

shall be supplied to the Customer at the Commencement Date as the case may be and which terms are subject to and incorporated in the Conditions in their entirety.†

- 2.10. Where the Order specifies that Third-Party Products and/or Third-Party Services are being provided to the Customer, the Company shall deliver such Third-Party Products and/or Third-Party Services to the Customer as made available to the Company by the Third-Party supplier. Such Third-Party Products and Third-Party Services may have additional terms which are applicable to them. The Customer shall comply with any such additional terms and shall indemnify and keep indemnified the Company against any loss or damage which the Company may suffer or incur as a result of the Customer's breach of such terms.
- 2.11. The Company may treat the Customer's breach of the additional terms relating to Third-Party Products and/or Third-Party Services as a breach of this contract.
- 2.12. Any quotation given by the Company shall not constitute an offer, is only valid within the calendar month issued to a maximum of 20 Business Days from date of issue and can be withdrawn by the Company at any time.†
- 2.13. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Products or descriptions of the Services contained in the Company's catalogues or brochures or on the Company's website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products. They shall not form part of the Conditions or have any contractual force.†

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- 3.1. †The Customer is wholly responsible for providing the specifications for the Order in sufficient detail to enable the Company to successfully provide Products or to undertake the Services. The Customer shall ensure that the terms of the Order are complete and accurate. †
- 3.2. The Customer shall:
 - 3.2.1. co-operate with the Company in all matters relating to the Services and Products;
 - 3.2.2. provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises and other facilities as reasonably required by the Company to provide the Services;
 - 3.2.3. provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 3.2.4. prepare the Customer's premises for the delivery of the Products and the supply of the Services;
 - 3.2.5. obtain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start and maintain them throughout the term of Service delivery; and
 - 3.2.6. comply with all applicable laws in all matters relating to the Products and Services.
- 3.3. If the Company's performance of any of its obligations under these Conditions is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
 - 3.3.1. without limiting or affecting any other right or remedy available to it, the Company 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 Company's performance of any of its obligations;

- 3.3.2. the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Clause 3.3; and the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

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- 4.1. Unless otherwise agreed, the price for the Products and Services shall be the sum quoted in writing by the Company on receipt of an Order plus any of the following as applicable:
 - 4.1.1. any additional fees or sums payable resulting from variations to the Order requested by the Customer after the quotation was given;
 - 4.1.2. any additional fees or sums incurred as a result of delay caused by the Customer for whatever reason;
 - 4.1.3. any fluctuations caused by but not restricted to increases in costs incurred by the Company as a consequence of any increase in the cost of raw materials, manufacture, packaging, transport or other direct or indirect costs;
 - 4.1.4. any travel and/or accommodation expenses incurred as part of the Services,

any such additional fees or sums shall be added to the price quoted in the Order (together referred to as "the Price") and the adjusted amount shall be invoiced to the Customer.

- 4.2. The Price is exclusive of value added tax which shall be due at the rate ruling on the date of the Company's invoice and shall be added to the Price together with any other statutory tax.
- 4.3. The Company reserves the right to review the Price for Products and Services 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.
- 4.4. The Company reserves the right to review the Price for the Products and Services at any time if there is a change to the price of any Third-Party Products and/or Third-Party Services. Where this results in an increase to the Price, the Company shall give the Customer as much notice as reasonably possible of such increase to the Price but the Customer acknowledges that the Company will only be able to give such notice if the supplier of the Third-Party Products and/or Third-Party Services gives notice to the Company.
- 4.5. Payment of the Price and value added tax shall be due within 30 days of the date of the Company's invoice and shall be made by the Customer without any deduction whatsoever. Time for payment shall be of the essence.
- 4.6. Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% above Royal Bank of Scotland Plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.

- 4.7. If the Customer fails to pay the Price in accordance with the Conditions then the Company may in its absolute discretion suspend provision of the Services until the Customer brings all of its payments up to date. For the avoidance of doubt the Company may suspend any of the Services being provided to the Customer for non-payment by the Customer for other Products or Services notwithstanding that the Customer may have paid in advance for the suspended Service.

