

TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions the following definitions apply:
- "Business Hours"** 9:00am to 5:00pm Monday to Friday excluding UK bank holidays and public holidays;
- "Commissioning Report"** any report which is compiled by, or any certificate which is issued by, the Company, in relation to the commissioning of the Equipment;
- "Company"** BISAF Limited;
- "Company's Charge Rate"** the Company's relevant charges (which shall bear VAT) in force and notified to the Customer in writing from time to time in respect of the Services and/or Parts in addition to those supplied under the terms of the Customer's chosen Contract Service Level or where otherwise specified under the terms of the Contract;
- "Company Technician"** a Company technician or engineer, including any Company nominated subcontractor, agent or other person authorised by the Company;
- "Conditions"** these Terms and Conditions of Supply;
- "Confidential Information"** any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential;
- "Contract"** the contract between the Company and the Customer for the supply of Installation Works, Services and/or Parts in accordance with these Conditions;
- "Contract Service Level"** any one of the maintenance service levels chosen by the Customer;
- "Customer"** the person or firm who purchases the Installation Works, Services and/or Parts from the Company;
- "Customer's Premises"** the premises at the Customer's address stated in the Order, where the Equipment is to be installed and located, or at such other address notified in writing to the Company as being the place at which the Equipment is to be installed and located;
- "Equipment"** the equipment, machinery and/or Parts as described or listed in the Order and to which the provision of the Installation Works and the Services relates;
- "Force Majeure Event"** an event beyond the reasonable control of the Company including without limitation strikes, lock-outs or other industrial disputes (whether involving the Company's workforce or that of 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;
- "Installation Works"** the work required to be undertaken by the Company to install the Equipment at the Customer's Premises and the subsequent commissioning of the Equipment by the Company;
- "Intellectual Property Rights"** any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;
- "Order"** the Customer's order and/or specification for the supply of Installation Works, Services and/or Parts;
- "Parts"** parts/replacement parts integral to/for the Equipment;
- "Scheduled Tests"** the schedule of tests and checks appropriate to the Equipment or the Contract Service Level;
- "Services"** the services, including site welding services, supplied by the Company to the Customer for the servicing of the Equipment, including the inspection, repair and maintenance of the Equipment;
- "Standard Contract Fee"** the standard fee (plus VAT) for the provision of the Installation Works and also for the provision of the Services and/or Parts for a 12-month period as quoted to the Customer and/or stated in the invoice to the Customer, payable by the Customer in accordance with the terms of the Contract;
- "Time and Material Work"** any additional service repair work and/or Parts provided by the Company to a Customer outside the scope of the Customer's agreed Contract Service Level;

"VAT" United Kingdom value added tax at the appropriate rate in force.

- 1.2 In these Conditions the following rules apply:
- (a) words in the singular number shall include the plural and vice versa and words in the masculine gender shall include the feminine and neuter genders;
 - (b) a reference to a clause is to a clause of these Conditions;
 - (c) headings are for convenience only and shall not affect the interpretation of any provision;
 - (d) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (e) any reference to **parties** means the parties to the Contract and **party** shall be construed accordingly;
 - (f) a reference to a party includes its successors or permitted assigns;
 - (g) 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;
 - (h) 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 Installation Works, Services and/or Parts from the Company in accordance with these Conditions.
- 2.2 The Contract shall only come into existence when the Company accepts the Order in writing.
- 2.3 The Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Company shall not constitute an offer.
- 2.6 All of these Conditions shall apply to the supply of Installation Works, Services and Parts except where application to one or the other is specified. The Installation Works, Services and Parts are also referred to collectively in clause 17 as the **"Supplies"**.
- 2.7 In consideration of the payment by the Customer to the Company of the Standard Contract Fee the Company will supply the Installation Works to the Customer and will also supply the Services and/or Parts to the Customer for a period of 12 months from the date of commencement of the Contract in accordance with the Contract Service Level chosen by the Customer.

