

## PRINCIPAL HYGIENE SYSTEMS LIMITED: TERMS AND CONDITIONS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF *CLAUSE 11 (LIMITATION OF LIABILITY)*.

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

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

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 9 (Charges and payment).

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.5.

**Consumables:** goods, being soap, toilet roll/tissue, and hand towels (or any part of them) set out in the Order or as may be ordered from time to time by the Customer from the Supplier during the Term.

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

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

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

**Customer Default:** has the meaning set out in clause 8.2.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Deliverables:** the deliverables set out in the Order provided by the Supplier for the Customer (which shall include the Equipment).

**Delivery Location:** has the meaning given to it in clause 4.2.

**Dispensers:** dispensers of soap, hand towels or toilet roll/tissue supplied by the Supplier to the Customer.

**Equipment:** the equipment supplied by the Supplier as set out in the order (including any Dispensers)

**Installation Date:** the date the Equipment is installed at the Customer's premises. In the event that the installation takes more than one day, unless otherwise agreed in writing by the Supplier, the Installation Date shall be treated as the first day that the Supplier attends the Customer's premises to commence the installation of the Equipment.

**Order:** the Customer's order for the supply of Consumables and/or Services, as set out overleaf, or as the case may be.

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

**Specification:** the description or specification of:

- a) for the Consumables set out in the Order or as may be agreed by the Customer and the Supplier from time to time where Consumables are purchased during the Term; and/or
- b) the Services provided in writing by the Supplier to the Customer in the Order, detailing any Equipment and service visits, and the frequency of such visits.

**Supplier:** Principal Hygiene Systems Limited of Unit 2, Bentley Bridge Business Park, Well Lane, Wednesfield, Wolverhampton WV11 3DR registered in England and Wales with company number 04188360 and VAT registration number 648614514.

**Supplier Materials:** has the meaning set out in clause 4.1(i).

**Term:** 60 months from the Installation Date.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 Interpretation:

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

1.4 A reference to a party includes its successors and permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.6 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.

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

## **2. Basis of contract**

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

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions of the Consumables 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 Consumables and Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

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

## **3. Consumables**

3.1 The Consumables are described in the Order (or as the case may be, in Supplier's catalogue or sale literature) as modified by any applicable Specification.

3.2 The Supplier reserves the right to amend the Specification relating to the Consumables if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

## **4. Delivery of Consumables**

4.1 The Supplier shall ensure that:

- (a) each delivery of the Consumables is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Consumables (including the code number of the Consumables, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Consumables remaining to be delivered; and
  - (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Consumables to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Consumables are ready.
- 4.3 Delivery of the Consumables shall be completed on the completion of unloading of the Consumables at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Consumables are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Consumables that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Consumables.
- 4.5 If the Supplier fails to deliver the Consumables, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Consumables. The Supplier shall have no liability for any failure to deliver the Consumables to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Consumables or any relevant instruction related to the supply of the Consumables.
- 4.6 If the Customer fails to take delivery of the Consumables within three Business Days of the Supplier notifying the Customer that the Consumables are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Consumables:
  - (a) delivery of the Consumables shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Consumables were ready; and
  - (b) the Supplier shall store the Consumables until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.7 If ten Business Days after the Supplier notified the Customer that the Consumables were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Consumables and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Consumables or charge the Customer for any shortfall below the price of the Consumables.
- 4.8 If the Supplier delivers up to and including 5% more or less than the quantity of Consumables ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Consumables was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Consumables.
- 4.9 The Supplier may deliver the Consumables by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. Quality of Consumables**

- 5.1 The Supplier warrants that on delivery, and for a period of 6 months from the date of delivery (**warranty period**), the Consumables shall:
- (a) conform in all material respects with their description and the Specification to the extent that it relates to Consumables;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Consumables, or refund the price of the defective Consumables in full if:
- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Consumables do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Consumables; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Consumables to the Supplier's place of business at the Customer's cost.
- 5.3 The Supplier shall not be liable for the Consumables' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Consumables after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, or use of the Consumables or (if there are none) good trade practice;
- (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (d) the Consumables differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Consumables' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Consumables supplied by the Supplier.

## **6. Title and risk**

6.1 The risk in the Consumables shall pass to the Customer on completion of delivery.

6.2 Title to the Consumables shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Consumables and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Consumables shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Consumables, in which case title to the Consumables shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Consumables has passed to the Customer, the Customer shall:

- (a) store the Consumables 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 the Consumables;
- (c) maintain the Consumables in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any insolvency related event; and

- (e) give the Supplier such information relating to the Consumables as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Consumables in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Consumables. However, if the Customer resells the Consumables before that time:
  - (a) title to the Consumables shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Consumables passes to the Customer the Customer becomes subject to any insolvency related event, then, without limiting any other right or remedy the Supplier may have:
  - (a) the Customer's right to resell Consumables or use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Customer to deliver up all Consumables in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Consumables are stored in order to recover them.

