

**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 when banks in the country where the Supplier is based are open for business.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.5.

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

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

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

**Data Protection Legislation:** all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) and any applicable national implementing laws, regulations and secondary legislation.

**Deliverables:** the deliverables set out in the Specification.

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

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral 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, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Services and/or Products, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Products:** any products to be supplied by the Supplier as set out in the Order.

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

**Software:** the software owned or distributed by the Supplier that the Customer has ordered under an Order, including package software, application software, programs, operational manuals thereto and/or other intangible materials.

**Specification:** the description or specification for the Services provided by the Supplier to the Customer.

**Supplier:** Samsung SDS Europe Limited registered in England and Wales with company number 03964307.

**Supplier Materials:** has the meaning set out in clause 8.1(h).

**Third-Party Licences:** any open-source software licences relating to the Supplier's software and/or any proprietary third-party software licences.

**Total Charges:** all sums paid by the Customer under the Contract in respect of Services and Products provided by the Supplier.

1.1 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(c) 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.

(d) 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.

(e) A reference to **writing** or **written** includes email.

**2. Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Services and/or Products in accordance with these Conditions.

2.2 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.

2.3 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 and/or Products described in them. They shall not form part of the Contract or have any contractual force.

2.4 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.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Services and Products except where application to one or the other is specified.

**3. Products**

3.1 The Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Point**).

3.2 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

3.3 If the Supplier fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement products in the cheapest market available, less the price of the Products. The Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with

- adequate delivery instructions for the Products or any relevant instructions related to the supply of the Products.
- 3.4 If the Customer fails to accept delivery of the Products within two Business Days of the Supplier notifying the Customer that the Products are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Products:
- (a) delivery of the Products shall be deemed to have been completed at 9:00 am on the second Business Day following the day on which the Supplier notified the Customer that the Products were ready; and
  - (b) the Supplier shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.5 If ten Business Days after the Supplier notified the Customer that the Products were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Products.
- 3.6 The Supplier warrants that on delivery, the Products shall:
- (a) conform in all material respects with their description;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 3.7 Subject to clause 3.8, the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full if:
- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 3.6;
  - (b) the Supplier is given a reasonable opportunity of examining such Products; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at Supplier's cost.
- 3.8 The Supplier shall not be liable for the Products' failure to comply with the warranty in clause 3.6 if:
- (a) the Customer makes any further use of such Products after giving a notice in accordance with clause 3.7;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
  - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
  - (d) the Customer alters or repairs such Products without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions; or
  - (f) the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4. Title and risk**
- 4.1 The risk in the Products shall pass to the Customer on completion of delivery.
- 4.2 Title to the Products shall not pass to the Customer until the earlier of:
- (a) the Supplier receives payment in full (in cash or cleared funds) for the Products; and
  - (b) the Customer resells the Products, in which case title to the Products shall pass to the Customer at the time specified in clause 4.4(b).
- 4.3 Until title to the Products has passed to the Customer, the Customer shall:
- (a) store the Products separately from all other products 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 the Products;
  - (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d); and
  - (e) give the Supplier such information relating to the Products as the Supplier may require from time to time.
- 4.4 Subject to clause 4.5, the Customer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Customer resells the Products before that time:
- (a) it does so as principal and not as the Supplier's agent; and
  - (b) title to the Products shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 4.5 If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d), then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell Products 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 Products in its possession which have not been resold, 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 Products are stored in order to recover them.
- 4.6 For avoidance of doubt, the Product in this clause 4 excludes the Software and the license of Software is pursuant to clause 6 and 10.

**5. Import licences**

The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Products as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier prior to the relevant shipment.

**6. Software**

6.1 If the Supplier's or third party Software is used in performing the obligation under this Agreement, the Customer shall comply with the Licences policy of the Supplier or third party and both parties shall consult with each other on the treatment thereof, and take necessary actions including the execution of a license agreement between the Supplier or the Customer and the relevant third party. Any issue or infringement on rights related thereto shall be managed pursuant to an agreement for use of the relevant Supplier or Third Party License.

6.2 The Customer shall indemnify and hold the Supplier harmless against all liabilities, costs, expenses, damages and losses (including any direct or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with the Customer's breach of the terms of any such Third-Party Licences.