3. SCOPE OF CONTRACT

- 3.1 All warranties, guarantees and other obligations of the Company under the Contract shall apply provided the Equipment has been operated in accordance with the instructions of the manufacturer and/or the Company.
- 3.2 The Customer acknowledges that the Company does not accept any responsibility or liability under the Contract for any loss or damage suffered or incurred by the Customer if such loss or damage occurs as a direct or indirect result of the Customer's failure to follow or adhere to any recommendations made by the Company.
- 3.3 The Contract does not apply to attendant equipment or installations or electricity or other services provided or connected to or associated or used with the Equipment. If in the reasonable opinion of a Company Technician any such equipment or installations or electricity or other services provided or connected to or associated or used with the Equipment is at any time considered unsafe, the Company's obligations under the Contract shall immediately be suspended until the matter is rectified to the reasonable satisfaction of a Company Technician. In the case of doubt, the Company will recommend that advice is taken from an independent qualified advisor and the Customer and the Company agree to abide by the decision of such independent qualified advisor.

- 3.4 If in the reasonable opinion of a Company Technician the Equipment is beyond reasonable repair, condemned or deemed obsolete, it will immediately cease to be covered by the Contract.
- 3.5 Provided the Company agrees in writing, the terms of the Contract may be assigned such that they apply to any new equipment that replaces the Equipment.
- 3.6 Any modification of the Equipment which is necessitated by any statute, statutory regulation or other applicable law shall be entirely at the Customer's own cost and expense.

4. PROVISION OF THE SERVICES

- 4.1 The Company agrees to provide the Services to the Customer using reasonable skill and care by means of a Company Technician in all material respects in accordance with the appropriate Contract Service Level chosen by the Customer.
- 4.2 On the first visit by a Company Technician to perform the Services under the Contract (whichever Contract Service Level the Customer has selected), the Company will inform the Customer of any remedial work that is required outside normal servicing to return the Equipment to a satisfactory condition. The Company will provide the Customer with an estimate of its charges for any such work and upon the Customer's acceptance the work will be carried out. Payment will be due from the Customer against the rendering of the Company's invoice on completion of the work.
- 4.3 Any Time and Material Work will be carried out by a Company Technician according to the Customer's chosen Contract Service Level and charged at the Company's Charge Rate.
- 4.4 The Company shall use all reasonable endeavours to meet any performance dates agreed with the Customer but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.5 The Company may 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 Company shall notify the Customer in any such event.

5. AD HOC PROVISION OF THE SERVICES

- 5.1 The Company may provide all or any part of the Services (including the provision of Parts) to a Customer on an ad hoc or one-off basis including where applicable in circumstances where the Customer has not selected any of the Contract Service Levels and/or where the Customer is charged on a different basis from the charging basis set out in these Conditions.
- 5.2 If the Company provides all or any part of the Services (including the provision of Parts) to a Customer on an ad hoc or one-off basis as set out in clause 5.1 then these Conditions shall apply, with the necessary changes having been made, to the extent that they do not conflict with any other terms agreed in writing between the Company and the Customer.

6. SERVICE INSPECTION

6.1 Inspection and Service

- (a) a Company Technician will carry out the number of routine inspections of the Equipment as agreed with the Customer, at the Customer's Premises.
- (b) during each inspection, a Company Technician will carry out the Scheduled Tests. Following each inspection the Company will send the Customer a copy of the Company Technician's inspection report. The Customer may obtain a copy of the Scheduled Tests from the Company at any time during Business Hours.
- (c) all routine inspections will be performed during Business Hours. If the Company is required to make routine inspections or service calls outside Business Hours it will be entitled to charge for these at the appropriate higher level of the Company's Charge Rate.
- (d) all routine work undertaken and Parts used in that connection, including any not specified in the Scheduled Tests, will be charged at the Company's Charge Rate.
- (e) if during a routine inspection the Company Technician is of the reasonable opinion that major repairs to the Equipment are necessary, these will be

charged for separately and a written estimate of the Company's costs for such repairs will be provided to the Customer upon request. The Company will only commence carrying out such repairs on receipt of the Customer's written acceptance of the Company's estimate.

