

TERMS AND CONDITIONS OF SUPPLY

1. Definitions and Interpretation

The following definitions and rules of interpretation in this clause apply in this agreement.

1.1 Definitions:

Bespoke Items: Items tailor made or ordered with a specific requirement in accordance with the Customers instructions.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. To contact us, please email sales@judd-medical.co.uk. Please note our business hours are Monday – Thursday 9.00am – 5.00pm & Friday 9.00am – 4.30pm.

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

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

Delivery: completion of delivery of Products specified in an Order in accordance with clause 6.

Delivery Date: the date specified for delivery of Products as set out in an Order.

Delivery Location: the delivery location set out in the Order.

Force Majeure Event: has the meaning given in clause 2.2.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

Manufacturer: any third party that manufactures or produces the Products.

Order: an order for Products and/or Services placed by the Customer via the Supplier's website or by telephone, or through the Customer ordering the Products for purchase on a third party website (such as eBay).

Order Confirmation: the order confirmation received by the Customer upon placing an order on the Supplier's website.

Order Number: the reference number to be applied to an Order by the Supplier in accordance with clause 2.2.

Products: means the products set out in the Order.

Price: the price of the Products and/or Services as determined in accordance with clause 11.

Returns Authorisation Number: the number supplied by the Supplier in accordance with clause 8.1.

Samples: any samples of the Products supplied to the Customer.

Services: any services supplied by the Supplier to the Customer as per the relevant Order.

Sterile Medical Devices [any instruments or devices provided in sealed packaging that have a requirement to be kept sterile.]

Supplier: JUDD MEDICAL LIMITED, a company incorporated and registered in England and Wales with company number 03323507 whose registered office is at Unity House, Buntsford Park Road, Bromsgrove, Worcestershire, B60 3DX.

VAT: value added tax chargeable in the United Kingdom.

Clause and paragraph headings shall not affect the interpretation of this agreement.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.

1.5 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.6 A reference to a statute or statutory provision is a reference to it is in force as at the date of this agreement. A reference to a statute or statutory provision shall include all subordinate legislation made at the date of this agreement under that statute or statutory provision.

1.7 A reference to **writing** or **written** includes email.

1.8 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.9 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.10 References to clauses are to the clauses of this agreement.

1.11 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. Supply of Products

2.1 Each Order shall be deemed to be a separate offer by the Customer to purchase Products on the terms of this agreement, which the Supplier shall be free to accept or decline at its absolute discretion.

2.2 No Order shall be deemed to be accepted by the Supplier until it issues an Order Number or (if earlier) the Supplier notifies the Customer that the Order is ready for collection.

2.3 The Supplier shall assign an Order Number to each Order it accepts and notify those Order Numbers to the Customer. Each party shall use the relevant Order Number in all subsequent correspondence relating to the Order.

2.4 When an Order is accepted, the Supplier shall supply and the Customer shall purchase such quantities of Products as the Customer has ordered in accordance with the terms and conditions of this agreement.

2.5 All Orders accepted by the Supplier are subject to these conditions. The Supplier accepts no variation of these conditions or an Order, unless previously agreed in writing.

2.6 Customers placing Orders expressly warrant that they are authorised to accept and are accepting these conditions not only for themselves but also as agent for and behalf of all other persons who are, or may become, interested in the Supplier's products, whether in whole or part.

3. Suitability of Products

3.1 The Supplier provides no warranty that the Products will be fit for the Customer's intended purpose of use and expresses no specific knowledge of the appropriateness of any product for a particular task or purpose. The Customer agrees that it is responsible for determining whether the Products are wholly suitable for their intended purpose.

3.2 Details and specifications for the Products are correct at the time of publication but can be changed without prior notice. The Supplier will check the latest specifications for the Customer at the time an Order is accepted. The Supplier has the right to alter specifications of any given Product, and to withdraw any item without explanation or notification to the Customer. All images presented by the Supplier to the Customer are for illustration only. At the time of purchase the Customer is responsible for checking that the specification meets their actual requirements.

