



**EFA (TRADING) LIMITED**  
**TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF GOODS,  
SECOND LIFE VEHICLES, EQUIPMENT AND SERVICES**

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**EFA (TRADING) LIMITED** incorporated and registered in England and Wales under registration number 05351436 and whose registered office is at Kelvedon Park, London Road, Rivenhall, Witham, Essex CM8 3HB (**Supplier**).

## 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.7.

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

**Customer:** the person or organisation who purchases the Goods and/or Services from the Supplier.

**Deliverables:** the deliverables set out in the Order.

**Delivery Location:** has the meaning set out in clause 4.2.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Force Majeure Event:** has the meaning given to it in clause 14.1.

**Goods:** the goods (or any part of them) set out in the Order. Excludes Second Life Vehicles & Equipment

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

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

**Order:** the Customer's order for the supply of Goods and/or Services, as set out the Customer's purchase order form

**Pre-existing Materials:** all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this Contract, including computer programs, data, and reports

**Second Life Vehicles & Equipment:** Vehicles and equipment that is not new or that has been previously used.

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

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer.

**Supplier:** EFA (Trading) Limited

**Supplier Materials:** has the meaning set out in clause 8.1(g).

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods 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 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 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.

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

### **3. GOODS**

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the specification of the Goods or the Goods Specification if required by any applicable statutory or regulatory requirements.

### **4. DELIVERY OF GOODS AND SECOND LIFE VEHICLES AND EQUIPMENT**

4.1 The Supplier shall ensure that:

(a) each delivery of the Goods or Second Life Vehicles & Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods or Second Life Vehicles & Equipment (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods or Second Life Vehicles & Equipment remaining to be delivered; and

(b) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. 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 Goods or Second Life Vehicles & Equipment to the location set out in the Order, or such other location as the parties may agree (**Delivery Location**) on a date that is agreed between the parties (or as

close to that date as is reasonably possible) after the Supplier notifies the Customer that the Goods are ready.

- 4.3 Delivery of the Goods or Second Life Vehicles & Equipment shall be completed on the Goods or Second Life Vehicles & Equipment arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods or Second Life Vehicles & Equipment are approximate only, as set out in clause 4.2 and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods or Second Life Vehicles & Equipment 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 Goods or Second Life Vehicles & Equipment.
- 4.5 If the Supplier fails to deliver the Goods or Second Life Vehicles & Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods or Second Life Vehicles & Equipment of similar description and quality in the cheapest market available, less the price of the Goods or Second Life Vehicles & Equipment. The Supplier shall have no liability for any failure to deliver the Goods or Second Life Vehicles & Equipment to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or Second Life Vehicles & Equipment or any relevant instruction related to the supply of the Goods or Second Life Vehicles & Equipment.
- 4.6 If the Customer fails to accept or take delivery of the Goods or Second Life Vehicles & Equipment within 10 Business Days of the Supplier notifying the Customer that the Goods or Second Life Vehicles & Equipment 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 Goods or Second Life Vehicles & Equipment:
  - (a) delivery of the Goods or Second Life Vehicles & Equipment shall be deemed to have been completed at 9.00 am on the Business Day following the day on which the Supplier notified the Customer that the Goods or Second Life Vehicles & Equipment were ready; and
  - (b) the Supplier shall store the Goods or Second Life Vehicles & Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 15 Business Days after the Supplier notified the Customer that the Goods or Second Life Vehicles & Equipment 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 Goods or Second Life Vehicles & Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess

over the price of the Goods or Second Life Vehicles & Equipment or charge the Customer for any shortfall below the price of the Goods or Second Life Vehicles & Equipment.

- 4.8 In a commercial contract the Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent lesser or greater than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the incorrect quantity of Goods was delivered. Statutory rights of non-commercial customers not affected by this Clause.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. QUALITY OF GOODS**

5.1 The Supplier warrants that on delivery, and for a period of 12 (twelve) months from the date of delivery (**warranty period**), the Goods (excluding Second Life Vehicles & Equipment) shall:

- (a) conform in all material respects with their description and Goods Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 and the Consumer Rights Act 2015); and
- (d) be fit for any purpose held out by the Supplier.
- (e) All warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from the Contract.
- (f) In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and

- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,  
the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods 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, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from the Goods Specification 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 Goods' 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 Goods supplied by the Supplier under clause 5.2.

## **6. TITLE AND RISK**

6.1 The risk in the Goods or Second Life Vehicles & Equipment shall pass to the Customer on completion of delivery.

6.2 Title to the Goods or Second Life Vehicles & Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods or Second Life Vehicles & Equipment, in which case title to the Goods or Second Life Vehicles & Equipment shall pass at the time of payment.

