

Terms and Conditions of Business
Baker Goodchild Direct Marketing Limited
Trading as Baker Goodchild

1. DEFINITIONS

1.1. In these Conditions, the following definitions apply:

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

Charges: means the Supplier's charges for the Materials and Services as referred to in clause 8.

Commencement Date: has the meaning set out in clause 2.4.

Conditions: these terms and conditions as amended from time to time in accordance with clause 8.2.

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

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

Deliverables: all deliverables set out in the Supplier's Quotation.

Force Majeure Event: has the meaning given to it in clause 14.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Materials: the Materials (or any part of them) set out in the Supplier's Quotation.

Materials Specification: any specification for the Materials, including any relevant plans or drawings that are agreed in writing by the Customer and the Supplier.

Services: the services means any direct mail, bulk postage, print management and/or data processing services to be provided by the Supplier under any Contract, together with any other services which the Supplier provides, or agrees to provide to the Customer including the Deliverables, supplied by the Supplier to the Customer set out in the Service Specification below.

Service Specification: any description or specification for the Services which is agreed in writing by the Supplier and the Customer.

Specification: the Materials Specification and/or the Service Specification (as appropriate).

Supplier: Baker Goodchild Direct Marketing Limited (trading as Baker Goodchild) registered in England and Wales with company number 6442817.

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Supplier's Quotation: any quotation issued by the Supplier to the Customer in relation to Materials and/or Services.

- 1.2. In these Conditions, the following rules apply:
- (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 personal representatives, successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) a reference to **writing** or **written** includes faxes and e-mails

2. BASIS OF CONTRACT

- 2.1. The Supplier's Quotation is based on information available to the Supplier at the date of the quotation and is subject to sight of materials, their suitability and any artwork to be supplied to the Supplier by the Customer. The Supplier reserves the right to correct quotations and invoices where typographical, clerical or other errors have been made.
- 2.2. The Supplier's Quotation shall not constitute an offer and is valid for a period of 7 calendar days. The Supplier may extend the period for consideration of the Supplier's Quotation at its discretion and may refuse to accept any order for Materials and Services, which constitutes only a part of the Supplier's Quotation (unless the Customer's initial specification requested separate quotations for separate elements of the order).
- 2.3. The Customer's acceptance of the Supplier's Quotation constitutes an offer by the Customer to purchase Materials and/or Services in accordance with these Conditions.
- 2.4. The Supplier's Quotation shall only be deemed to be accepted when the Customer issues written acceptance of the Supplier's Quotation at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.5. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.6. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Materials or illustrations or descriptions of the Services 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 Materials described in them. They shall not form part of the Contract or have any contractual force.

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- 2.7. 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.
- 2.8. All of these Conditions shall apply to the supply of both Materials and Services except where application to one or the other is specified.

3. MATERIALS

- 3.1. The Supplier will use reasonable endeavours to ensure any Materials shall be as described in the Specification in all material respects.
- 3.2. If the Materials are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect 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 in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification.
- 3.3. The Supplier reserves the right to amend the Specification Materials which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services and the Supplier shall notify the Customer in any such event
- 3.4. Where readable machine codes or symbols are used by the Customer:
- (a) the Supplier shall print the same as specified or as approved by the Customer in accordance with generally accepted industry standards and procedures;
 - (b) the Customer shall be responsible for satisfying itself that the machine readable code or symbol used will read correctly on the equipment likely to be used by those of whom the machine readable codes or symbol is intended; and
 - (c) the Customer shall indemnify the Supplier both for itself and against any claim by any third party resulting from the machine readable code or symbol not reading at all or not reading correctly for any reason whatsoever, except to the extent that such a claim arises from any failure of the supplier to comply with clause 3.4 (a) above which is not attributable to any error falling within the tolerance generally accepted in the industry in relation to printing of this kind.