4. Samples

4.1 All Samples are subject to the Customer signing the Supplier's sample agreement form prior to the sample being sent out. The terms and conditions of this agreement will apply to any sample agreement form or use of any Sample by the Customer.

4.2 The Supplier and the Customer will agree a time frame for usage of Samples. After an agreed time frame of usage, the Customer must send any and all re-usable samples back to the Supplier at the Customer's own cost.

4.3 The Customer will complete an evaluation form in respect of the Samples and return this form to the Supplier with the Samples.

- 4.4 Where a Customer does not return Samples with the agreed timeframe, the Customer agrees that the Supplier may invoice the Customer for continued use of the Samples as if it had placed an Order for the equivalent Products. The Customer will pay any such amount invoiced in accordance with these terms and conditions.
- 5. Quality and packing**
- 5.1 The Supplier shall, pack and supply the Products in accordance with all generally accepted industry standards and practices that are applicable.
- 5.2 The Products supplied to the Customer by the Supplier under this agreement shall:
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended);
 - comply with all applicable statutory and regulatory requirements.
- 5.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from this agreement.
- 5.4 The Supplier shall ensure that the Products are properly packed and secured in a manner to enable them to reach their destination in good condition.
- 5.5 The Customer acknowledges that the Supplier may not be the manufacturer of the Products. Where the Supplier is not the manufacturer, the Supplier shall have no liability whatsoever relating to the quality or specified use of the Products supplied to the Customer and all such liability shall sit with the Manufacturer.
6. The Customer is responsible for ensuring it complies with the Manufacturer's instructions for use of any Products. Where the Supplier provides demonstrations for any Products, the demonstrations are for guidance purposes only, and the Supplier shall not be liable for any loss whatsoever or howsoever arising caused by any advice or demonstrations given in respect of Products.
- 7. Delivery**
- 7.1 The time and date stated for Delivery is an estimate only. The Supplier makes every effort to despatch Products on time but does not accept liability for failure to deliver within the stated time.
- 7.2 The Supplier shall ensure that each delivery of the Products is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered.
- 7.3 The Supplier shall deliver the Products to the Delivery Location or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Products are ready.
- 7.4 The Customer must accept the goods when they are ready for Delivery.
- 7.5 Delivery is deemed to take place when the goods are delivered to the Delivery Location or the other agreed location, where upon the risks of loss, breakage and all damage shall pass to the Customer.
- 7.6 It is the Customer's responsibility to notify the Supplier of any different Delivery Location to the one in the Order.
- 7.7 The Supplier does not accept liability for shortages or damage to deliveries unless the Customer notifies the Supplier by phone of the shortage or damage within 48 hours of receipt of the Delivery.
- 7.8 Delays in the delivery of an Order shall not entitle the Customer to:
- refuse to take delivery of the Order; or
 - claim damages; or
 - terminate this agreement.
- The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that any failure or delay is caused by the Customer's failure to comply with its obligations under this agreement, or failure to provide adequate access to the Delivery Location.
- 7.9 If the Customer fails to take delivery of an Order on the Delivery Date or on such other date that the Supplier notifies the Customer the Products will be ready, then except where that failure or delay is caused by the Supplier's failure to comply with its obligations under this agreement:
- delivery of the Order shall be deemed to have been completed at 9.00 am on the Delivery Date; and
 - the Supplier may store and insure the Products at the Customer's expense and risk or sell the goods at the best price reasonably obtainable (after deducting reasonable

storage insurance and selling costs) and pay to the Customer any excess over the Price or charge the Customer for any shortfall.