6.3 Until title to the Goods or Second Life Vehicles & Equipment has passed to the Customer, the Customer shall:

- (a) store the Goods or Second Life Vehicles & Equipment separately from all other goods or Second Life Vehicles & Equipment 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 Goods or Second Life Vehicles & Equipment;
- (c) maintain the Goods or Second Life Vehicles & Equipment 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 of the events listed in clause 13.2(a) to clause 13.2(f); and
- (e) give the Supplier such information relating to the Goods or Second Life Vehicles & Equipment as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods or Second Life Vehicles & Equipment in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods or Second Life Vehicles & Equipment. However, if the Customer resells the Goods or Second Life Vehicles & Equipment before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods or Second Life Vehicles & Equipment 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 Goods or Second Life Vehicles & Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(f), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell Goods or Second Life Vehicles & Equipment 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 Goods or Second Life Vehicles & Equipment 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 Goods or Second Life Vehicles & Equipment are stored in order to recover them.



## **7. SUPPLY OF SERVICES AND SUPPLIER OBLIGATIONS**

- 7.1 The Services shall commence on the Commencement Date and shall be for the duration set out in the Order unless terminated early in accordance with the Contract.
- 7.2 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier will:
- 7.2.1 use sufficient personnel who have appropriate skills and experience for their duties;
  - 7.2.2 provide and use sufficient and appropriate equipment and materials required to provide the Services;
  - 7.2.3 obtain and maintain all license, permits and other consents required for its performance of the Services; and
  - 7.2.4 comply with all applicable laws and regulations;
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. Where practicable it will give the Customer reasonable notice of any change.

## **8. CUSTOMER'S OBLIGATIONS**

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods or Second Life Vehicles & Equipment Specification are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (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 to provide the Services;

- (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (e) if applicable, prepare the Customer's premises for the supply of the Services;
- (f) 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; and
- (g) keep and maintain 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.

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

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 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.

## 9. CHARGES AND PAYMENTS

9.1 The price for the Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.

9.2 The price for Services shall be as set out in the Order.

9.3 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in

connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.4 The Supplier reserves the right to:

- (a) increase its charges for the Services. The Supplier will give the Customer written notice of any such increase 1 (one) month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 (two) weeks of the date of the Supplier's notification and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 (four) weeks' written notice to the Customer;
- (b) increase the price of the Goods or Second Life Vehicles & Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods or Second Life Vehicles & Equipment to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods or Second Life Vehicles & Equipment ordered, or the Goods or Second Life Vehicles & Equipment Specification; or
  - (iii) any delay caused by any instructions of the Customer in respect of the Goods or Second Life Vehicles & Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods or Second Life Vehicles & Equipment.

9.5 In respect of Goods or Second Life Vehicles & Equipment, the Supplier shall invoice the Customer before delivery of the Goods or Second Life Vehicles & Equipment. The Goods or Second Life Vehicles & Equipment shall be delivered by the Supplier on receipt of payment from the Customer. In respect of Services, the Supplier shall invoice the Customer before the performance of the Services and shall not start performance of the Services until the Customer has made the payment.

9.6 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 (thirty) 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.

- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts Regulations. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Nothing in the Contract will affect the rights (including Intellectual Property Rights) in the Supplier Materials which are and shall remain vested in the Supplier.
- 10.2 To the extent that the Supplier Materials are used or incorporated into the Services or any part of the Deliverables then the parties acknowledge and agree that the Customer is licensed to use the same upon the terms set out in clause 10.3.
- 10.3 The Supplier hereby grants to the Customer a royalty-free, worldwide licence, revocable only for breach by the Customer of the terms of the Contract, to use the Supplier Materials solely to the extent necessary to use the results of the Services. The Customer:
- 10.3.1 will not use the Supplier Materials for any other purpose;
  - 10.3.2 will not modify or reverse engineer or take any similar action in relation to any propriety software of the Supplier (except so far as required for interoperability);
  - 10.3.3 may sublicense its Affiliates to use the Supplier Materials on the terms of this clause 10.3, and provided that the Customer is liable for any breaches by them of such terms, but will not otherwise assign, sublicense or deal with the Supplier Materials;

- 10.3.5 hereby assigns to the Supplier, on their creation, all Intellectual Property Rights which arise or are created by any use by it of, or work done by it on, the Supplier Materials or the results of the Services.
- 10.4 The Supplier will defend or, at its option, settle any action brought against the Customer arising from any claim that the receipt by the Customer of the Services or use by it of the results of the Services, in both cases in accordance with the Contract, infringes any third party intellectual property right, and indemnify the Customer against all reasonable costs and expenses incurred by the Customer in connection with such claim.
- 10.5 The Supplier's obligations under clause 10.4 will not apply to Services received, or where their results are modified or used, by the Customer other than in accordance with the Contract. The Customer will indemnify the Supplier against all reasonable costs and expenses incurred by the Supplier in connection with any claim arising from such receipt, modification or use.
- 10.6 The Supplier's obligations under clause 10.4 are conditional on the Customer:
- (a) promptly advising the Supplier in writing of any claim or action;
  - (b) making no admission as to, or settlement or compromise of any claim or action without the Supplier's prior written consent;
  - (c) giving the Supplier sole conduct of any defence and any settlement negotiations; and
  - (d) co-operating fully with the Supplier at the Supplier's expense and providing the Supplier with all reasonable assistance in the defence or settlement of such claim or action.
- 10.7 The Customer's reasonable costs of compliance with clauses 10.6(c) and 10.6(d) will be paid by the Supplier.
- 10.8 The provisions of this clause 10 set out the Supplier's entire liability and the Customer's sole right in respect of third party infringement of any intellectual property right.

