

## 1. INTERPRETATION

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

1.2. Definitions:

**Booking Form** means the booking form used by the Customer to book the Public Courses.

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

**Charges** means the charges payable by the Customer for the supply of the Services in accordance with the Quotation or Booking Form and clause 6 (Charges and payment).

**Commencement Date** has the meaning given to it in clause 2.2 or 2.3 as applicable.

**Conditions** means these terms and conditions as amended from time to time in accordance with clause 12.5.

**Confidential Information** means in the case of either party, all information (in any media) of a confidential nature disclosed by that party, its employees, agents, consultants or subcontractors to the other, including Intellectual Property Rights, Specifications, inventions processes or initiatives.

**Contract** means the contract between the Supplier and the Customer for the supply of the Services comprising these Conditions, the Quotation, the Booking Form and any Special Conditions.

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

**Customer** means the person or firm who purchases Services from the Supplier as identified in the Quotation or the Booking Form as applicable.

**Customer Default** has the meaning set out in clause 5.2.

**Data Protection Legislation** (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and; (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.

**Deliverables** means the drawings, Specifications, technical know-how, plans, reports, models, presentation materials, brochures, guides, course notes, training materials or promotional materials and any other further deliverables as set out in the Quotation or the Booking Form.

**GDPR** means General Data Protection Regulation ((EU) 2016/679).

**Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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** means a request for Services made by the Customer either by (1) telephone on 02920 099002; (2) email (info@mentertraining.com); (3) through the Website; or (4) by post to 74-78 Park Road, Whitchurch, Cardiff CF14 7BR);

**Premises** means the Customers premises at which the Private courses may be provided as stated in the Quotation.

**Private Courses** means the training services provided by the Supplier to the Customer at the Premises, including the Deliverables as set out in the Specification.

**Public Courses** means the training courses hosted by the Supplier either at a public location, or the Suppliers own premises, as specified, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification. The Customer may book one or several spaces on such public courses in accordance with the terms of these Conditions subject to availability.

**Quotation** means the quotation for the Services provided by the Supplier to the Customer.

**Services** means the Private Courses and the Public Courses collectively.

**Specification** means the description or specification of the Services provided in writing by the Supplier to the Customer, in the Quotation, or as requested in the Booking Form.

**Special Conditions** means any special conditions provided by the Supplier to the Customer from time to time.

**Supplier** means Menter Training Limited registered in England and Wales with company number 07493434 with its registered office address at 74-78 Park Road, Whitchurch, Cardiff, Wales, CF14 7BR.

**Supplier Materials** has the meaning set out in clause 5.1.7.

**Website** means the Suppliers website at [www.mentertraining.com](http://www.mentertraining.com).

1.3. Interpretation:

1.4. 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.

1.5. 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.

1.6. A reference to writing or written includes email unless otherwise expressly stated.

## 2. BASIS OF CONTRACT

2.1. The Order is a request for Services from the Customer. Following receipt of an Order, the Supplier shall consider the content of the Order and may discuss the specific requirements of the Order with the Customer, prior to issuing the Customer with a Quotation. The Quotation constitutes an offer by the Supplier to provide Services in accordance with these Conditions. For the avoidance of doubt, the Customer may request both Private Courses and Public Course in accordance with this clause.

2.2. The Quotation shall be deemed to be accepted upon the Customers signature of the Quotation on which date the Contract shall come into existence (Commencement Date).

2.3. The Booking Form is a request for Public Courses only. The Customer shall complete the Booking Form and submit a copy to the Supplier either over email or through the Website. The Booking Form constitutes an offer by the Customer to receive the Public Courses in accordance with these conditions. The Supplier and the Customer may enter into discussions via email or telephone, and amend the content of the Booking Form until the Booking Form is mutually agreed between the parties. The Booking Form shall only be deemed to be accepted upon the Suppliers provision of a confirmation email (Commencement Date).

2.4. The Services shall only be requested once a Contract comes into existence in accordance with clause 2.2 or 2.3. Any places specified on the Quotation are true as at the time of issue of the Quotation, and may be resold by the Supplier at any time prior to acceptance of the Quotation by the Customer. The Supplier shall notify the Customer in the event that the places have sold out prior to the Customers' acceptance of the Quotation.