8. Acceptance and defective products

- 8.1 The Customer must inspect all Products immediately upon Delivery, the Customer must check for any damages or incomplete deliveries at the time of signing for delivery and notify the carrier.
- 8.2 No claims can be addressed for damage or deficiency unless the Supplier's sales office is notified within the following specified times:
- Failure to deliver: the Customer should notify the Supplier within 48 hours from the date of invoice.
 - Damage or deficiency: the Customer must notify the Supplier within 48 hours of receipt of Products.
- 8.3 The Supplier is under no obligation to accept cancellation or amendment to any part of an Order. If and when such cancellation is accepted by the Supplier, there may be a cancellation or amendment charge.
- 8.4 The Customer may reject any Products delivered to it that do not comply with clause 5.2, provided that:
- notice of rejection is given to the Supplier:
 - in the case of a defect that is apparent on normal visual inspection, within 2 Business Days of Delivery;
 - in the case of a latent defect, within a reasonable time of the latent defect having become apparent.
- 8.5 If the Customer fails to give notice of rejection in accordance with clause 7.4, it shall be deemed to have accepted these Products.
- 8.6 The Supplier shall not be liable for a Product's failure to comply with the warranty set out in clause 5.2 in any of the following events:
- the Customer makes any further use of those Products after giving notice in accordance with clause 5.2;
 - the defect arises because the Customer failed to follow the Supplier's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
 - the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - the Customer alters or repairs those Products without the written consent of the Supplier;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - the Products differ from the Order as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.7 If the Customer rejects Products under clause 7.4, then the Customer shall be entitled to:
- require the Supplier to replace the rejected Products; or
 - require the Supplier to repay the Price of the rejected Products in full.
- Once the Supplier has complied with the Customer's request, it shall have no further liability to the Customer for the rejected Product's failure to comply with clause 5.2.
- 8.8 The terms of this agreement shall apply to any replacement Products supplied by the Supplier.
- 9. Returns**
- 9.1 The Customer can only return Products for credit by arrangement. All unused Products must be returned in the original packaging and in good condition. The Customer must contact the Supplier before returning any Products to acquire a Returns Authorisation Number.
- 9.2 The Supplier will only accept returns with a Returns Authorisation Number. All returns must be sent with a copy of the original paperwork, including the Order Number.
- 9.3 The Customer will bear the cost of returning any Products or an additional carriage charge will be levied. Any items that qualify for return are subject to a restocking charge as notified by the Supplier.

- 9.4 The Customer will have to notify the Supplier within 5 Business Days of Delivery if the Customer intends to return Sterile Medical Devices. Returns will only be accepted if received by the Supplier within 10 Business Days from the date of Delivery, with the packaging intact. The Customer must pay a restocking charge in relation to returned Sterile Medical Devices in the amount of 20%-25% of the Price of the returned Products. The percentage charged will be dependent on the size of the return and the Supplier will notify the Customer of the amount upon receipt of the returned Products.
- 9.5 The Supplier will not accept returns of Bespoke Items or special orders.
- 10. Title and risk**
- 10.1 Risk in Products shall pass to the Customer on Delivery.
- 10.2 Title to Products shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Products and all other sums that are or that become due to the Supplier from the Customer for sales of Products, in which case title to these Products shall pass at the time of payment of all such sums.
- 10.3 Until title to Products has passed to the Customer, the Customer shall:
- (a) store those Products separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to those Products;
 - (c) maintain those Products in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect those Products and the insurance policy; and
 - (d) provide access to its property to the Supplier to enable the Supplier to collect any Products where title remains with the Supplier.
- 11. Supply of Services**
- 11.1 The Supplier shall supply all Services to the Customer with reasonable skill and care.
- 11.2 The Supplier shall not be liable for any loss whatsoever or howsoever arising caused by its failure to supply Services or any part thereof on the date specified in the Order. Time for supply of Services is not of the essence.
- 11.3 The Supplier reserves the right to supply Services by instalments and to tender a separate invoice in respect of each instalment.
- 11.4 Where the Services fail to comply with any warranty given in writing by the Supplier, the Customer shall be entitled to:
- (a) require the Supplier to re-perform the Services; or
 - (b) require the Supplier to repay the Price of the rejected Services in full.
- Once the Supplier has complied with the Customer's request, it shall have no further liability to the Customer for the disputed Services failure to comply with any such warranty.
- 12. Price**
- 12.1 The Price for the Products shall be as stated in the Supplier's price list from time to time. Where Products are made available for purchase on a third party website or on the Supplier's website, the Price shall be as stated on such website.
- 12.2 The Price for Services shall be as stated in the Supplier's price list from time to time or as otherwise set out in the Order for Services.
- 12.3 All Prices are exclusive of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier any additional amounts due in respect of VAT.
- 12.4 All Prices are exclusive of the costs of packaging, insurance and carriage of the Products, which shall be paid by the Customer.
- 12.5 Any quotes for Products or Services provided by the Supplier to the Customer are valid for 30 days, unless stated otherwise.
- 12.6 All price lists of the Supplier may be subject to change without notice.

