
These Terms and Conditions were published on 6th January 2023.

1 Definitions and interpretation

1.1 In our Contract:

1.1.1 each Order entered into by the Customer shall form a separate agreement, incorporating these Conditions (our **Contract**);

1.1.2 in the event of any conflict in respect of the provisions of our Contract and/or the documents referred to in it the following order of priority shall prevail (in descending order of priority):

- (a) the Order;
- (b) these Terms and Conditions (**Conditions**);
- (c) the Documentation; and

subject to the order of priority between documents in clause 1.1.2, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

1.2 In these Conditions the following definitions apply:

Affiliate	means, in respect of any entity, any entity that directly or indirectly controls, is controlled by or is under common control with that entity within the meaning set out in section 1124 of the Corporation Tax Act 2010;
Applicable Law	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in England;
Conditions	means the Supplier's terms and conditions of sale set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;
Customer	means the named party in the Contract which has agreed to purchase the Goods from the Supplier and whose details are set out in the Order;
Documentation	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Goods;
Force Majeure	means an event or sequence of events beyond a party's reasonable preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

Goods	means the goods and related accessories, spare parts and Documentation and other physical material set out in the Order and to be supplied by the Supplier to the Customer in accordance with the Contract;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in software, rights in goodwill, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:
	(a) whether registered or not
	(b) including any applications to protect or register such rights
	(c) including all renewals and extensions of such rights or applications
	(d) whether vested, contingent or future
	(e) to which the relevant party is or may be entitled, and
	(f) in whichever part of the world existing;
IPR Claim	has the meaning given in clause 12.1;
Location	means the address or addresses for delivery of the Goods as set out in the Order;
Order	means an order for the Goods from the Supplier placed by the Customer in substantially the same form set out in the Supplier's sales order form;
Price	has the meaning given in clause 3.1;
Specification	means the description, or Documentation provided for the Goods and their packaging set out or referred to in the Contract. The Specification is available at: https://firstpaymentmerchantservices.co.uk/wp-content/uploads/2021/06/A920-Product-Sheet-1.pdf ;
Supplier	means the named party in the Contract which has agreed to sell the Goods to the Customer and whose details are set out in the Order;
Territory	means United Kingdom and its overseas territories;
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods; and
Warranty Period	has the meaning given in clause 9.3.

1.3 In these Conditions, unless the context requires otherwise:

- 1.3.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);
- 1.3.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.3.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.3.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.3.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.3.6 a reference to a gender includes each other gender;

- 1.3.7 words in the singular include the plural and vice versa;
- 1.3.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.3.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.3.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time;
- 1.3.11 a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 1.3.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
 - 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
 - 2.3 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods subject to the Contract including these Conditions.
 - 2.4 If the Supplier is unable to accept an Order, it shall notify the Customer in writing as soon as reasonably practicable.
 - 2.5 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier for **3 (three) Business Days** from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
 - 2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
 - 2.6.1 the Supplier's written acceptance of the Order; or
 - 2.6.2 the Supplier dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).
 - 2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
 - 2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Customer.
 - 2.9 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.
- ## **3 Price**
- 3.1 The price for the Goods shall be as set out in the Order or, where no such provision is set out, shall be as advised by the Supplier from time to time before the date the Order is placed (the **Price**).
 - 3.2 The Prices are exclusive of:
 - 3.2.1 packaging, delivery, insurance, shipping carriage, and all other related charges or taxes or describe relevant elements of the goods which are not included in the standard price which shall be charged in addition at the Supplier's standard rates, and
 - 3.2.2 VAT (or equivalent sales tax).
 - 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
 - 3.4 The Supplier may increase the Prices at any time by giving the Customer **not less than 15 Business Days'** notice in writing.

3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Goods which exceeds 10% and which is due to any factor beyond the control of the Supplier.

4 Payment

4.1 The Supplier shall invoice the Customer for the Goods, partially or in full, at any time following acceptance of the Order.

4.2 Unless otherwise agreed in the Order, the Customer shall pay all invoices:

4.2.1 in full without deduction or set-off, in cleared funds **within ten Business Days** of the date of each invoice; and

4.2.2 to the bank account nominated by the Supplier.

4.3 Fees payable to the Supplier under the Contract shall be paid into the Supplier's bank account by way of direct debit unless otherwise notified by the Supplier to the Customer in writing in accordance with the Contract.

4.4 The Customer shall not without the prior written agreement of the Supplier cancel any direct debit which has been established for payment of any amounts in connection with the Contract.