2.5. The Services, and the Customers space on the course shall only be confirmed and reserved upon payment of the Charges. The Supplier reserves the right to sell the spaces at any time until full payment of the Charges has been received from the Customer. The Supplier shall notify the Customer in the event that the places have sold out prior to receipt of the Customers' payment of the Charges.

2.6. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them shall not form part of the Contract or have any contractual force.

2.7. 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, and shall prevail over any terms or conditions contained or referred to in the Order or other Customer correspondence. No variation or addition or exclusion of these Conditions shall be binding upon the Supplier unless agreed in accordance with clause 12.5.

2.8. The Quotation given by the Supplier, or the Booking Form provided by the Customer, is only valid for a period of thirty (30) days (or such shorter period if the Services are due to start in less than thirty (30) days or such other duration as stated on the Quotation, or Booking Form, or as otherwise notified by the Supplier, and the Supplier or the Customer (as applicable) shall be entitled to vary or withdraw a Quotation or a Booking Form (as applicable) at its discretion after this time.

2.9. All the provisions of the Contract between the Supplier and the Customer are contained in or referred to in the Quotation or the Booking Form as applicable, these Conditions and (if applicable) the Special Conditions. In no event shall any conditions of purchase submitted at any time by the Customer be applied to the Contract and any failure by the Supplier to challenge any such terms and conditions does not imply acceptance.

2.10. In the event of any conflict between the terms and conditions contained in the Quotation or Booking Form, Special Conditions and these Conditions, the following order of precedence shall apply to the extent of the inconsistency only (1) the Special Conditions (2) the Quotation (3) Booking Form (4) These Conditions.

## 3. SUPPLY OF SERVICES

3.1. The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects. The Supplier shall supply the Services to the Customer using all reasonable skill, care and diligence to the standards of a reasonably qualified and competent provider of services similar to the Services.

3.2. The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Quotation or the Booking Form but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3. 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.

3.4. The Private Courses shall be carried out at the Premises.

3.5. The Public Courses shall be carried out through attendance at a public course provided by the Supplier at a pre-arranged venue.

## 4. CANCELLATION TERMS

4.1. The Supplier reserves the right to cancel or postpone any Public Courses in the case of insufficient delegate numbers. Alternative training courses shall be provided wherever possible, and the Supplier shall use all responsible endeavours to find a suitable alternative course, however the Supplier shall hold no liability in the event that it is unable to do so. In such instances, any Charges paid in relation to the Public Courses shall be refunded to the Customer if the Customer cannot attend an alternative course, or the Public Courses are cancelled.

4.2. Subject to the cancellation charges in clause 4.5, the Customer has the right to cancel Services by providing written notice to the Supplier.

4.3. Subject to the cancellation charges in clause 4.5, in relation to Public Courses only, the Customer has the right to transfer to an alternative course (spaces permitting), provided that no less than seven (7) days' notice is provided in writing prior to the start date of Public Courses, specifying the alternative course to be transferred to. Should a booking be transferred to another course with a start date within seven (7) days of the notice, a charge of either £50 or 50% of the Charges whichever is the greater, shall be incurred.

4.4. The Customer has the right to change the name of the delegate attending Services, provided no less than three (3) days' notice is given prior to the start date of the Services.

4.5. In the event that the Customer (i) cancels the Services in accordance with clause 4.2, (ii) fails to attend the Services without notice or transfer to an alternative course in accordance with clause 4.3; or (iii) fails to provide a substitute in accordance with clause 4.4, the Supplier has the right to charge the following cancellation charges:

4.5.1. notice provided more than 28 days prior to the course start date – no charge;

4.5.2. notice provided 15 to 28 days (inclusive) prior to the course start date – 50% of the Charges;

4.5.3. notice provided less than 14 days before the course start date, or no notice provided at all – 100% of the Charges plus any travel or accommodation costs incurred which are unable to be reimbursed.

4.6. These Conditions do not affect any of your statutory rights where you are a person dealing as consumer, not for business purposes. Any section which would otherwise exclude or restrict your rights as a consumer will, to that extent have no force or effect. If you have entered the Contract as a consumer from a location outside of the Suppliers premises, either online, via telephone or email, then you shall have a fourteen (14) day cooling off period to change your mind under the Consumer Contracts Regulations 2013. If the Services are completed within the fourteen (14) day period, this right will expire.