4. DELIVERY

- 4.1. The Supplier will endeavour to comply with completion and despatch dates agreed in the Contract however:
- (a) Speed of delivery shall not be of the essence unless explicitly stated by the Customer and noted in the Supplier's Quotation;

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- (b) all Contracts shall be subject to receipt by the Supplier of all information and materials to enable it to proceed with the contract and to comply with any applicable governmental or other consent;
 - (c) the Customer acknowledges and accepts that postage is an untracked and non-guaranteed service;
 - (d) the Supplier accepts no responsibility for delays caused by third party postal carriers, or any delays which occur after despatch by the Supplier;
 - (e) the Supplier will retain any surplus materials upon completion of the mailing for use or disposal as the Supplier determines, unless the amount exceeds 10% in which case the entire amount of remaining materials may be available for collection by the Customer, at the Customer's cost, and at a convenient time to both Supplier and Customer. If any of these materials or any goods remain in the Supplier's possession after 10 Business Days from the completion of any mailing they will be subject to storage charges. Alternatively after this time the Supplier reserves the right to use, destroy or dispose of all such materials; and
 - (f) the Supplier shall not be liable for any delay in delivery of the Materials that is caused by a Force Majeure Event or 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 Materials.
- 4.2. The Supplier may deliver the Materials by separate instalments as agreed in the Contract. These separate instalments may be invoiced separately. Where the Materials are to be delivered in instalments, each delivery shall constitute a separate contract. Failure by the Supplier to deliver any one or more of the instalments in accordance with the Contract shall not entitle the Customer to treat the Contract for the remaining instalments as terminated.
- 4.3. If the Customer requires the Supplier to return any excess Materials or any of the Customer's materials to the Customer, this fact must be clearly stated in its acceptance of the Supplier's Quotation and shall be at the Customer's expense.
- 4.4. The cost of collection and delivery of the Customer's materials or any goods is not included within the Supplier's Quotation and where this is carried out by the Supplier for the Customer it will therefore be charged for as an extra.
- 4.5. If the Supplier fails to deliver the Materials, its liability shall be limited to the pro rata equivalent of the price directly attributable to the failure.
- 4.6. If on any agreed date of delivery the Customer refuses or fails to take delivery of the Materials or refuses to, or does not, permit the Supplier to carry out the Services, or fails to give the Supplier adequate delivery instructions, then without prejudice to any other right or remedy available to the Supplier, the Supplier will be entitled at its discretion to store the Materials at the Customer's risk and the Customer shall, in addition to the price payable in the Supplier's Quotation, pay all costs and expenses either in respect of such storage and any additional costs of carriage incurred in respect of the Materials, or incurred in cancelling performance of the Services, and/or rearranging delivery of the same on an alternative date in respect of the Services.

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- 4.7. Reasonable endeavours will be made by the Supplier to deliver the correct quantity of Materials ordered by the Customer. However, the Customer may not reject short or excess deliveries which are within a margin of five per cent short and five per cent over, or in case of colour work, ten per cent short or ten per cent over. In such cases, the Supplier will adjust the price of the Materials proportionately.
- 4.8. The Customer shall notify the Supplier in writing (and where applicable, shall notify any independent carrier engaged in delivery of the Materials) of any non-delivery and shall submit a detailed written claim within 5 Business Days after the due date for delivery of the Materials. All Services will be deemed to have been performed in accordance with the Contract unless the Customer notifies the Supplier of any non-conformance in writing within 10 Business Days of the date of completion of the Services. All Materials must be inspected by the Customer immediately on delivery. If any Materials are damaged or lost or if (subject to clause 4.7) there has been short delivery the Customer must:
- (a) submit a detailed written claim to the Supplier and, where applicable, any independent carrier engaged in delivery of the Materials within 3 Business Days of delivery of the Materials: and
 - (b) endorse the consignment note accordingly. Signature by any representative of the Customer on the consignment note without any such endorsement shall release the Supplier from any liability in respect of damage or loss in transit or short delivery.

Any other claims (other than those already referred to in this clause) must be made in writing to the Supplier within 10 Business Days of delivery. In the event of all or any claims or rejections the Supplier reserves the right to inspect the Materials within 5 Business Days of the claim or rejection being notified.

5. TITLE AND RISK

- 5.1. The risk in the Materials shall pass to the Customer on completion of delivery.
- 5.2. Title to the Materials shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Materials and any other materials that the Supplier has supplied to the Customer in respect of which payment has become due.
- 5.3. With the exception of items mutually agreed from time to time, subject to clause 5.1 any other property belonging to the Customer and all property given to the Supplier (whether or not for a fee) shall while it is in the possession of the Supplier or in transit to or from the Customer be at the Customer's risk unless otherwise agreed in writing by an authorised representative of the Supplier. The Customer should insure accordingly. The Supplier shall therefore have no liability to the Customer in respect of loss of, or damage to such property.