4.5 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

4.5.1 the Supplier may, without limiting its other rights, charge interest on such sums at 9% a year above the base rate of the Bank of England from time to time in force, and

4.5.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Delivery

6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location specified in the Order.

6.2 The Goods shall be deemed delivered on arrival only of the Goods at the Location by the Supplier or its nominated carrier (as the case may be).

6.3 The Supplier may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.4 The Customer shall not be entitled to reject a delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied.

6.5 Delivery of the Goods shall be accompanied by a delivery note stating:

6.5.1 the date of the Order;

6.5.2 the product numbers, type and quantity of the Goods in the consignment; and

6.5.3 any special handling instructions.

6.6 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are indicative only.

6.7 The Supplier shall not be liable for any delay in or failure of delivery caused by:

6.7.1 the Customer's failure to make the Location available;

6.7.2 the Customer's failure to prepare the Location;

6.7.3 the Customer's failure to provide the Supplier with adequate instructions for delivery and installation;

6.7.4 Force Majeure.

6.8 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all storage and insurance charges at the Supplier's then-applicable rates.

6.9 If 10 Business Days following the due date for delivery of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer, except as provided for in clauses 6.9.1 and 6.9.2. The Supplier shall:

- 6.9.1 deduct all storage charges at the Supplier's then-applicable rates and reasonable costs of resale; and
- 6.9.2 account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.

7 Risk

Risk in the Goods shall pass to the Customer on delivery.

8 Title

- 8.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall:
 - 8.2.1 hold the Goods as bailee for the Supplier;
 - 8.2.2 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - 8.2.3 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
 - 8.2.4 ensure that the Goods are clearly identifiable as belonging to the Supplier;
 - 8.2.5 not remove or alter any mark on or packaging of the Goods;
 - 8.2.6 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 15.1.1 to 15.1.3 or 15.2.1 to 15.2.14; and
 - 8.2.7 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 8.3 Notwithstanding clause 8.2, the Customer may at the Suppliers express written consent, use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 15.1.1 to 15.1.3 or 15.2.1 to 15.2.14 has occurred or is likely to occur.
- 8.4 If the Customer resells the Goods in accordance with clause 8.3, title to the Goods shall pass to the Customer immediately prior to the resale.
- 8.5 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 15.1.1 to 15.1.3 or 15.2.1 to 15.2.14, the Supplier may:
 - 8.5.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
 - 8.5.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

9 Dead on Arrival and Warranty

- 9.1 **Dead on Arrival cover.** Subject to the limitations set forth in this clause 9, Goods purchased by the Customer shall be subject to a Dead On Arrival (DOA) period of **ninety (90) days**, ("DOA Period") which shall commence upon the date that the Goods are delivered to Supplier's nominated carrier. For purposes of this Contract, Goods shall be considered DOA if the operating system software in the Goods fails to initialize when the Goods are connected to an appropriate power source and switched on.
- 9.2 Dead on Arrival claims. If any Goods are determined to be DOA during the DOA Period, then such Goods may be returned to the Supplier at Supplier's expense, unless the Supplier demonstrates that such Goods do not qualify for the DOA policy under clause 9.1 above, in which case the Customer shall bear the cost of returning such Goods to the Supplier. Upon receipt of any such Goods during the DOA Period, the Supplier shall, at its expense, (i) in Supplier's sole discretion, repair or replace such Goods, and (ii) return such Goods or replacement Goods to the manufacturer. Supplier's obligations hereunder shall arise only if the Supplier's examination of the Goods in question discloses to the Supplier's satisfaction that the Goods were DOA, and were not subject to: any improper storage, installation or testing; any attempt to maintain, repair or modify the Goods; any abuse, misuse or neglect of the Goods (including any use in conjunction with any product, equipment, device or software not supplied or approved in advance by the Supplier); any accident, fire or other hazard. The repair or replaced Goods shall be covered only for the remainder of the DOA Period for the original Goods.

