract to any third party.
- 13.2 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 this Agreement or any contract.
- 14. Confidentiality**
- 14.1 Each party undertakes that it shall not at any time during this Agreement and for a period of five (5) years after expiry or termination of this Agreement, disclose to any person any Confidential Information, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 14 as though they were a party to this Agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause 14; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 14.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.
- 15. Termination and suspension**
- 15.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any other term of this Agreement and that breach is irremediable or (if that breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
 - (c) the other party repeatedly breaches any of the terms of this Agreement in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - (d) an application is made to court, or an order is made for insolvency or for the appointment of a receiver, examiner or administrator is appointed over the whole or any part of the other party's assets (and such application or order is not dismissed by the court) or the other party is struck off the Register of Companies (or similar register) in the jurisdiction where it was formed or a petition is filed and not rejected or dismissed, a resolution is passed or an order made for winding up the other Party (unless such order or resolution is dismissed or part of a voluntary scheme for the reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by the terms of this Agreement);
 - (e) 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(d);
 - (f) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
 - (g) any Force Majeure Event prevents the other party from performing its obligations under this Agreement for any continuous period of three months.
- 15.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods and/or the Services under the Agreement 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(d) to clause 15.1(e), 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 Agreement on the due date for payment.
- 15.3 On termination of the Agreement for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 15.4 On termination of this Agreement, each party shall promptly return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in connection with the supply and purchase of the Goods, return all documents and materials (and any copies) containing the other party's Confidential Information, erase all the other party's Confidential Information from its computer systems (to the extent possible), and on request certify in writing to the other party that it has complied with the requirements of this clause 15.
- 15.5 On expiry or termination of this Agreement the following clauses shall continue in force:
- (a) clause 9 (Insurance);
 - (b) clause 12 (Limitation of liability);
 - (c) clause 14 (Confidentiality);
 - (d) clause 15.3 and 15.4 (Obligations on termination); and
 - (e) clause 17.8 (Governing law and jurisdiction);
- 15.6 Termination or expiry of this Agreement 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 for any breach of the Agreement that existed at or before the date of termination or expiry.
- 16. Force Majeure**
- 16.1 Force Majeure Event means any circumstance not in a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
 - (b) epidemic or pandemic;
 - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - (d) nuclear, chemical or biological contamination, or sonic boom;
 - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - (f) collapse of buildings, fire, explosion or accident;
 - (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
 - (i) interruption or failure of utility service.
- 16.2 Provided it has complied with clause 16.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 16.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three (3) weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving one week's written notice to the Affected Party.
- 17. Miscellaneous**

- 17.1 **Costs:** Except as expressly provided in this Agreement, each party shall pay its own costs incurred in connection with the negotiation, and preparation, of this Agreement and any documents referred to in it.
- 17.2 **Severability:** The parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Agreement shall not be affected.
- 17.3 **Variation:** No variation of this Agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).
- 17.4 **Waiver:** A waiver of any right or remedy under this Agreement or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this Agreement 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 this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 **Notices:** Any notice given to a party under or in connection with this Agreement shall be in writing and shall be sent by registered airmail to the registered office address of the other party. Such notice shall be deemed received if delivered by hand, on signature of a delivery receipt, sent by pre-paid first-class post or other next working day delivery services, at 9:00 am on the second Business Day after posting, or if sent by email at 9:00 am on the next Business Day after transmission. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.6 **Entire agreement:** This Agreement 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. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement. Nothing in this clause 17.6 shall limit or exclude any liability for fraud.
- 17.7 **Third party rights:** Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 17.8 **Governing law and jurisdiction:** this Agreement is governed by and shall be interpreted in accordance with the laws of England and Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales in relation to all matters arising out of or in connection with this Agreement.