6. SUPPLY OF SERVICES

- 6.1. The Supplier shall provide the Service to the Customer in accordance with the Service Specification in all material respects.

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- 6.2. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Supplier's Quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services and the Supplier shall notify the Customer in any such event.
- 6.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7. CUSTOMER'S RESPONSIBILITIES

- 7.1. The Customer shall ensure that the terms of the Contract and (if submitted by the Customer) the Specification are complete and accurate and shall co-operate with the Supplier in all matters relating to the Services.
- 7.2. The Supplier shall count the number of pallets or parcels containing materials supplied by or on behalf of the Customer against any delivery note and shall immediately report any error to the Customer. The Customer shall be responsible for ensuring that the materials supplied by it or on its behalf to the Supplier, conform to specifications in the Supplier's Quotation and Royal Mail's (or any other carrier's (as appropriate) requirements, are supplied punctually, are accompanied by a delivery advice note stating the quantity and description of the materials supplied, are delivered on pallets, boxed, and labelled, and are sufficient to enable the Supplier to deliver the Mailing in accordance with the Contract allowing for normal wastage. The Supplier (or its subcontractors) is not able to check for discrepancies between quantities shown on dockets and actual quantities delivered to it and the Supplier's (or its subcontractors') signature on dockets or delivery notes shall not render the Supplier liable for any shortfall and the Supplier shall not be liable for any loss or delays arising from any errors or omissions in the materials supplied by the Customer.
- 7.3. The Supplier retains the right to:
 - (a) refuse to use Customer provided materials at any time if it feels that the quality of the materials is insufficient or of a defective nature or is unfit for its intended purpose. Any costs incurred as a result shall be passed to the Customer; and /or
 - (b) to charge the Customer reasonable additional costs and expenses incurred by it if any information and/or Customer supplied materials are found to be defective, insufficient or unsuitable during production or were provided late, including where the Supplier undertakes work which involves rearranging, sorting, cutting, folding otherwise dealing with any mailing inserts supplied or specified by the Customer in order to make them suitable for the Supplier's machinery.

Without limiting any of the foregoing provisions of this clause 7.3, if any information and/or Customer supplied materials are found to be deficient, the Supplier may cancel the Contract or if instructed by the Customer to continue shall have no liability for quality of the materials.

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- 7.4. The Customer will be wholly responsible for any losses sustained as a result of the Supplier not receiving adequate materials in time or in accordance with the Specification.
- 7.5. The Customer agrees to provide the Supplier with a minimum of a 2% surplus of any Customer supplied materials required for any Contract.
- 7.6. The Customer's approval of proofs, and layouts and acceptance of the pricing in the Supplier's Quotation will be the Supplier's authority to produce the mailings and any Materials and to despatch them. The Supplier shall not be liable for any errors or omissions in such mailings and Materials to the extent that they have been approved by the Customer.
- 7.7. All materials supplied by or on behalf of the Customer are at the Customer's risk whilst on the Supplier's premises (or in transit to such premises).
- 7.8. The Customer shall ensure that all information or materials provided by it complies with all applicable laws and with all applicable codes of practice and ensure that any consumer mailing addresses provided to the Supplier are cleaned against the Mailing Preference Service (MPS) files (unless it is agreed that this will be carried out by the Supplier).
- 7.9. The Customer shall ensure that any computer or electronic data supplied to the Supplier is clean, unadulterated, capable of being processed and does not contain any viruses or malware. In the event of the computer or electronic data supplied being corrupt, the Supplier shall (at its option) either require the Customer to rectify the issue or shall decontaminate the data itself at the Customer's expense. The Customer shall ensure that all data supplied to the Supplier is completely unambiguous with regard to its format. A specification of the format of the data supplied and any instructions for interpretation must be provided in writing by the Customer.
- 7.10. The Customer shall indemnify the Supplier against all costs, claims, liabilities, penalties and expenses (including any direct, indirect or consequential losses, legal and other professional costs and expenses) which the Supplier may incur by reason of any breach of this clause 7.
- 7.11. If the Supplier's performance of any of its obligations in respect of the Services 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) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (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 7.11; 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
- 7.13. If a Customer requests a change to any Contract, the Supplier shall be entitled to charge the Customer for all work which has been partially completed or prepared up to that point.