- 9.3 The Supplier warrants that the Goods shall, for a period of *twelve* months from delivery (the **Basic Warranty Period**):
- 9.3.1 conform in all material respects to the Order and the Specification;
 - 9.3.2 be free from material defects in design, material and workmanship.
- 9.4 **Extended Warranty Period.** The Customer may at the same time as placing an order for Goods also purchase extended warranty cover with the Goods, if such option is offered by the Supplier. The length of the warranty cover purchased shall be referred to as the Extended Warranty Period. The Extended Warranty Period shall commence on the date of expiry of the Basic Warranty Period. The Extended Warranty period shall not exceed 9 months. Basic Warranty Period and Extended Warranty Period shall together mean **Warranty Period**.
- 9.5 The Customer warrants that it has provided the Supplier in writing with all relevant, full and accurate information as to the Customer's business and needs.
- 9.6 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, repair, replace, of the Goods that do not comply with clause 9.3, provided that the Customer:
- 9.6.1 serves a written notice on Supplier:
 - (a) during the Warranty Period in the case of defects discoverable by a physical inspection; or
 - (b) in the case of latent defects, within one month from the date on which the Customer became aware (or should reasonably have become aware) of the defect;
 - 9.6.2 provides the Supplier with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
 - 9.6.3 gives the Supplier a reasonable opportunity to examine the defective Goods; and
 - 9.6.4 returns the defective Goods to the Supplier at the Supplier's expense.
- 9.7 The provisions of these Conditions, including the warranties set out in clause 9.3, shall apply to any of the Goods that are repaired or replaced with effect from the date of delivery of the repaired or replaced Goods.
- 9.8 To the extent that the Goods are replaced following the instruction of the Customer and in Supplier's reasonable opinion there is no breach of the warranties set out in clause 9.3 in respect of such Goods and/or such Goods are defective due to any reason set out in clause 9.3 then, the Customer shall, on demand by Supplier, be required to pay the replacement or repayment value (calculated by the Supplier) of relevant Goods.
- 9.9 If Goods are replaced by the Supplier the Customer acknowledges and agrees that the replacement Goods may not be new and may be older than the Goods which they replace. However, such replacement Goods shall be of the same or greater specification as the Goods they replace.
- 9.10 The Supplier shall not be liable for any failure of the Goods to comply with clause 9.3:
- 9.10.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
 - 9.10.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
 - 9.10.3 to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Goods;
 - 9.10.4 where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or
 - 9.10.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 9.3.
- 9.11 Except as set out in this clause 9:
- 9.11.1 the Supplier gives no warranties and makes no representations in relation to the Goods; and
 - 9.11.2 shall have no liability for their failure to comply with the warranty in clause 9.3
- and all warranties and conditions (including the conditions implied by ss 13-15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

9.12 **Repairs.** The Customer may request the Supplier to repair the Goods. The repair services shall be subject to a separate charge.

10 Indemnity

10.1 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 the Contract.

11 Limitation of liability

11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.

11.2 Subject to clauses 11.5 and 11.6, the Supplier's total liability shall not exceed the greater of the sum of paid for the Goods in the six months before the circumstances giving rise to a claim occur OR £2,000.

11.3 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for consequential, indirect or special losses.

11.4 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

11.4.1 loss of profit;

11.4.2 loss of revenue;

11.4.3 loss or corruption of data;

11.4.4 loss or corruption of software or systems;

11.4.5 loss or damage to equipment;

11.4.6 loss of use;

11.4.7 loss of production;

11.4.8 loss of contract;

11.4.9 loss of commercial opportunity;

11.4.10 loss of savings, discount or rebate (whether actual or anticipated);

11.4.11 harm to reputation or loss of goodwill; and/or

11.4.12 wasted expenditure.

11.5 The limitations of liability set out in clauses 11.2 to 11.4 shall not apply in respect of any indemnities given by the Customer under the Contract.

11.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

11.6.1 death or personal injury caused by negligence;

11.6.2 fraud or fraudulent misrepresentation;

11.6.3 any other losses which cannot be excluded or limited by Applicable Law.

12 Intellectual property rights

12.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use or possession of the Goods infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Supplier shall have no such liability if the Customer:

12.1.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;

12.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;

12.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;

- 12.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 12.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer;
 - 12.1.6 uses the Goods in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.
- 12.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
- 12.2.1 procure for the Customer the right to continue using and possessing the relevant Goods; or
 - 12.2.2 modify or replace the infringing part of the Goods so as to avoid the infringement or alleged infringement, provided the Goods remain in material conformance to their Specification.
- 12.3 The Supplier's obligations under clause 12.1 shall not apply to Goods modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

13 Confidentiality and announcements

- 13.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 13.1.1 any information which was in the public domain at the date of the Contract;
 - 13.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 13.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
 - 13.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 13.2 This clause 13 shall remain in force for a period of *five* years from the date of the Contract and, if longer, *three* years after termination of the Contract.
- 13.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

14 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 10 days, either party may terminate the Contract by written notice to the other party.