6.2 Breakdown

In the event of a breakdown:

- (a) the Company shall use all reasonable endeavours to repair the Equipment within a reasonable time of being notified of the breakdown. If the Customer does not permit the necessary work to be undertaken the Company reserves the right to charge for the Company Technician's time at the Company's Charge Rate; and
- (b) the Company will charge for Parts and labour supplied at the Company's Charge Rate.

6.3 Insurance Inspections

Where complete stripping down of Equipment is carried out, as appropriate, or if it is required by an insurer, the Company will charge an additional amount at the Company's Charge Rate in respect of labour and Parts supplied.

7. INSTALLATION

7.1

The Company will undertake the performance of the Installation Works using reasonable skill and care. The Company may make any changes to the Installation Works which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Installation Works, and the Company shall notify the Customer in any such event.

7.2

With respect to the Installation Works, the Customer shall, at its sole cost:

- (a) be responsible for preparing any relevant part of the Customer's Premises for the performance of the Installation Works (including ensuring that any necessary civil works are completed within any timescales notified to the Customer by the Company) and for reinstating any such part of the Customer's Premises and undertaking any required making good and clean-up work once performance of the Installation Works has been completed;
- (b) ensure that conditions at the Customer's Premises are suitable for the performance of the Installation Works and that any relevant thing required to perform the Installation Works thereon is made readily available to the Company (including adequate lighting and an adequate supply of electricity) and is in good working order and that ready access to adequate and clean toilet and washing facilities is provided to the Company's personnel;
- (c) provide facilities at the Customer's Premises for the off-loading and storage of the Company's tools and equipment in a readily accessible and secure storage area protected from theft and damage and shall be solely responsible for the safekeeping of the Company's tools and equipment whilst the same are stored at the Customer's Premises;
- (d) take all steps to ensure the health and safety of the Company's personnel whilst they are in attendance at the Customer's Premises in connection with the performance of the Installation Works and be solely responsible for ensuring the safety of any and all persons who are or may be present at the Customer's Premises during the performance of the Installation Works, including restricting access to those areas of the Customer's Premises where the Installation Works are to be performed to those individuals engaged in performing the Installation Works, or providing assistance to those so engaged;
- (e) provide prompt and unobstructed access to and egress from the Customer's Premises;
- (f) inform the Company of any unusual layout, composition or construction of the Customer's Premises or its parts and for reporting any unusual conditions or obstacles to the performance of the Installation Works at the Customer's Premises to the Company;