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8. CHARGES AND PAYMENT

- 8.1. The price for Materials and/or Services shall be the price set out in the Supplier's Quotation (as increased from time to time, in accordance with clause 8.2 or by agreement between the Customer and Supplier) and shall be exclusive of VAT and all costs and charges of packaging, customs duties and other taxes, insurance and transport.
- 8.2. The Supplier may increase the price of the Materials and/or Services at any time before the date of delivery to reflect any changes in delivery dates, quantities or specifications of the Materials and /or the Services requested by the Customer or to reflect any uplift in the price of raw materials or labour or postage or such cost increase caused by any delay or alteration to the instructions given by the Customer.
- 8.3. The Supplier shall submit an invoice in relation to the Materials and Services prior to such Materials being produced and/or Services being provided.
- 8.4. The Customer shall pay each invoice submitted by the Supplier in full and in cleared funds to a bank account nominated in writing by the Supplier no later than 48 hours before the mailing begins. If the invoice is not paid within the specified time limit, the Supplier shall have the right to withhold the mailing and shall not be liable in respect of any delay to the mailing.
- 8.5. Any additional costs due from the Customer by the Supplier shall be due within 30 days of the date of the invoice.
- 8.6. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Materials at the same time as payment is due for the supply of the Services or Materials.
- 8.7. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 6% per annum above the Base Rate as published by Barclays Bank in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such 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. The Supplier also reserves the right to recover any charges relating to the collection of the unpaid invoice and administration of debts from the Customer.
- 8.8. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8.9. The Supplier shall hold a lien over all the Customer's property and materials in its possession where there is an unpaid invoice, and after 10 Business Days the Supplier will be entitled to dispose of the

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Customer's property and materials using the sale proceeds (if any) to offset against any unpaid invoices.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. All Intellectual Property Rights in or arising out of any Materials created by or for the Supplier in relation to or in connection with the Services shall be owned by the Customer unless the contrary is agreed in writing.
- 9.2. The Supplier shall not be obliged to supply any printed material which in its reasonable opinion may be illegal or libellous or which may infringe the intellectual Property Rights of any third party or otherwise result in a claim under clause 9.3 and the Supplier shall be entitled to cancel without liability any such Contract.
- 9.3. The Customer grants the Supplier a license to use all data, materials and other items provided by the Customer (the **data**) for the purposes of providing the Materials and/or Services and shall indemnify and keep the Supplier fully indemnified against any and all actions, claims, proceedings, losses, damages, demands, liabilities, costs (including legal and other professional costs) and expenses arising out of or in connection with any findings or claim that:
- (a) the Supplier's use or possession of the data or any other items supplied or specified by the Customer is illegal, libellous or obscene or is in breach of any third party's rights (including without limitation, Intellectual Property Rights); and/or
 - (b) the provision of the Services and/or the Materials by the Supplier in accordance with a Contract or otherwise in accordance with the instructions of the Customer is illegal or unlawful or infringes postal or other regulations or is in breach of any trade descriptions or other legislation or breaches any third party rights (including, without limitation, Intellectual Property Rights).