4.7. The Supplier shall not provide any refunds, unless in accordance with clause 4.1.

## 5. CUSTOMER'S OBLIGATIONS

5.1. The Customer shall:

- 5.1.1. ensure that the terms of the Order and any information it provides in the Specification are complete and accurate, and 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, accurate and legitimate in all material respects, and shall ensure that none of it infringes the Intellectual Property or defames any person, and shall indemnify and hold harmless the Supplier accordingly. The Supplier shall have no obligation to check the accuracy of any information provided and the Supplier accepts no liability for the incorrect provision of Services based on the information provided by the Customer under the Contract;
  - 5.1.2. co-operate with the Supplier in all matters relating to the Services;
  - 5.1.3. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Premises, office accommodation and other facilities as reasonably required for the Supplier to perform the Private Courses;
  - 5.1.4. prepare the Premises for the supply of the Private Courses, and wherever possible provide a car parking facility for use by the Supplier personnel whilst attending the Premises which is free from legal restrictions and close to the location of the premises;
  - 5.1.5. obtain and maintain all necessary licences, permissions and consents which may be required for the Private Courses before the date on which the Private Courses are to start;
  - 5.1.6. comply with all applicable laws, including health and safety laws;
  - 5.1.7. keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the 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;
  - 5.1.8. comply with any additional obligations as set out in the Specification;
  - 5.1.9. be solely responsible for maintaining back-up and disaster recovery procedures and all other information that the Customer provides to the Supplier from time to time (with the exception of personal data provided under clause 8); and
  - 5.1.10. the Customer acknowledges that the provision by the Supplier of the Services in accordance with the Contract does not absolve the Customer from any obligation, including any statutory obligation, to which from time to time it may be subject.
- 5.2. 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):
    - 5.2.1. 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;
    - 5.2.2. 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 5.2; and
    - 5.2.3. 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.
  - 5.3. In the event that the Customer fails to notify the Supplier of any problem or concern within three (3) Business Days of the Supplier carrying out the Services, the Customer shall be deemed to have accepted the same.
- 6. CHARGES AND PAYMENT**
- 6.1. The Charges for the Services shall be those agreed and set out in the Quotation or the Booking Form.
  - 6.2. The Customer shall pay the Charges either (i) upon the Customers' acceptance of the Quotation; (ii) following receipt of the confirmation email to the Booking Form in accordance with clause 2.3; or (iii) within thirty (30) days of the date of any invoice, as the Customer chooses. The Services shall only be confirmed once full payment has been received by the Supplier in accordance with clause 6.3. The Customer shall not be entitled to receive the Services until payment has been made.
  - 6.3. Charges must be paid in full and cleared funds in pounds sterling by BACS transfer, or via credit card through WorldPay, into such Supplier account as notified to the Customer from time to time or as detailed on the invoice. Time for payment shall be of the essence of the Contract.
  - 6.4. 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 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.
  - 6.5. The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date and the Supplier shall notify the Customer of any resulting changes at least thirty (30) days prior to implementation in the event there is a Contract in place.
  - 6.6. 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.
  - 6.7. 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 10, 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 6.7 will accrue each day at 8% per annum above the Bank of England's base rate from time to time. The Supplier shall be entitled to reclaim all costs incurred in obtaining collection of overdue amounts, and the Customer shall indemnify the Supplier in relation to the same.
  - 6.8. 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).
  - 6.9. The Supplier reserves the right to refuse entry to a Public Course in the event that the Customer has not paid the Charges in accordance with clause 6.2 and 6.3. Full Charges shall still be payable in the event that entry is refused.
- 6.10. Training certificates shall not be provided unless and until payment of the Charges have been received.
  - 6.11. If the Customer requires the Supplier to carry out any additional Service above what is covered in the Quotation or the Booking Form, the Supplier shall be entitled to make additional charges for such services.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1. All Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
  - 7.2. The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to view, print out and copy text from the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business, provided that they are copied without modification or changing the original meaning, and the Customer shall clearly acknowledge the identity of the Intellectual Property and may not claim any Intellectual property Rights in the Deliverables whatsoever.
  - 7.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 7.2.
  - 7.4. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
  - 7.5. The Customer acknowledges that the Supplier shall have no liability for any misuse by or on behalf of the Customer or any other person of any of the Deliverables.
  - 7.6. The Customer hereby agrees to fully indemnify and hold the Supplier harmless in respect of any third party claims brought against the Supplier as a result of using the Intellectual property provided by the Customer to the Supplier under the Contract.
  - 7.7. The Customer shall not be entitled to rely upon the Deliverables for any other reason other than the purpose for which they were provided.
- 8. DATA PROTECTION AND DATA PROCESSING**
- 8.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
  - 8.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
  - 8.3. Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the Contract.
  - 8.4. Without prejudice to the generality of clause 8.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
    - 8.4.1. process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (Applicable Data Processing Laws). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit the Supplier from so notifying the Customer;
    - 8.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
    - 8.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
    - 8.4.4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
      - 8.4.4.1. the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
      - 8.4.4.2. the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
      - 8.4.4.3. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
      - 8.4.4.4. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.
    - 8.4.5. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
    - 8.4.6. notify the Customer without undue delay on becoming aware of a Personal Data breach;
    - 8.4.7. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and
    - 8.4.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 8.
  - 8.5. The Customer consents to the Supplier appointing Bright Office, Cloud 50 and World Pay as a third-party processor of Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written