<p>(g) notify the Company of any special properties of, or requirements of the Customer in relation to, any surfaces, fixtures or fittings at the Customer's Premises, as the Company shall not in any event be held liable for any damage resulting directly or indirectly from the installation of the Equipment to the Customer's property, fixtures or fittings, including damage caused by the drilling of walls, tiles, glass or other surfaces, the removal of fixtures and fittings whether obsolete or not, or damage to porous or any other materials;</p> <p>(h) ensure that any materials and/or surfaces upon which the Installation Works are to be performed comply with any tolerances required by the Company and are of adequate strength to withstand any work undertaken on them by the Company and to support the Equipment and the maximum loads to be imposed on the Equipment;</p> <p>(i) at all times during the performance of the Installation Works ensure, insofar as it is reasonably practicable to do so, that other trades or operations are not undertaken on that part of the Customer's Premises where the performance of the Installation Works is to take place, so as to ensure that the Installation Works can be performed in one continuous, uninterrupted operation during Business Hours;</p> <p>(j) be responsible at its own cost (other than for statutory obligations placed solely on the Company) for obtaining all consents, permissions, easements and licences necessary for the performance of the Installation Works in accordance with these Conditions and for complying with all Statutes and Orders, Regulations and By-Laws which are applicable at any time to the Installation Works and shall indemnify and keep indemnified the Company against any actions, proceedings, costs, charges, claims or demands arising out of or in connection with any breach of this clause 7.2 (j);</p> <p>(k) provide the Company with all information, co-operation and support that may be required to enable the Company to carry out its obligations to the Customer; and</p> <p>(l) effect and maintain appropriate insurance at the Customer's Premises on an all risks basis and in an adequate amount.</p> <p>8. COMMISSIONING</p> <p>8.1 With respect to the commissioning of the Equipment:</p> <p>(a) commissioning will be carried out according to a specification to be agreed before commencement of commissioning;</p> <p>(b) reasonable time and assistance will be provided by the Customer to the Company with respect to the commissioning of the Equipment;</p> <p>(c) subject to any other exclusion or limitation of the Company's liability in these Conditions, the Company will only be liable for representations made by it and contained or referred to in the Commissioning Report.</p> <p>9. CUSTOMER'S OBLIGATIONS</p> <p>9.1 The Customer agrees to be responsible for:</p> <p>(a) the day-to-day upkeep of the Equipment and its immediate surroundings in accordance with established standards of safety; and</p> <p>(b) the upkeep and maintenance of all mains services and connections to the Equipment and to arrange for annual checks to be made in respect of the maintenance of such mains services and connections. The Company shall not incur any obligation or liability whatsoever as a result of any failure or fluctuation in such mains services and/or connections.</p> <p>9.2 The Customer agrees that any relocation, adjustment or repair of the Equipment will only be made by, or under the direct supervision of, or strictly in accordance with the recommendations of, a Company Technician. If the Customer is</p>	<p>9.3 The Customer shall co-operate with the Company in all matters relating to the supply of Services and/or Parts and 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.</p> <p>10. REPLACEMENT PARTS/GUARANTEE/RETURNS</p> <p>10.1 All replacement Parts supplied or fitted under the Contract will be the Company's manufactured Parts, or those of the original manufacturer of the original component, and where these are not available, such alternative Parts as the Company, in its reasonable discretion, considers to be suitable.</p> <p>10.2 Replacement Parts will be covered by a guarantee for six months from the date of delivery to the Customer in accordance with the following terms:</p> <p>(a) the guarantee will not cover any defect or damage arising as a result of:</p> <p style="padding-left: 20px;">(i) misuse of the Equipment; or</p> <p style="padding-left: 20px;">(ii) a repair or alteration made by the Customer or a third party not authorised by the Company; or</p> <p style="padding-left: 20px;">(iii) fair wear and tear, wilful damage, negligence, or abnormal working conditions;</p> <p>(b) should replacement Parts for any reason require replacement and the alleged defect is brought to the Company's attention within six months of replacement, the Company will endeavour to repair or replace the replacement Parts free of any additional charge; and</p> <p>(c) the Company's inability to repair or replace the replacement Parts shall not be deemed to amount to a breach of the Contract but will entitle the Customer to terminate the Contract by giving the Company one month's written notice. If the Customer terminates the Contract in such circumstances, the Company will refund the Customer that proportion of the Standard Contract Fee paid by the Customer as relates to the unexpired period of the relevant year of the Contract.</p> <p>10.3 The risk in the Parts supplied by the Company shall pass to the Customer on completion of delivery. Title to the Parts shall not pass to the Customer until the Company has received payment in full for the Parts.</p> <p>10.4 All Parts returned by the Customer to the Company ("returns") must be notified to the Company in writing with a reason stated for such return and must be authorised by the Company in writing prior to return. Any returns not so notified and authorised will not be accepted by the Company nor credited to the Customer.</p> <p>10.5 Only returns of new unused Parts in their original packaging will be accepted by the Company.</p> <p>10.6 If a return has been authorised under clause 10.4, the Customer will be charged a restocking fee at the rate of up to 20% of the price at which the Company supplied the relevant Part, to cover return transport, inspection, quality assurance checks and re-warehousing.</p> <p>10.7 The Customer shall not be charged for any return which arises due to the fault of the Company.</p> <p>10.8 The terms of these Conditions shall apply to any repaired or replacement Parts supplied by the Company under clause 10.2.</p> <p>11. TERMINATION AND VARIATION</p> <p>11.1 In addition to the other rights of termination set out in clauses 10.2, 12.5, 13.3 and 14 the Company or the Customer may terminate the Contract:</p>