6.3 The Supplier may treat the Customer's breach of any Third-Party Licence as a breach of the Conditions.

**7. Supply of Services**

7.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 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.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

**8. Customer's obligations**

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in 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, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier in order to provide the Services;
- (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) comply with all applicable laws, including health and safety laws;

(h) keep 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; and

(i) comply with any additional obligations as set out in the Specification (if any).

8.2 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 8.2; 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.

**9. Charges and payment**

9.1 The price for Products:

- (a) shall be the price set out in the Order;
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Products, which shall be invoiced to the Customer; and
- (c) shall be exclusive of any customs, import or other duties charged in respect of the sale and importation of Products into the country in which the Customer is resident or the Delivery Point is located.

9.2 Unless otherwise stated in the Order, the charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's daily fee rates as amended from time to time;
- (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 5.00 pm worked on Business Days;

- (c) the Supplier shall be entitled to charge an overtime rate of 200% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) 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, 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.
- 9.3 In respect of Products, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, unless otherwise agreed by the parties, the Supplier shall invoice the Customer monthly in arrear.
- 9.4 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
- (b) 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.
- 9.5 All amounts of money referred to in these Conditions shall be interpreted as being amounts exclusive of value added tax, any similar sales tax or any tax that replaces such sales taxes. Any such tax payable in relation to any such amounts shall be paid in addition to those amounts. If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 9.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (Termination), 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 9.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.7 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).
- 10. Intellectual property rights**
- 10.1 Unless otherwise agreed in writing by the parties, all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier or its licensors.
- 10.2 The Supplier hereby grants to the Customer, and the Customer hereby accepts, a non-exclusive, non-assignable, non-transferable, royalty free, limited right, without right of sublicense, to use the Software for up to the number of licenses and for the license type (term) specified in the Order, solely for the Customer's own internal business operations. The license granted to the Customer for the Software is subject to the applicable licensing metrics, licensing rules and license type (term) designation set forth in the Order
- 10.3 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 Contract for the purpose of providing the Services to the Customer.
- 11. Data protection and data processing**
- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2 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).
- 11.3 Without prejudice to the generality of clause 11.1, 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.
- 12. Export Control**
- 12.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under the Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 12.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the ones set out in clause 12.1; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.
- 13. Limitation of liability**
- 13.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 13.2 Subject to clause 13.1, the Supplier's total liability to the Customer shall not exceed the Total Charges. 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.
- 13.3 Subject to clause 13.1, the following types of loss are wholly excluded by the parties:

- (a) Loss of profits.
  - (b) Loss of sales or business.
  - (c) Loss of agreements or contracts.
  - (d) Loss of anticipated savings.
  - (e) Loss of use or corruption of software, data or information.
  - (f) Loss of or damage to goodwill.
  - (g) Indirect or consequential loss.
- 13.4 The Supplier has given commitments as to the quality of the Products and Services in clause 3 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 13.6 This clause 11 shall survive termination of the Contract.
- 14. Termination**
- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party 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 30 days of that party being notified in writing to do so;
  - (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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (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 reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.2 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.
- 14.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Products 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 14.1(b) to clause 14.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 15. Consequences of termination**
- 15.1 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 and Products 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 Materials and any Deliverables or Products 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 the Contract.
- 15.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 15.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 16. General**
- 16.1 **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 results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).
- 16.2 **Assignment and other dealings.**
- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
  - (b) 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.
- 16.3 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group companies to which the other party belongs (**Confidential Information**), except as permitted by clause 16.3(b).

- (b) Each party may disclose the Confidential Information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the Confidential Information comply with this clause 16.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the Confidential Information for any purpose other than to perform its obligations under the Contract.
- (d) Each and every obligation of the receiving party under this clause 16.3 is owed to the disclosing party and to each of its group companies. Such group companies may enforce the terms of the Contract under the Contracts (Rights of Third Parties) Act 1999. References to the disclosing party in the context of the receiving party's obligations shall be construed accordingly.

**16.4 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.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**16.5 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).

**16.6 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.

**16.7 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.

**16.8 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; or sent by email to the address specified in the Order.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt;
  - (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 11.8(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.

**16.9 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.

**16.10 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. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with these Conditions, these Conditions shall prevail.

**16.11 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.