

# Terms and Conditions

## Excitech terms and conditions

### 1. Interpretation

1.1 In these Conditions the following definitions apply:

**Acceptance Tests:** the tests specified in any Scope of Work and any other such tests that may be agreed in writing between the Customer and the Supplier that are designed to demonstrate that any implemented software solution complies in all material respects with what has been agreed between the parties.

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

**Commencement Date:** has meaning set out in clause 2.3;

**Confidential Information:** any information of a confidential nature, including all information relating to the business, organisation, pricing, transactions, finances, customers, suppliers, technology, processes, specifications, methods, designs, formulae, technology and business activities or affairs including technical or commercial knowhow, specifications, inventions, processes or initiatives which have been disclosed by either the Customer or the Supplier (or their agents) to the other party under this Contract;

**Contract:** the contract between the Supplier and the Customer for the supply of Equipment and/or Services in accordance with these Conditions and, if applicable, any support services agreement and/or software licence provided by the Supplier from time to time;

**Customer:** the person, firm or company who purchases the Equipment and/or Services from the Supplier;

**Deliverables:** any documents, drawings, designs, photos, graphics, logos, typographical arrangements, software and all other materials in any form (including hard copy and electronic form) prepared or developed by the Supplier or its agents, subcontractors and employees as part of or in relation to the Services;

**Delivery Date:** has the meaning set out in clause 6.1;

**Equipment:** the equipment (including computer hardware, Software and related services) purchased by the Customer from the Supplier as detailed in the Purchase Order;

**Force Majeure Event:** any event or circumstances beyond the reasonable control of the Supplier, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other third party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors;

**Insolvency Situation:** the Customer (a) has a receiver, liquidator, administrator, trustee or an individual with a similar role appointed over any of its assets; or (c) proposes to make arrangements with its creditors; or (c) anything which, under the law of any jurisdiction, is analogous to any of the acts or events specified in this definition;

**Intellectual Property Rights:** any current and future intellectual property rights and interests including patents, utility models, designs, design rights, copyright (including rights in software), decryption rights, database rights, trade marks, rights pursuant to passing off, service marks, business and trade names, domain names, know-how, topography rights, inventions, rights in confidential information (including technical and commercial trade secrets) and image rights, and rights of a similar or corresponding character in any part of the world, in each case whether registered or not and including any application for registration and renewals or extensions of such rights in any country in the world;

**Location:** the premises where Equipment is to be installed and/or delivered and/or Services are to be provided (if applicable);

**Purchase Order:** the Customer's written order for Equipment and/or Services from the Supplier;

**Services:** the services supplied to the Customer by the Supplier as specified in Purchase Order;

**Software:** any operating system or application software to be provided to Customer by Supplier under the Contract as set out in the Purchase Order;

**Software Licence:** has the meaning set out in clause 8.1;

**Scope of Work:** the description or specification for the Equipment and/or Services provided in writing by the Supplier to the Customer;

**Supplier:** Excitech Limited, a company incorporated and registered in England with company number 01894181 and having its registered office at Design Technology Centre, 8 Kinetic Crescent, Innova Business Park, Enfield, Middlesex, EN3 7XH; and

**Year:** each consecutive 12 (twelve) month period from and including the Commencement Date.

- 1.2 Clause headings do not affect the interpretation of these Conditions.
- 1.3 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 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

- 2.1 Any quotation given by the Supplier does not constitute an offer and is valid for a period of 30 days from its date of issue. The Supplier may withdraw a quotation at any time.
- 2.2 Each Purchase Order constitutes an offer by the Customer to purchase the Equipment and/or Services in accordance with these Conditions. The Customer shall ensure that the Purchase Order is complete and accurate.
- 2.3 The Purchase Order shall only be deemed accepted when the Supplier issues written acceptance of the Purchase Order or, if earlier, when the Supplier provides the Services and/or Equipment to the Customer, at which point the Contract shall come into existence (the "Commencement Date").
- 2.4 The Supplier may deliver the Equipment by separate instalments and/or provide the Services in stages. Each instalment and/or stage shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment or stage shall entitle the Customer to repudiate or cancel any other Contract, instalment or stage.
- 2.5 These Conditions apply to the Contract to the exclusion of all other terms or conditions that the Customer seeks to impose or incorporate or which are implied by law, trade custom, practice or course of dealing.
- 2.6 No variation of the Contract shall be effective unless in writing and signed by each party.