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	(a)	on any 12-month anniversary of the date of commencement of the Contract by giving to the other at least one month's prior written notice; or		
	(b)	immediately upon written notice to the other if the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of notification in writing of the breach; or	12.6	VAT is payable by the Customer on all amounts specified under the Contract.
	(c)	immediately upon written notice to the other in the event that the other party becomes bankrupt or insolvent, or ceases to carry on its business, or ceases or threatens to pay its debts as they fall due, or any action is commenced for a winding-up of that party, or any administrator or administrative receiver is appointed over the other party.	12.7	The Company reserves the right to invoice the Customer for any abortive visits made by a Company Technician to the Customer's Premises to provide the Services, where (through no fault of the Company or any Company Technician) such Services cannot be provided for whatever reason.
11.2		The Company may elect not to renew the Contract due to the age and/or condition of the Equipment and in that event the Company may in its sole and absolute discretion:	12.8	Without prejudice to the provisions of clause 11.3, the Company may increase the Standard Contract Fee and the Company's Charge Rate annually in line with the annual percentage increase in the UK Retail Price Index.
	(a)	terminate the Contract on giving at least one month's written notice to the Customer expiring on or after any 12-month anniversary of the date of commencement of the Contract; and/or	12.9	The Customer shall be solely responsible for paying any additional costs, charges and expenses arising from or associated with any stoppage, suspension, interruption or delay in undertaking the Installation Works and/or the Services which occurs due to any matter beyond the Company's reasonable control.
	(b)	offer the Customer a new or revised Contract with the Services provided at a revised Contract Service Level.	12.10	The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
11.3		The Company shall be entitled to vary the Standard Contract Fee and the Company's Charge Rate by giving the Customer at least one month's written notice before any 12-month anniversary date of the date of commencement of the Contract, such revision to take effect from that anniversary date. The Customer may then, notwithstanding clause 11.1(a), terminate the Contract by giving the Company at least seven days' written notice before the revision takes effect.	13.	PAYMENT OPTIONS
11.4		On termination of the Contract for any reason:	13.1	The Customer shall pay the Standard Contract Fee by the method selected by the Customer and in accordance with the particulars stated in the Order.
	(a)	the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services and/or Parts supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately following receipt;	13.2	The Customer may pay by cash, cheque or electronic bank transfer provided that payment is received by the Company as agreed in the Order or within 30 days of the date of invoice. If the Customer has elected to pay by instalments, it may make use of the direct debit payment system.
	(b)	the accrued rights, remedies, obligations and liabilities of the parties as at expiry or 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	13.3	If any instalment payable under the Contract is not paid by its due date, the Company shall be entitled to immediately terminate the Contract by giving notice in writing and the Customer shall pay to the Company forthwith on demand:
	(c)	clauses which expressly or by implication have effect after termination shall continue in full force and effect.		(a) any instalment due to the Company and other sums due and unpaid at the date of termination;
				(b) the balance outstanding in respect of the Standard Contract Fee; and
				(c) interest on any amount not paid by its due date at 5% above the base rate of Barclays Bank plc from time to time in force accruing from the due date until the date of payment whether before or after judgement.
12. PAYMENT			13.4	The Company shall be entitled to charge the Customer all costs incurred by the Company in relation to the enforcement of any of its rights under the Contract and without limitation, all collection costs incurred by it or charged by any debt collection agency employed by the Company in collecting any payment due by the Customer to the Company under the Contract.
12.1		The Standard Contract Fee will be set out in the Company's invoice to the Customer and is payable, together with VAT, in accordance with clause 12.5.	14. FORCE MAJEURE	The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Company from supplying any of the Installation Works, Services and/or Parts for more than six months, either party may terminate the Contract immediately by giving written notice to the other and the Company shall not incur any liability to the Customer as a result of such termination.
12.2		Any charges for any work and/or Parts supplied in addition to that covered by the Customer's chosen Contract Service Level will be set out in a further invoice and charged at the Company's Charge Rate.	15. HEALTH AND SAFETY	The Customer undertakes to take such steps as are sufficient to ensure, so far as is reasonably practicable, that the Equipment is safe and will be used safely and without risks to health when properly used, having due regard to information and/or instructions applying to it. The Customer's attention is drawn in particular to section 6(8) of the Health and Safety at Work Act 1974.
12.3		Charges for Time and Material Work will be separately invoiced and charged at the Company's Charge Rate and will be payable within 30 days of the invoice date.	15.1	
12.4		Should any Equipment be lawfully sold, transferred or removed from the Customer's Premises with the Company's prior written consent the Company will give the Customer credit in respect of the Standard Contract Fee paid by the Customer as relates to that proportion of the unexpired period of the relevant year of the Contract, if and when the Customer enters into a new Contract with the Company in respect of any replacement Equipment.		
12.5		The terms of payment of the Standard Contract Fee will be agreed with the Customer and will be set out on the face of the invoice. In the absence of any express agreement by the parties to the contrary (whether or not in writing), the Standard Contract Fee and any other amount payable by the Customer under the Contract shall be payable by the Customer in full within 30 days of the date of invoice. Time of payment is of the essence and payment by post shall be at the Customer's own risk. If any		