## **11. CONFIDENTIALITY**

- 11.1 The Customer undertakes that it shall not at any time during this Contract or after its termination, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain, except as permitted by clause 11.2.
- 11.2 The Customer may disclose the Supplier's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers,

representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 The Customer shall not use the Supplier's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

11.4 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier Material) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

11.5 This clause 11 shall survive termination of the Contract.

## **12. LIMITATION OF LIABILITY AND INSURANCE:**

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

12.2 Subject to clause 12.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of data or use, loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% (one hundred and twenty five percent) of the Contract price for the Goods or Services.

- 12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.4 Throughout the duration of the Contract the Supplier shall have in force and with reputable insurer professional indemnity insurance and employer's liability insurance.

### **13. TERMINATION**

- 13.1 In the event of contract being made for the Supplier to provide the Customer a training service, event or product; if the Customer cancels the contract, they shall unless agreed otherwise between the Parties pay to the Supplier the following amounts, representing the Supplier's anticipated losses:
- (a) Cancellation within 2 weeks of the agreed date for delivery of the training, the full cost of the training;
  - (b) Cancellation within 4 weeks of the agreed date for delivery of the training, 50% of the full costs of the training;
  - (c) Cancellation within 6 weeks of the agreed date for delivery of the training, 25% of the full costs of the training.

For the avoidance of doubt the Customer agrees that this Clause 13.1 represents a genuine pre-estimate of loss on the part of the Supplier.

- 13.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 20 (twenty) days after being notified in writing to make such payment;]
  - (b) the other Party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 (thirty) days after being notified [in writing to do so;
  - (c) the other Party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
  - (d) 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];

- (e) 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
- (f) 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 this Contract has been placed in jeopardy.

13.3 For the purposes of clause 13.1.(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Party would otherwise derive from:

- (a) a substantial portion of this Contract; or
- (b) any of the obligations set out in clauses 5, 7, 8, 10, 11 and 15.

over the term of this Contract.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

13.4 The Customer may terminate the Contract for whatever reason (**termination for convenience**) by giving the Supplier at least 3 (three) months prior written notice (unless a shorter period is agreed) and such termination shall not affect the Customer's obligation to pay for any Services to be performed up to the date of termination.

13.5 In the event of the Customer terminating this Contract in accordance with clause 13.4, the Customer shall be liable to pay to the Supplier an amount equal to the full price for the Services as set out in Schedule 3 for the unexpired term. The Parties agree that such an amount constitutes a genuine attempt to estimate the Supplier's losses resulting from the termination. This clause 13.5 shall not apply if the Customer terminates the Contract as a result of the Supplier's breach.

13.6 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet 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 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 this Contract;

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

#### **14. FORCE MAJEURE**

14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14.2 A party will not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:

14.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and

14.2.2 uses reasonable endeavours to minimise the effects of that event.

14.3 If, due to Force Majeure, a party:

14.3.1 is or will be unable to perform a material obligation; or

14.3.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 (thirty) days in any Year,

the other party may, within 30 (thirty) days, either terminate this Contract on immediate notice renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

#### **15. DATA PROTECTION AND FREEDOM OF INFORMATION**

15.1 The Supplier shall process Personal Data for and on behalf of the Customer in accordance with the instructions of the Customer and for the purpose of performing its obligations under the Agreement and to ensure compliance with the Data Protection Act 1998 (the 1998 Act) and any other applicable data protection legislation.

15.2 Both parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act.

15.3 The Supplier is subject to the provisions of the Freedom of Information Act 2000 and the parties shall assist each other to ensure compliance with these Acts. The parties acknowledge that they may be obliged to disclose Information relating to this Contract.

## **16. DISPUTE RESOLUTION PROCEDURE**

16.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Customer requests in writing that the Supplier does not do so).

16.2 If a dispute arises between the Customer and the Supplier in relation to any matter which cannot be resolved by the Parties either of them may refer such dispute to the Dispute Resolution Procedure.

16.3 In the first instance the Customer and the Supplier shall arrange for a senior officer from each organisation to meet solely in order to resolve the matter in dispute. Such meeting(s) shall take place within 21 days of the date of the commencement of the relevant dispute, shall be minuted and shall be chaired by the Customer (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.

16.4 If the meeting(s) referred to in Clause 16.3 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). Neither Party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as the mediator shall require and will pay the costs, as the mediator shall determine or in the absence of such determination such costs will be shared equally.

## **17. GENERAL**

### **17.1 Assignment and other dealings.**

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

### **17.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail
- (b) A notice or other communication shall be deemed to unless other terms of this contract specify the means of delivery. have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at [9.00 am] on the [second] Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

### **17.3 Severance.**

- (a) 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.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the

parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 17.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.6 **Third Parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier and the Customer.
- 17.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 17.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

**18. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 18.1 No person who is not a Party to the Contract (including without limitations any employee, officer, agent, representative or sub-contractor or either the Company or the contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties. This Clause does not affect any right or remedy of any person, which exists or is available otherwise than pursuant to that Act.