5. Delivery of Products

- 5.1. The Order will specify that:
- 5.1.1. the Customer shall collect the Products from the Company's premises or such other address as specified in the Order; or
- 5.1.2. the Company shall deliver the Products to the Customer at the Customer's address or such other address as specified in the Order in accordance with Clauses 2.6, 2.7 and 5.2.
- 5.2. If the Order specifies that the Company will deliver the Products/Services as set out in Clause 5.1.2, the Company will at the Customer's request arrange for carriage of such Products or/and Services to the Customer's address. The costs of such carriage and any insurance which the Customer reasonably directs the Company to incur shall be reimbursed by the Customer without any set off or other withholding whatever and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent.
- 5.3. The Company may deliver the Products by separate instalments as specified in the Order. Each instalment shall be invoiced and paid for separately and shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.4. Delivery of the Products shall be completed on the completion of either collection of the Products by the Customer as set out in Clause 5.1.1 or unloading of the Products at the delivery address as set out in Clause 5.1.2.
- 5.5. Any dates for delivery of the Products are approximate only and the time for delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 5.6. The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver such Products promptly or at all.
- 5.7. Notwithstanding that the Company may have delayed or failed to deliver such Products (or any of them) promptly, the Customer shall be bound to accept delivery and to pay for those Products in full.
- 5.8. If the Customer fails to take or accept delivery of the Products within five Business Days of the Company notifying the Customer that the Products are ready, then except where such failure or delay is caused by the Company:
- 5.8.1. delivery of the Products shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Company notified the Customer that the Products were ready; and
- 5.8.2. the Company may store the Products, and charge the Customer for all related costs and expenses (including insurance).
- 5.9. If ten Business Days after the Company notified the Customer that the Products were ready for collection or delivery the Customer has not taken or accepted delivery

of them, the Company may at its discretion charge the Customer for the Products or resell or otherwise dispose of part or all of the Products and charge the Customer for any shortfall below the price of the Products.

6. Quality of Products

- 6.1. The Company warrants that on delivery, the Products shall:
- 6.1.1. conform in all material respects with their description in the Order; and
- 6.1.2. be free from material defects in design, material and workmanship.
- 6.2. The Customer may reject any Products delivered to it that do not comply with Clause 6.1, provided that:
- 6.2.1. in the case of a defect that is apparent on normal visual inspection, within three Business Days of Delivery;
- 6.2.2. in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and
- 6.2.3. none of the events listed in Clause 6.5 apply.
- 6.3. If the Customer fails to give notice of rejection in accordance with Clause 6.2, it shall be deemed to have accepted these Products.
- 6.4. Subject to Clauses 6.2, 6.5 and 6.6, the Company shall, at its option, repair or replace defective Products, or refund the price of the defective Products in full if:
- 6.4.1. the Company is given a reasonable opportunity of examining such Products; and
- 6.4.2. the Customer (if asked to do so by the Company) returns such Products to the Company's place of business at the Customer's cost.
- 6.5. The Company shall not be liable for the Products' failure to comply with the warranty in Clause 6.1 if:
- 6.5.1. the Customer makes any further use of such Products after giving a notice in accordance with Clause 6.2;
- 6.5.2. the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
- 6.5.3. the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
- 6.5.4. the Customer alters or repairs such Products without the written consent of the Company;
- 6.5.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 6.5.6. the Products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.6. The Customer acknowledges that, in relation to any Third-Party Products and Third-Party Services, the warranties contained in these Conditions do not apply. The Company is only able to make available to the Customer the benefit of the warranties (if any) contained in the relevant terms of the suppliers of such Third-Party Products and/or Third-Party Services. The Company will also help manage the process of delivering such Third-Party Products and Third-Party Services to the Customer, including handling the return merchandise

authorisation for Third-Party Products that are 'dead on arrival'.

- 6.7. Except as provided in this Clause 6, the Company shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in Clause 6.1.
- 6.8. These Conditions shall apply to any repaired or replacement Products supplied by the Company.