- 15.2 The Customer will furnish complete and correct information relating to the use of the Equipment to the Customer's employees, to any person who may use the Equipment or to whom the Customer may supply the Equipment.
- 16. LIMITATION OF LIABILITY – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 16.1 Nothing in these Conditions shall limit or exclude the Company'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; or
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 16.2 Subject to clause 16.1:
- (a) the Company 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 profit, or any indirect or consequential loss arising under or in connection with the Contract including without limitation any such loss or any other loss or damage caused by or related to any variation in any of the services which are connected to the Equipment or to any equipment or appliances which are connected to the Equipment or arising from stoppages, breakdown, failure of the Equipment or any other cause; and
 - (b) the Company'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 be limited to the maximum extent permitted by law and shall in no circumstances exceed the Standard Contract Fee, inclusive of all legal costs.
- 16.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 16.4 This clause 16 shall survive termination of the Contract.
- 17. CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY RIGHTS AND NON-SOLICITATION**
- 17.1 The Customer and the Company agree that in the course of the Company providing the Supplies to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party. The Customer and the Company agree not to use any Confidential Information for any purpose other than the discharge of the receiving party's obligations under the Contract.
- 17.2 As and between the parties, the Customer acknowledges the Company's ownership of all Intellectual Property Rights in the Supplies and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. The Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein, nor shall the Customer register or attempt or permit to be registered, any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that any and all Intellectual Property Rights developed by the Company in providing the Supplies under the Contract shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this clause 17.2. The Customer shall not do anything which could amount to an infringement of the Company's Intellectual Property Rights in the Supplies and the Customer shall not copy, duplicate, disseminate or publish any report or deliverable associated with the Supplies without the Company's prior written consent.
- 17.3 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf), at any time from the date of first provision of the Supplies to the expiry of 6 months after the last date of provision of the Supplies, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, agent or subcontractor of the Company in the provision of the Supplies. Any consent given by the Company in accordance with this clause 17.3 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, agent or subcontractor.
- 17.4 This clause 17 shall survive termination of the Contract.
- 18. MISCELLANEOUS**
- 18.1 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Company.
- 18.2 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 18.3 A waiver of any right under the Contract 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 preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 18.4 Any notice under the Contract may be delivered or sent by post, or facsimile to the relevant party's address stated in the Order or to its usual or last known address. Proof of posting shall not be conclusive evidence of receipt in the ordinary course of post and any notice shall be assumed to have been received 48 hours after posting and upon receipt of a fax confirmation in the case of delivery by facsimile.
- 18.5 The Company may at any time assign, transfer, 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 or agent. The Customer shall not, without the Company's prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.6 No term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to it.
- 18.7 The Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.