- agreement. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.
- 8.6. Either party may, at any time on not less than thirty (30) days' notice, revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 9. LIMITATION OF LIABILITY AND REMEDIES:**
- 9.1. Nothing in the Contract shall limit or exclude the Supplier'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. breach of the terms implied by 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.
- 9.2. Subject to clause 9.1, 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:
- 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. any indirect or consequential loss.
- 9.3. Subject to clause 9.1, 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 100% of the total Charges paid under the Contract.
- 9.4. 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.
- 9.5. These Conditions do not affect any of your statutory rights where you are a person dealing as consumer, not for business purposes. Any section which would otherwise exclude or restrict your rights as a consumer will, to that extent have no force or effect.
- 9.6. Save as required by law, the Customers exclusive remedy for any default or defect in the performance of the Services by the Supplier, shall be to correct or re-perform the defective Services. If it is not feasible to re-perform the defective Services, the Customers exclusive remedy shall be a full or partial credit of the sum paid (Subject always to the provisions of this clause 9).
- 9.7. This clause 9 shall survive termination of the Contract.
- 10. TERMINATION**
- 10.1. Without affecting any other right or remedy available to it, and subject always to clause 4, either party may terminate the Contract by giving the other party thirty (30) days written notice.
- 10.2. 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:
- 10.2.1. 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 fourteen (14) days of that party being notified in writing to do so;
- 10.2.2. 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;
- 10.2.3. 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
- 10.2.4. 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.
- 10.3. 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:
- 10.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 10.3.2. there is a change of Control of the Customer.
- 10.4. 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 10.2.2 to clause 10.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 11. CONSEQUENCES OF TERMINATION**
- 11.1. On termination of the Contract:
- 11.1.1. 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;
- 11.1.2. 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 the Contract.
- 11.2. Termination or expiry 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.
- 11.3. 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.
- 12. GENERAL**
- 12.1. **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.
- 12.2. Assignment and other dealings.**
- 12.2.1. 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.
- 12.2.2. 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.
- 12.3. Confidentiality.**
- 12.3.1. Neither party shall announce the existence of the Contract, or that the Services have been provided without the other party's prior written consent, such consent shall not be unreasonably withheld.
- 12.3.2. 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 12.3.3.
- 12.3.3. Each party may disclose the other party's confidential information:
- 12.3.3.1. 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 the 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 12.3; and
- 12.3.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3.4. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 12.4. Entire agreement (business users only).**
- 12.4.1. 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.
- 12.4.2. 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.
- 12.4.3. Nothing in this clause shall limit or exclude any liability for fraud.
- 12.5. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing (email shall not suffice) and signed by the parties (or their authorised representatives).
- 12.6. **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.
- 12.7. **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.
- 12.8. **Notices.**
- 12.8.1. 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 at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified by the Supplier from time to time.
- 12.8.2. 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; or, if sent by email, at 9.00 am on the next Business Day after transmission.
- 12.8.3. 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.
- 12.9. Third party rights.**
- 12.9.1. 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.
- 12.9.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 12.10. **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.
- 12.11. **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.