10. CONFIDENTIALITY

- 10.1. A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

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11. DATA PROTECTION

- 11.1. The parties agree that the Supplier is a data processor for the purposes of the Data Protection Act 1988 (the Act). The Supplier warrants to the Customer that it has in place appropriate technical and organisational measures against accidental or unlawful destruction or loss or alteration to any personal data or any unauthorised disclosure of any personal data.
- 11.2. The Customer consents to the processing by or on its behalf of personal data supplied by the Customer and/or held by the Supplier for the purposes of processing any Contract and warrants that it has obtained the necessary consents from all individual data subjects for the processing of personal data in accordance with the Contract. The Customer's statutory rights under the Act shall remain unaffected.
- 11.3. The Customer agrees that it shall and shall procure that its employees, agents and sub-contractors shall, at all times, comply with the provisions of the Act and warrants to the Supplier that all data provided to the Supplier is properly and lawfully held and provided (including without limitation in accordance with the Act). The Customer indemnifies the Supplier against all actions, claims, proceedings, losses, damages, demands, liabilities, costs (including legal and other professional costs) and expenses arising out of or in connection with any breach of this clause and/or the Act.
- 11.4. Where the Supplier supplies a list of names and addresses or agrees to return addressed material to the Customer, the same are supplied for the sole use of the Customer and on the basis that the list and compilation of addressed material is confidential to the Supplier, that such confidence will be maintained by the Customer, that such materials will be used by the Customer for the purpose of making a single mailing in respect of the specific Contract only and no such materials or any information extracted therefrom shall be used by the Customer for any other purposes nor copied, recorded, passed or resold to any third party, nor without the Supplier's written consent may any such material be entrusted to any agent or sub-contractor or passed or resold to any third party for filing or posting. Lists of names and addresses are compiled from many sources and whilst every effort is made to ensure accuracy, no guarantee is given that such lists are complete, accurate or updated.

12. LIMITATION OF LIABILITY

- 12.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) anything for which the Supplier cannot lawfully restrict its liabilities.
- 12.2. Subject to clause 12.1:
- (a) The Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

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- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges for the relevant Contract (net of all third party costs) and shall be limited to the pro-rata equivalent of such charges which are directly attributable to the failure.

12.3. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4. The Supplier shall not be liable to the extent that any loss or liability is caused by any third party or by the Customer.

12.5. This clause 12 shall survive termination of the Contract.

13. TERMINATION

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

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of written notice in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Day;

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- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (j) 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 13.1(b) to clause 13.1(i) (inclusive);
 - (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.2. Without limiting its other rights or remedies, the Supplier may terminate any Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.3. Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Materials 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 13.1(b) to clause 13.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 13.4. On termination of any Contract for any reason:
- (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 Materials supplied; and
 - (b) where a Contract has been partially completed, including work in preparation of any Contract but for which no invoice has yet been submitted, the Customer will pay to the Supplier a reasonable sum for any work carried out by the Supplier prior to such cancellation together with a reasonable profit on the uncompleted portion of the Contract. The Supplier shall submit an invoice in respect of these costs, which shall be payable by the Customer immediately on receipt; and
 - (c) where the Supplier has not yet commenced work on the Contract the Supplier shall be entitled to charge an administration fee to the Customer which shall be immediately payable upon receipt of the relevant invoice: and

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- (d) the accrued rights of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. FORCE MAJEURE

- 14.1. For the purposes of these Conditions, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.2. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under any Contract as a result of a Force Majeure Event.
- 14.3. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Materials, the Supplier shall, without limiting its other rights or remedies, have the right to terminate any Contract immediately by giving written notice to the Customer.

15. GENERAL

15.1. Assignment and other dealings.

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

15.2. Notices.

- (a) Any notice or other communication given to a party under or in connection with these Conditions shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail one Business Day after transmission.

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- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3. **Severance.**

- (a) If any provision or part-provision of any 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.
- (b) If any provision or part-provision of any Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 15.4. **Waiver.** A waiver of any right under any Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under any Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.

- 15.5. **Dispute Resolution.** In the event of any disagreement or dispute between the parties they shall first endeavour to resolve it by referring it to the designated point of contact for each party. If these persons are unable to reach agreement within one month of the dispute being referred to them, the parties shall seek to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

- 15.6. **No partnership or agency.** Nothing in any Contract or these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 15.7. **Non-solicitation.** The Customer shall not, for a period of 12 months from the date of completion or termination of any Contract (for whatever reason), solicit, endeavour to entice away, employ, offer to employ or engage any person who is at any time during the Contract employed by the Supplier in connection with the provision of the Services under the Contract (whether or not such person would commit any breach of his contract of service or employment in leaving such employment or engagement).

- 15.8. **Third parties.** A person who is not a party to any Contract shall not have any rights to enforce its terms.

- 15.9. **Variation.** Except as set out in these Conditions, no variation of any Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

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- 15.10. **Governing law.** These Conditions, any Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 15.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with their Conditions or any Contract or its subject matter or formation (including non-contractual disputes or claims).