## **7. Supply of Services**

- 7.1 The Supplier shall supply the Services and hire the Equipment to the Customer in accordance with the Specification in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 7.3 The Supplier will, other than in the exercise of its rights and obligations under the Contract, interfere with the Customer's quiet possession of the Equipment.
- 7.4 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

- 7.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.6 The Supplier warrants to the Customer that the Equipment shall be of satisfactory quality. The Supplier shall use reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within 12 months of delivery, provided that:
- (a) the Customer notifies the Supplier of any defect in writing within ten (10) Business Days of the defect occurring or of becoming aware of the defect;
  - (b) the Supplier is permitted to make a full examination of the alleged defect;
  - (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel; and
  - (d) the defect is directly attributable to defective material, workmanship or design

## **8. Customer's obligations**

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services and the installation of the Deliverables;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier (including but not limited to the installation of the Deliverables);
- (d) unless otherwise agreed in writing between the Customer and the Supplier, ensure that the Supplier can install the Deliverables within 6 months of the Commencement Date;
- (e) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) prepare the Customer's premises for the supply of the Services;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) comply with all applicable laws, including health and safety laws;



- (i) keep all materials, Equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (j) insure the Equipment;
- (k) comply with any additional obligations as set out in the Specification; and
- (l) where specified in the Order, purchase all Consumables exclusively from the Supplier for use with the Equipment during the Term.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default (including but not limited to Charges for the Services and/or Equipment).

## 9. Charges and payment

9.1 The price for Consumables shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's standard price list as at the date of the order. Such price shall be inclusive of all costs and charges of packaging, insurance, transport of the Consumables, which shall be invoiced to the Customer.

9.2 The Charges for the Services (including the hire of the Equipment) shall be set out in the Order. Additional hire costs may arise under clause 10.6.

9.3 The Customer shall be responsible for any costs relating to the installation, removal or repair of the Equipment.

- 9.4 Any additions to the Services (including the hire of additional Equipment or the repair of Equipment) during the Term shall be charged to the Customer by the Supplier in addition to the Charges (“the Additional Charges”). The Additional Charges shall be calculated on a time and materials basis. The Additional Charges shall be calculated in accordance with the Supplier's fee rates, as set out in its current price list at the date of the Contract.
- 9.5 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 9.6 The Supplier shall invoice the Customer:
- (a) In respect of Consumables: immediately
  - (b) In respect of Services and Equipment: unless stated otherwise on the Order, quarterly in advance.
- 9.7 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 9.8 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 at the same time as payment is due for the supply of the Services.
- 9.9 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 9.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. Equipment**

- 10.1 The Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Contract). The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on delivery to the Customer's premises.
- 10.2 The Customer will be responsible for and shall indemnify the Supplier against all loss and damage in respect of the Equipment and the Supplier Materials whilst located at the Customer's premises.
- 10.3 The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment
- 10.4 The Supplier reserves the right to supply Equipment which has been used previously and/or reconditioned.
- 10.5 The Supplier shall be allowed access to the Customer's premises at all reasonable times to install the Equipment, monitor the condition of the Equipment and to remove it (if appropriate) at the end of the Contract.
- 10.6 Where the Supplier provides Dispensers free of charge to the Customer conditional upon the Customer purchasing Consumables during the Term (as recorded in the Order), and the Customer fails to exclusively purchase Consumables from the Supplier during the Term, without prejudice to the other rights of the Supplier, the Customer shall pay a monthly rental for the Dispensers in accordance with the Supplier's standard price list for the supply of Equipment for the remainder of the Term.

## **11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 11.1 Nothing in the Contract 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) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

- 11.2 Subject to clause 11.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; or
  - (g) any indirect or consequential loss.
- 11.3 Subject to clause 11.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the greater of £5,000 or 100% of the average annual Charges paid under the Contract.
- 11.4 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.
- 11.5 This clause 11 shall survive termination of the Contract.

## 12. Duration and Termination

- 12.1 The Contract shall come into force on the Commencement Date and shall remain in force from the Commencement Date and for the initial Term, and thereafter continue on a rolling 12 month basis ("the Rolling 12 Month Period") unless or until terminated by either party giving to the other at any time not less than three months prior written notice of termination expiring:
- (a) at the end of the initial Term; or
  - (b) thereafter, at the end of a Rolling 12 ~~m~~Month ~~p~~Period.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its

creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

12.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services 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 8.2(b) to clause 8.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them. During any period of suspension, the Customer shall remain liable for a reasonable proportion of the Charges relating to the hire of Equipment.

### **13. Consequences of termination**

13.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Equipment, Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **14. General**

**14.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### **14.2 Assignment and other dealings.**

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

### **14.3 Data Protection**

- (a) Both parties will comply with all applicable requirements of the Data Protection Legislation (which shall mean the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party). This clause 14.3 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- (b) The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

### **14.4 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or

negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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

**14.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**14.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**14.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**14.8 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Order, or as notified in writing from time to time.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**14.9 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**14.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

**14.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.