7. Title and Risk in Products

- 7.1. The risk in the Products shall pass to the Customer on actual or deemed delivery.
- 7.2. Despite delivery having been made, title in the Products shall not pass from the Company until:
 - 7.2.1. the Customer has paid the Price plus value added tax in full (in cash or cleared funds); and
 - 7.2.2. no other sums whatever shall be due from the Customer to the Company.
- 7.3. Until title in the Products passes to the Customer in accordance with Clause 7.2, the Customer shall:
 - 7.3.1. store the Products (at no cost to the Company) in original packaging separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property;
 - 7.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - 7.3.3. maintain the Products in satisfactory condition and insure and keep them insured to the full price against all risks to the reasonable satisfaction of the Company until the date that title in the Products passes from the Company and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the Customer fails to do so all sums whatever owing by the Customer to the Company shall forthwith become due and payable;
 - 7.3.4. notify the Company immediately if it becomes subject to any of the events listed in Clause 13.1.1 to Clause 13.1.4 (inclusive); and
 - 7.3.5. give the Company such information relating to the Products as the Company may require from time to time.
- 7.4. Notwithstanding that the Products (or any of them) remain the property of the Company, the Customer may (but in relation to Third-Party Products, only where the same is permitted by the supplier of such Third-Party Products) sell or use the physical items of the Products in the ordinary course of the Customer's business (but not otherwise) at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings. Until property in the Products passes from the Company, the entire proceeds of sale or otherwise of the Products shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.
- 7.5. If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in Clause 13.1.1 to Clause 13.1.44 (inclusive) then without limiting any other right or remedy available to the Company:

7.5.1. the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and

7.5.2. the Company may at any time:

7.5.2.1. require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and

7.5.2.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any other party where the Products are stored in order to recover them.

7.6. The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Products which are the property of the Company. Without prejudice to the other rights of the Company, if the Customer does so, all sums whatever owing by the Customer to the Company shall forthwith become due and payable.

8. Supply of Services

- 8.1. The Company shall perform the Services which are to be performed by it (not including any Third-Party Services) to the Customer.
- 8.2. The Customer acknowledges that the Company cannot give any warranties as to the performance of the Third-Party Services. The Company is only able to make available to the Customer the benefit of the warranties (if any) contained in the relevant terms of the suppliers of such Third-Party Services.
- 8.3. Subject to a Force Majeure Event and subject to the performance by the Customer of its relevant obligations under these Conditions, the Company shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.4. The Company reserves the right to amend any description of the Services set out in the Order or otherwise 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, or if a description is changed by a Third-Party supplier of the relevant Services. The Company shall notify the Customer in any such event.

9. Limitation of Liability

- 9.1. Nothing in these Conditions shall limit or exclude the Company's liability for:
 - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 9.1.2. fraud or fraudulent misrepresentation; or
 - 9.1.3. any other liability that cannot be limited or excluded by law.
- 9.2. Subject to Clause 9.1, the Company shall not be liable to the Customer under or in connection with this contract or any Order or the transactions and activities contemplated by them, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, for any:
 - 9.2.1. loss of profits;
 - 9.2.2. loss of sales or business;
 - 9.2.3. loss of agreements or contracts;
 - 9.2.4. loss of anticipated savings;

- 9.2.5. loss of use or corruption of software, data or information;
- 9.2.6. loss of or damage to goodwill; or
- 9.2.7. indirect or consequential loss.

9.3. Without prejudice to clause 9.1 the Customer acknowledges that the Company has no control over the Third-Party Products or the Third-Party Services and agrees that the Company therefore cannot accept any liability in relation to any element of them. In the event that the Third-Party Products or Third-Party Services fail to comply with these Conditions, the Customer's sole remedy will be limited to the remedy that the Company is able to obtain (if any) from the suppliers of the Third-Party Products or Third-Party Services under the Company's agreements with such suppliers.

9.4. Subject to Clauses 9.1, 9.2 and 9.3, the Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with each Order under this contract, shall be limited to 100% of the Price paid by the Customer under the Order to which the claim relates.

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

9.6. This Clause 9 shall survive termination of this contract.

10. Intellectual Property

10.1. Nothing in these Conditions shall change the ownership of any Intellectual Property Rights.

10.2. The Customer grants the Company a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the contract for the purpose of providing the Services to the Customer.