15 Termination

- 15.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- 15.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
 - 15.1.2 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the Supplier has given notification to the Customer that the payment is overdue; or
 - 15.1.3 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 the Contract or receive any benefit to which it is entitled.
- 15.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 15.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 15.2.2 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;

- 15.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 15.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
 - 15.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
 - 15.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
 - 15.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 15.2.8 has a resolution passed for its winding up;
 - 15.2.9 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;
 - 15.2.10 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;
 - 15.2.11 has a freezing order made against it;
 - 15.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 15.2.13 is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.12 in any jurisdiction; OR
 - 15.2.14 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 15.2.1 to 15.2.13 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 15.3 The right of the Supplier to terminate the Contract pursuant to clause 15.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) of the Customer where the amalgamated, reconstructed or merged entity agrees to adhere to the Contract.
- 15.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 15, it shall immediately notify the Supplier in writing.
- 15.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

16 Notices

- 16.1 The Customer agrees to receive all communications, correspondences, and notices that the Supplier provides in connection with the Goods , including, but not limited to, marketing and promotional messages related to the Supplier and/or its Affiliates or the Goods, correspondence regarding our delivery of the Goods, and providing the Customer information related to the use of the Goods (**Communications**), via electronic means, including by e-mail, text, in-product notifications, push notifications, or by posting them on or making them otherwise available through the Supplier's website. To the fullest extent permitted under applicable laws, the Customer agrees that all Communications we provide to the Customer electronically satisfy any legal requirement that such Communications be in writing or be delivered in a particular manner and the Customer agrees to keep your contact information current.

- 16.2 This clause does not apply to notices given in legal proceedings or arbitration

17 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

18 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

19 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

- 20 Entire agreement**
- 20.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 20.2 Each party acknowledges that it has not entered into the Contract [or any documents entered into pursuant to it] in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract[or any documents entered into pursuant to it]. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 20.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 21 Variation**
- No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.
- 22 Assignment**
- 22.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, [such consent not to be unreasonably withheld or delayed OR which it may withhold or delay at its absolute discretion].
- 22.2 Notwithstanding clause 22.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.
- 22.3 The Supplier may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Contract.
- 23 Set-off**
- 23.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.
- 23.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 24 No partnership or agency**
- The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 25 Equitable relief**
- The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 26 Severance**
- 26.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 26.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 27 Waiver**
- 27.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

27.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

28 Compliance with law

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

29 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

30 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

31 Third party rights

31.1 Except as expressly provided for in clause 31.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

31.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

32 Amendments to the Contract

32.1 The Supplier shall, from time to time and in its absolute discretion, be entitled to amend (including by way of additional provisions) any of the terms of these Conditions, on giving the Customer not less than **two (2) months' prior notice**.

32.2 Where the Supplier serves notice of any changes pursuant to clause 32.1:

32.2.1 unless the Customer notifies the Supplier, prior to the expiry of the applicable 1 (one) month notice period, that it does not accept such changes, it shall be deemed to have accepted such changes, which shall take effect on the expiry of such notice period (and the Contract shall be deemed to be amended accordingly);

32.2.2 the Customer shall be entitled to terminate the Contract without charge at any time before the expiry of such notice period.

33 Miscellaneous

33.1 **Anti-Corruption, Anti-Bribery and Anti-Money Laundering.** The Customer shall ensure that the Customer's subsidiaries, owners, officers, directors, employees, partners, subcontractors, agents and representatives (collectively, "**Customer Affiliates**") fully comply with all applicable anti-corruption, anti-bribery and anti-money laundering laws and regulations in connection with this Contract, as may be amended from time to time. Without limiting the generality of the foregoing obligation, the Customer specifically understands and agrees that the Customer shall not, and shall take reasonable measures to assure that Customer Affiliates shall not, make, authorize, offer or promise to make or give any money or any other thing of value, directly or indirectly, to any government official or employee, political party or candidate for political office, or any other person for the purpose of securing any improper or unfair advantage or obtaining or retaining business in connection with the activities contemplated hereunder. Any breach or violation of any provision contained in this clause 33.1 shall be grounds for immediate termination of this Contract by the Supplier.

33.2 Neither party shall make or permit to be made any publicity releases or announcements regarding the Contract without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

33.3 The failure of either party to require the performance of any of the terms of the Contract, or the waiver by either party of any default under the Contract, shall not prevent a subsequent enforcement of such term, nor be deemed a waiver of any subsequent breach.

- 33.4 The Contract shall be concluded in the English language. All correspondence and communications in connection with the Contract shall be given in English. In the event of any conflict between the English version of the Contract (or any part of the Contract, or any document referred to in it) or any such correspondence and communications and any version thereof which has been translated into any language other than English, then the English version shall prevail.
- 33.5 The Contract and any matter arising from or in connection with it (including its formation and all non-contractual or other obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto submit to the exclusive jurisdiction of the courts of England and Wales.