## 3. Quantity and Description

- 3.1 The quantity and description of the Services and/or Equipment shall be as set out in the Scope of Work.
- 3.2 All, drawings, descriptive matter, specifications and advertising issued by the Supplier or contained in the Supplier's catalogues or brochures are issued for illustrative purposes only and do not form part of the Contract nor have any contractual force.
- 3.3 The Supplier reserves the right to make any changes to the Equipment and/or Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect their quality or performance. The Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier.

## 4. Quality of the Equipment

- 4.1 The Supplier warrants to the Customer that as at delivery the Equipment will conform to the Scope of Work, is free from material defects in workmanship and materials. Subject to clauses 4.2 to 4.4, the Supplier shall, at its opinion, repair or replace Equipment which is found to be defective as a result of faulty materials or workmanship within 6 months of the Delivery Date (the "Warranty Period") or such longer period as may be provided for in any relevant manufacturer's warranty relating to the Equipment.
- 4.2 The Supplier shall not be liable for a breach of the warranty in clause 4.1 unless: (a) the Customer gives written notice of the defect to the Supplier within 3 days of the date when the Customer discovers or ought to have discovered the defect; and (b) after receiving the notice, the Supplier is given a reasonable opportunity of examining such Equipment to determine whether a breach has occurred.
- 4.3 The Supplier shall not be liable for a breach of the warranty in clause 4.1 if: (a) the Customer makes further use of any Equipment in respect of which it has given written notice under clause 4.2; (b) the defect arises because the Customer failed to follow the manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; (c) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions or improper use of the Equipment or use outside its normal application; or (d) the Customer alters or repairs the relevant Equipment without the written consent of the Supplier.
- 4.4 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the Warranty Period.

## **5. Delivery and Acceptance**

- 5.1 The Supplier shall use reasonable endeavours to deliver the Equipment and/or provide Services to the Customer on the dates agreed between the parties (the "Delivery Date"). A Delivery Date shall not be confirmed by the Supplier until a Purchase Order has been received.
- 5.2 Time is not of the essence as to the delivery of Equipment and/or performance of the Services and the Supplier is not liable for any delay in delivery, however so caused.
- 5.3 The Supplier shall not be responsible for any failure or delay in delivery, damage or loss caused in transit unless the Customer notifies the Supplier of such failure, delay, damage or loss within 7 days of the Delivery Date. Any remedy under this clause shall be limited, at the sole option of the Supplier to:
  - 5.3.1 in the case of failure or delay in delivery of the Equipment, replacement of such Equipment or the issuing of a credit note for the Price paid or payable for such Equipment; and
  - 5.3.2 in the case of Equipment which has, in the reasonable opinion of the Supplier, been lost or damaged in transit, repair or replacement of such Equipment.
- 5.4 The Supplier shall not be in breach of Contract and shall not be liable for any delay in delivery or failure to deliver any or all of the Equipment and/or the Services, any delay in performance or failure to perform its obligations or other breach under the Contract if and to the extent that such delay, failure and/or breach is caused by any breach by the Customer of any of its obligations under the Contract.

## **6. Risk, Property and Ownership**

- 6.1 Equipment shall be at the risk of the Supplier until delivery to the Customer at the Location. The Supplier shall off-load the Equipment at the Customer's risk.
- 6.2 Title to the Equipment shall pass to the Customer when the Supplier receives payment in full and cleared funds for the Equipment (and any other equipment that the Supplier has supplied to

the Customer in respect of which payment has become due), in which case title to the Equipment shall pass at the time of payment of all such sums.

- 6.3 Until title has passed to the Customer under clause 7.2, the Customer shall: (a) hold the Equipment on a fiduciary basis as the Supplier's bailee; (b) store the Equipment (at no cost to the Supplier) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as the Supplier's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and (d) keep the Equipment insured on the Supplier's behalf for its full price against all risks to the reasonable satisfaction of the Supplier, and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 If before title to the Equipment passes to the Customer any of the circumstances set out in clause 16.3(b) arises, the Supplier may at any time:
- 6.4.1 require the Customer to deliver up all the Equipment in its possession; and
- 6.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. Software

- 7.1 If the Customer is purchasing Software from the Supplier under the Contract, the Supplier shall grant the Customer a non-exclusive, non-transferable right to use the Software for any purpose related to the business of the Customer (the "Software Licence") subject to the following conditions:
- 7.1.1 the Customer shall not copy (except to the extent permissible under applicable law or for normal operation of the Equipment), reproduce, disassemble, decompile, translate, adapt, vary or modify the Software, nor communicate it to any third party, without the Supplier's prior written consent;
- 7.1.2 the Customer shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software; and
- 7.1.3 the Software Licence shall be terminable by either party giving 28 days written notice, provided that the Supplier terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights (including any Intellectual Property Rights), or the Supplier is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract.
- 7.2 Software which has been installed is deemed to have been accepted and cannot be returned.
- 7.3 Nothing contained in these Conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals.
- 7.3.1 The Customer shall be subject to the rights and restrictions imposed by the Supplier as owner (as between Supplier and Customer) of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