10.3. Where any designs or specifications have been supplied by the Customer for manufacture by the Company, then the Customer warrants that the use of those designs or specifications shall not infringe the Intellectual Property Rights of any third-party. The Customer shall indemnify and keep indemnified the Company against all losses, costs and liabilities incurred by the Company as a result of any claim by a third-party that the designs or specifications supplied by the Customer infringe the Intellectual Property Rights of such third-party.

10.4. All Products sold in retail packaging may be resold by the Customer only in the packaging supplied by the Company and in no case may any trade mark other than those applied by the Company be marked on or applied in relation to those Products.

11. Confidentiality

11.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 11.2.

11.2. Each party may disclose the other party's confidential information:

- 11.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to

whom it discloses the other party's confidential information comply with this Clause 11; and

11.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this contract.

12. Assignment and Subcontracting

12.1. The Customer may not without the Company's written consent assign all or any part of its rights under this contract but the Company may assign all or any part of its rights under this contract at any time without the Customer's consent.

12.2. The Company may subcontract all or any part of its obligations under this contract at any time without the Customer's consent.

13. Termination

13.1. 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:

13.1.1. the other party commits a material breach of its obligations under the contract and (if such breach is remediable) fails to remedy that breach within thirty days after receipt of notice in writing to do so;

13.1.2. 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.1.3. 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

13.1.4. 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.

13.2. Without affecting any other right or remedy available to it, the Company may terminate the contract with immediate effect by giving written notice to the Customer if:

13.2.1. the Customer fails to pay any amount due under the contract on the due date for payment; or

13.2.2. there is a change of control of the Customer.

13.3. Without affecting any other right or remedy available to it, the Company may suspend the supply of Services or all further deliveries of Products under the contract or any other contract between the Customer and the Company if the Customer fails to pay any amount due under the contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 13.1.1 to Clause 13.1.4 (inclusive), or the Company reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of Termination

14.1. On termination of the contract, at the Company's option:

14.1.1. the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services

and Products supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt; or

14.1.2. the Customer shall return all of the Company's materials or Products which have not been fully paid for. If the Customer fails to do so, then the Company 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 this contract.

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

14.3. Any provision of the contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

15. Third-Party rights

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this contract is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions, except where the additional terms applicable to Third-Party Products and/or Third-Party Services require that the suppliers of such Third-Party Products and/or Third-Party Services will have rights under this contract, in which case such suppliers shall have the right to enforce the terms of this contract.

16. Force Majeure

16.1. 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 ability to control including any acts or omissions of the suppliers of any Third-Party Products or Third-Party Services ("Force Majeure Event").

16.2. In the event that a Force Majeure Event is ongoing for a period of sixty days, then the party not affected by the Force Majeure Event shall have the right to terminate this contract immediately on written notice to the other party.

17. Notices

17.1. 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 or by email (with delivery/read receipts retained) to the pre-notified and authorised representatives at the registered office (if a company) or its principal place of business (in any other case).

17.2. 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; and if by email on receipt of a delivery/read receipt by the sender.

17.3. 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.

18. General

18.1. If any term or provision of this contract shall be found to be unenforceable for any reason whatsoever then this contract shall be constructed as if such term or provision was specifically excluded from it.

18.2. A waiver of any right or remedy under these Conditions or by law is only effective if given in writing. The waiver by the Company of any breach of any of the terms of this contract shall not prevent the subsequent enforcement of that term and shall not be deemed to be a waiver of a subsequent breach. A failure or delay by the Company 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 Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.3. Unless the context otherwise requires the singular includes the plural and vice versa, references to persons include references to firms, companies or corporations and vice versa and references in the masculine gender include references to the feminine or neuter genders and vice versa.

18.4. The Clause headings are for reference only and shall not be taken into account in the construction or interpretation of these Conditions.

18.5. Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

18.6. This 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 English law and the Company and the Customer shall submit in all matters or disputes arising out of this contract to the exclusive jurisdiction of the courts of England.