- 13. Payment**
- 13.1 The Supplier shall be entitled to invoice the Customer for each Order following the Supplier's acceptance of the Order. Each invoice shall quote the relevant Order Numbers.
- 13.2 The Customer shall pay invoices in full and in cleared funds within the time period stated in the agreed payment terms. Payment shall be made to the bank account nominated in writing by the Supplier.
- 13.3 At the Supplier's discretion, the Supplier may take credit card payments via telephone.
- 13.4 Where the Customer fails to settle an invoice by its due date the Supplier shall be entitled to withhold delivery of Products or Services, subsequent Orders and any agreed discounts on the Price.
- 13.5 The Supplier may at any time, without notice to the Customer, set off any liability of the Customer to it against any liability it has to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by a party of its rights under this shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 13.6 All payments payable to the Supplier by the Customer under this agreement shall become immediately due and payable:
- (a) on termination of this agreement for any reason; or
 - (b) if the Customer becomes subject to any of the events listed in clause 19.2.
- 13.7 Where sums due under this agreement are not paid in full by the due date the Supplier may, without limiting its other rights:
- (a) charge interest on such sums at 4% per annum above the base rate of the Bank of England from time to time in force and interest shall accrue on a daily basis, from the due date for payment until actual payment; and
 - (b) place the Customer's account on stop, resulting in any orders placed by the Customer being held for delivery until payment is received in full for each outstanding debt.
- 13.8 Where the Customer places an Order via the Supplier's website, this will constitute an offer to purchase the Products, which if accepted by the Supplier, shall constitute a legally binding contract. The contract shall come into existence upon the Supplier sending the Customer the Order Confirmation.
- 13.9 Where the Customer has ordered Products in accordance with clause 13.8 the payment method shall be by PayPal or credit/debit card and the Customer shall pay the Price, the VAT and any packaging costs upon ordering the Product.
- 13.10 Please note that the Product(s) will not be sent to the Customer until the Supplier has received authorisation from the Customer's payment card issuer. The Supplier will not be liable if there is a delay, and the Supplier will not accept the Customer's Order if payment is not authorised.
- 13.11 Where the Customer is purchasing Products through a third-party website, payment shall be made in accordance with the requirement of that third party at the time the Products are ordered.
- 13.12 The Supplier shall not have any liability to the Customer in the event that payment is made for Products via the Supplier's website, where such payment is made fraudulently or by a person who is not authorised to approve payments on behalf of the Customer.
- 14. Compliance with laws and policies**
- 14.1 The Customer shall comply with all applicable laws, statutes, regulations and codes from time to time in force.
- 15. Indemnity**
- 15.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under this agreement.
- 16. Limitation of Liability**
- 16.1 Nothing in these terms and conditions shall limit or exclude either party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; or

- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any other losses which cannot be excluded or limited by applicable law.
- 16.2 Subject to clause 15.1, the Supplier shall under no circumstances whatsoever 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 this agreement.
- 16.3 Subject to clauses 15.1 and 15.2, the Supplier's total liability under or in connection with this agreement (whether in tort, contract or any other way) shall not exceed the Price paid for the relevant Order.
- 16.4 The Supplier shall not be liable for any defect caused by the Manufacturer.
- 17. Assignment and other dealings**
- 17.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Supplier.
- 18. Confidentiality**
- 18.1 The Customer undertakes that it shall not at any time during this agreement and for a period of two years after termination disclose to any person any Confidential Information of the Supplier, except as permitted by clause 18.2.
- 18.2 The Customer may disclose the Supplier's Confidential Information:
- (a) to its employees, officers, agents, consultants who need to know this information for the purposes of exercising the customer's rights or carrying out its obligations under or in connection with this agreement, provided that the Customer takes all reasonable steps to ensure that such person comply with the confidentiality obligations contained in this clause 17.2 as though they were a party to this agreement; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.3 The Supplier reserves all rights in its Confidential Information. No rights or obligations in respect of the Supplier's Confidential Information other than those expressly stated in this agreement are granted to the Customer or to be implied from this agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by the Supplier now or in the future.
- 18.4 All Intellectual Property Rights in the Products and/or Services shall vest in either the Supplier or the Manufacturer as the case may be. The Supplier shall have no liability whatsoever for breaches of a third party's intellectual property rights where the Supplier is not the Manufacturer of the Products.
- 19. Use of Data**
- 19.1 If the Customer provides any data relating to its business to the Supplier for any purpose, then the Customer agrees that the Supplier may hold such data and use it in relation to the supply of Products, to process payment and to inform the Customer (including all its staff) of other Products or Services that the Supplier may offer from time to time. The Supplier will hold all data relating to the Customer in accordance with its privacy policy in force from time to time and which is available on demand.
- 19.2 The Customer agrees that the Supplier may share any data referred to in clause 18.1 with third parties only where it is necessary for the provision of the Products or Services supplied by the Supplier and further that the Customer shall hold the Supplier harmless for any loss caused to those third parties arising from the Customer's data.
- 20. Termination and suspension**
- 20.1 The Supplier may terminate this agreement or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- (a) the Customer commits a material breach of this agreement and such breach is not remediable;
 - (b) the Customer commits a material breach of this agreement which is not remedied within 14 days of receiving written notice of such breach;

- (c) the Customer has failed to pay any amount due under this agreement on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
 - (d) any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under this agreement or receive any benefit to which it is entitled.
- 20.2 The Supplier may terminate this agreement at any time by giving notice in writing to the Customer if the Customer:
- (a) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - (b) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
 - (c) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - (d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - (e) has a resolution passed for its winding up;
 - (f) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - (g) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - (h) has a freezing order made against it;
 - (i) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items; or
 - (j) is subject to any events or circumstances analogous to those in this clause 19.2 in any jurisdiction.
- 20.3 The Supplier may terminate this agreement at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 20.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate this agreement under this clause 19, it shall immediately notify the Supplier in writing.
- 20.5 Termination or expiry of this agreement shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.
- 20.6 Without limiting its other rights or remedies, the Supplier may suspend provision of the Products and/or Services under this agreement or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 19.1 and 19.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this agreement on the due date for payment.
- 21. Obligations on termination**
- On termination of this agreement, the Customer shall promptly:
- (a) return to the Supplier all equipment, materials and property belonging to the Supplier that the Supplier had supplied to it in connection with the supply and purchase of the Products or Services under this agreement;
 - (b) return to the Supplier all documents and materials (and any copies) containing the Supplier's Confidential Information;
 - (c) erase all the Supplier's Confidential Information from its computer systems (to the extent possible); and
 - (d) on request, certify in writing to the Supplier that it has complied with the requirements of this clause 20.
- 22. Consequences of termination**
- Termination of this agreement 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 for any breach of this agreement that existed at or before the date of termination.

23. Force majeure

23.1 Neither party shall be liable for any failure or delay in performing its obligations under this agreement to the extent that such failure or delay is caused by a Force Majeure Event.

23.2 A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

24. General

24.1 Severance

- (a) If any provision or part-provision of this agreement 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 that 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 23 shall not affect the validity and enforceability of the rest of this agreement.
- (b) If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend that 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.

24.2 Variation

No variation of this agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

24.3 Waiver

- (a) A waiver of any right or remedy under this agreement or by law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (b) A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- (c) A party that waives a right or remedy provided under this agreement or by law in relation to one party or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

24.4 Notices

- (a) Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt;
 - (ii) if sent by email, at 9.00 am on the next Business Day after transmission.
- (c) This clause 23.4 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24.5 Entire agreement

- (a) This agreement constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- (d) Nothing in this clause 23.5 shall limit or exclude any liability for fraud.

24.6

Third party rights

Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

24.7

Governing law and Jurisdiction

- (a) This agreement 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.
- (b) 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 this agreement or its subject matter or formation.



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