## 8. Supplier Responsibilities

- 8.1 The Supplier shall provide the Services and Deliverables to the Customer in accordance with the Scope of Work, and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
- 8.2 The Supplier shall:
- 8.2.1 co-operate with the Customer in all matters relating to the Services;
- 8.2.2 set Customer expectations with respect to Supplier availability and resources including projected lead time and project start and end dates;
- 8.2.3 ensure that all goods, materials, standards and techniques used in providing the Services are of good quality;
- 8.2.4 comply with all applicable laws and regulations relating to the provision of the Services;
- 8.2.5 use reasonable skill and care in the performance of the Services;

- 8.2.6 observe, and ensure all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to the Supplier are complied with; and
- 8.2.7 notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services.

8.3 Where Acceptance Testing has been agreed, the Supplier shall use its reasonable endeavours to ensure that the testing begins on the dates specified in the Scope of Work.

## 9. Customer Responsibilities

9.1 The Customer shall:

- 9.1.1 co-operate with the Supplier in all matters relating to the supply of the Services;
- 9.1.2 provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services;
- 9.1.3 ensure the accuracy and validity of all data and technical information provided to the Supplier;
- 9.1.4 provide such information as the Supplier may reasonably request and the Customer considers reasonably necessary, in order to carry out the Services, in a timely manner, and ensure that it is accurate in all material respects; and
- 9.1.5 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises.

## 10. Change Control

10.1 If either party wishes to change the Scope of Work or execution of the Services, it shall submit details of the requested change to the other in writing.

10.2 If either party has made requests to make a change to the Scope of Work or execution of the Services, the Supplier shall, within a reasonable time provide a written estimate to the Customer of:

- 10.2.1 the likely time required to implement the change;
- 10.2.2 any necessary variations to the Supplier's charges arising from the change; and
- 10.2.3 any other impact of the change.

10.3 Unless both parties consent to a proposed change, there shall be no change to the Contract.

10.4 If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's charges, the Services and any other relevant terms acknowledging that this agreement has been varied in accordance with this clause.

10.5 If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to the Customer's non-compliance with the Customer's obligations, neither the Supplier's charges nor any other terms of this agreement shall vary as a result of such change.

## 11. Prices

11.1 The price of Equipment and/or Services shall be the Supplier's quoted price or, where a quoted price is no longer valid, the price listed in the Supplier's price list current at the date of acceptance of the Purchase Order (the "Price").

11.2 The Price is exclusive of delivery, packaging, packing, shipping, expenses, carriage, VAT and insurance unless agreed otherwise in writing by the Supplier.

- 11.3 On written agreement with the Customer, the Supplier may charge all reasonable accommodation and travel expenses incurred by the Supplier in the course of delivering the Services and/or providing the Equipment.
- 11.4 The Supplier reserves the right, by giving notice to the Customer prior to delivery of the Equipment and/or performance of the Services, to increase the Price to reflect any increase in the cost to the Supplier which is due to any factor beyond the Supplier's control.

## 12. Payment

- 12.1 The Supplier may invoice the Customer for the Price before, on or after the Delivery Date, as agreed with the Customer.
- 12.2 Unless otherwise agreed in writing, the Customer shall pay to the Supplier the Price plus all taxes:
- 12.2.1 within 30 (thirty) days of the date of the invoice; and
  - 12.2.2 in full and cleared funds to a bank account nominated in writing by the Supplier from time to time.
- 12.3 Time for payment shall be of the essence.
- 12.4 If the Customer fails to make payment in full on the due date, the outstanding Price shall become immediately due and payable and, the Supplier may: (a) terminate the Contract or suspend any further supply of Services or deliveries of Equipment under the Contract and/or any other contract between the Supplier and Customer; (b) appropriate any payment made by the Customer to such of the Services or Equipment (or the services or equipment supplied under any other contract between the Customer and the Supplier) as it thinks fit; (c) claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or (d) (if applicable) make a storage charge for any undelivered Equipment at the Supplier's storage rates as are in place from time to time.
- 12.5 The Customer shall not withhold, set off or reduce payment of any amounts payable under the Contract. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## 13. Cancellation Charges

- 13.1 The Customer shall pay the following sums if it wishes to cancel or transfer (if applicable) the Services:
- 13.1.1 if notification is received less than 2 weeks before the performance date, the Customer will be charged 100% of the total Price;
  - 13.1.2 if notification is received between 2 and 4 weeks before the performance date, the Customer will be charged 50% of the total Price;
- 13.2 if notification is received more than 4 weeks before the performance date, the customer will be charged 25% of the total Price.

## 14. Quality of the Services

- 14.1 The Supplier warrants to the Customer that:
- 14.1.1 the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services; and
  - 14.1.2 the Services will conform with all descriptions and specifications provided to the Customer by the Supplier, including any relevant Scope of Work; and
  - 14.1.3 the Services and Deliverables will be provided in accordance with all relevant applicable legislation.
- 14.2 Where Services include Software installation, configuration or development, the Supplier warrants that for a period of 30 days from delivery, the Supplier shall support and correct any

errors or bugs and provide patches and updates to ensure that the Software conforms to any specifications agreed with the Customer.

14.3 Services shall be assumed accepted, if a Customer representative has signed-off a Deliverable in accordance with the agreed sign off procedure.

14.4 If, on investigation, any Services have not been supplied in accordance with any term of the Contract, the Customer shall, within 6 months from the time the Services were delivered, be entitled to require the Supplier, without charge to the Customer, to carry out such reasonable additional work as is necessary to correct the Supplier's failure.

## 15. Limitation of Liability

15.1 Nothing in these Conditions excludes or limits the liability of the Supplier for: (a) death or personal injury caused by the Supplier's negligence; (b) fraud or fraudulent misrepresentation; or (c) any other liability which cannot be limited or excluded at law.

15.2 Subject to clause 15.1:

15.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for: (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 damage to goodwill; or (g) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

15.2.2 the Supplier's total liability to the Customer in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with the performance or contemplated performance of the Contract shall in all circumstances be limited to in respect of all claims (connected or unconnected) in any Year, a sum equal to the Price paid for the Equipment and/or Services.

## 16. Intellectual Property Rights

16.1 All Intellectual Property Rights in or arising out of or in connection with the Equipment and/or the Services and the Deliverables (other than Intellectual Property Rights in any materials provided by the Customer), shall remain the sole property of the Supplier.

16.2 The Supplier warrants that the Customer's use of the Equipment and/or the Services and any applicable Deliverables will not infringe the Intellectual Property Rights of any third party.

16.3 The Customer grants, and shall procure that any relevant third party grants, a royalty-free, non-transferable, non-exclusive licence to the Supplier of any and all Intellectual Property Rights necessary for the sole purpose of the Supplier providing the Equipment and/or Services and performing its obligations and exercising its rights under the Contract.

16.4 The Customer shall indemnify the Supplier against all losses, damages, costs, claims, demands, liabilities and expenses (including indirect and consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of any third party's Intellectual Property Rights which result from the Supplier's use of any information or materials provided by the Customer.

16.5 All materials, equipment and tools, drawings, specifications and data supplied by one party to the other shall, at all times, be and remain the exclusive property of the party supplying such materials, equipment and tools, drawings, specifications and data, but shall be held by the receiving party in safe custody at its own risk and maintained and kept in good condition by that party until returned to the supplying party and shall not be disposed of or used other than in accordance with the any written instruction or authorisation.

## 17. Confidentiality and Data Protection

- 17.1 Neither party shall at any time during the term of the Contract, and for a period of 5 years thereafter, disclose to any person any Confidential Information of the other party, except as is permitted by clause 15.2 below.
- 17.2 Both parties may disclose Confidential Information: (a) to their employees, agents, consultants or subcontractors who need to know such information for the purpose of discharging its obligations under the Contract. The party in receipt of such information shall ensure that its employees, agents, consultants or subcontractors to whom it discloses the Confidential Information comply with this clause; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 17.4 If the Supplier is required to process any personal data on the Customer's behalf, the Supplier's Data Protection Policy will govern its obligations under this Contract  
<https://www.excitech.co.uk/Data-Protection-Policy> (<https://www.excitech.co.uk/Data-Protection-Policy>).
- 17.5 This Clause shall survive termination of the Contract.

## 18. Auto-renew Product

- 18.1 The parties may agree in writing that the Services and/or Equipment purchased by the Customer on a subscription basis shall be purchased on an automatic-renewal basis (each such Service and/or Equipment being an "Auto-Renew Product"), in which case the Customer's purchase of the Auto-Renew Product shall be automatically renewed at the end of the initial term of the subscription as detailed in the Scope of Work (the "Initial Period") for subsequent terms of the same length as the Initial Period (each a "Subsequent Period"). If the Customer does not wish its purchase of the Auto-Renew Product to automatically renew, the Customer shall notify the Supplier in writing at least 10 Business Days prior to the end of the Initial Period or the relevant Subsequent Period (as applicable).
- 18.2 The Supplier reserves the right to amend the Price payable for the Auto-Renew Product for each Subsequent Period and the Supplier shall provide the Customer with at least 20 Business Days' written notice prior to the end of the current Subsequent Period of any such change in Price. The Customer shall be entitled to terminate the Contract for the purchase of such Auto-Renew Products in accordance with the process set out in clause 19.4.

## 19. Term and Termination

- 19.1 Either party may immediately terminate the Contract by giving notice to the other (and in the case of the Supplier only suspend any further deliveries under the Contract without liability to the Customer) if: (a) (in the case of the Supplier only) the Customer is unable to accept delivery of Equipment and/or performance of Services as a result of a Force Majeure Event; (b) the other party stops trading or is in a position whereby it cannot pay its debts and/or an Insolvency Situation arises; or (c) the other party materially breaches a term of the Contract and, if such breach is remediable, fails to remedy the breach within 20 days of receipt of notice of the breach.
- 19.2 The Supplier may terminate the Contract on giving not less than 3 months' written notice to the Customer.
- 19.3 Termination of the Contract shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

19.4 If the Contract is terminated for any reason, the Customer shall pay the Supplier for all completed work, all sums outstanding under any other Contract, work in progress and any irrecoverable costs incurred by the Supplier.

## **20. Multi-Tiered Dispute Resolution Procedure**

- 20.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("Dispute") then the parties shall follow the procedure set out in this clause.
- 20.2 Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, a representative of the Supplier and a representative of the Customer shall attempt in good faith to resolve the Dispute;
- 20.3 If the parties are for any reason unable to resolve the Dispute within 60 days of service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("ADR notice") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 10 days after the date of the ADR notice.
- 20.4 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England.

## **21. Force Majeure**

If the Supplier is prevented, hindered or delayed from performing its obligations as a result of a Force Majeure Event, the Supplier shall not be in breach of the Contract or otherwise liable for any such failure or delay in performance of such obligations. The time for performance of such obligations shall be extended accordingly.

## **22. Non-Solicitation**

The Customer shall not at any time during the term of the Contract and for a period of 6 months thereafter employ, subcontract or otherwise engage any of the Supplier's employees, agents, consultants or sub-contractors other than: (a) by means of a national advertising campaign open to all-comers and not specifically targeted at such employees, agents or sub-contractors; or (b) with the prior written consent of the Supplier and the immediate payment to the Supplier of a sum equal to the recruitment costs reasonably incurred by Supplier in finding a replacement for the relevant employee, consultant, agent or subcontractor.

## **23. Waiver**

No failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **24. Severance**

If any provision of these Conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal in any jurisdiction then it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible that provision shall be deemed to be omitted from these Conditions in so far as the Contract relates to that jurisdiction and the validity and enforceability of that provision in other jurisdictions and the other provisions of these Conditions shall not be affected or impaired.

## 25. Assignment

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 26. Anti-Bribery and Modern Slavery

Each party shall comply with the Bribery Act 2010 and the Modern Slavery Act 2015 and not do, or omit to do, any act that will cause the other to be in breach of the Bribery Act 2010 or the Modern Slavery Act 2015.

## 27. Third Party Rights

No one other than a party to the Contract shall have any right to enforce any of the terms of the Contract.

## 28. Independent Contractors

The relationship of Supplier and Customer is that of independent contractors. Under no circumstances shall any employees of one party be deemed to be the employee of the other for any purpose. Nothing in these Conditions shall be construed as creating an agency or joint venture, consortium or partnership between the parties, and neither party shall have the right to assume or create an obligation or responsibility on behalf of the other.

## 29. Entire Agreement

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. Each party acknowledges and agrees that it has not been induced to enter into the Contract by a statement or promise which it does not contain. All warranties, conditions and other terms (whether express or implied) which are not set out in these Conditions are (to the fullest extent permitted by law) excluded from the Contract.

## 30. Notices

Any notice required to be given pursuant to 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 principal place of business and shall be deemed to have been received: if delivered personally, on delivery; or if sent by post, on the second Business Day after it was posted provided that, if in any case notice would be deemed to be given outside of 9am to 5.30pm on a Business Day, such notice shall instead be deemed to have been given at the start of the next Business Day.

## 31. Governing Law and Jurisdiction

The Contract and these Conditions shall be governed by the laws of England and the parties agree that the English courts shall have exclusive jurisdiction.