## Terms and Conditions for the Supply of Products and Services by Dani Organics Foods Ltd

**The Customer's attention is particulars drawn to the provisions of Clause 15 (Limitation of Liability)**

**1. Interpretation**

1.1 Definitions: The following definitions and rules of interpretation apply in this agreement.

**"Buyer"** also referred to as 'Customer', 'Client' or 'Purchaser', means the person who or organisation which requests and/or accepts a quotation from the Seller with the intention of purchasing Product(s) from the Seller, or whose order for Product(s) is accepted by the Seller.

**"Contract"** means the contract for the purchase and sale of the Products for a fixed quantity, at a fixed price and over a fixed period of time. Contract deliveries comprise of call-offs, with a minimum of 1 call-off per contract. Deliveries will be made ONLY against a Contract call-off.

**"Data Protection Legislation"** all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK)

**"Force Majeure Event"** has the meaning given to it in Clause 19.

**"Intellectual Property Rights"** patents, [utility models], rights to inventions, copyright and [neighbouring and] related rights, [moral rights,] trademarks [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.

**"Purchase Order"** also referred to as 'Orders' or 'Call-offs' are single orders placed either against Quotations or Call-offs made against Contracts. Each Order will have a unique Order no. to identify it.

**"Products"** means the goods and/or services (including any instalment(s) of the Products) which the Supplier is to supply in accordance with these Conditions and any Products supplied in substitution for or in replacement of or in addition to such Products.

**"Quotation"** also referred to as 'quote' is the price offered by the Supplier to the Buyer for the purpose of selling Products. A quotation may only be submitted in writing and will usually be accompanied by 'Conditions' of offer and sale. If the Conditions of the offer and sale do not accompany an offer, it is implied that standard DANI ORGANICS 'Conditions' of offer apply.

**"Supplier or Seller"** means DANI ORGANIC FOODS LTD., also referred to as DANI ORGANICS, 'Supplier' (registered in England under number 5931674) or any authorised representative acting on behalf of Dani Organics, who offers a quotation to the Buyer with the intention of selling Products to the Buyer; or accepts an order from the Buyer; or who supplies or has supplied Products to the Buyer.

**1.2 Interpretation:**

(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 [personal representatives,] successors and permitted assigns.

(c) 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.

(d) 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.

(e) A reference to **writing** or **written** includes fax [and email].

**2. Basis of the sale**

2.1 The Seller shall sell and the Buyer shall purchase the Products in accordance with any written Quotation of the Supplier which is accepted by the Buyer, or any written Order of the Buyer which is accepted by the Supplier, subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such Quotation is accepted or purported to be accepted, or any such Order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Products which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Buyer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier

2.5 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).

2.6 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.

2.7 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.

2.8 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 5 Business Days from its date of issue, unless otherwise stated in writing.

2.9 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. Orders, specifications and quality**

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Supplier unless and until confirmed by the Supplier's authorised representative in writing.

3.2 The Buyer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Supplier in writing, any necessary information relating to the Products within enough time to enable the Supplier to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Products shall be those set out in the Supplier's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Supplier).

3.4 The Supplier reserves the right to make any changes in the specification of the Products which are required to conform with any applicable safety or other statutory requirements or, where the Products are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Supplier may be cancelled by the Buyer except with the agreement in Writing of the Supplier and the Buyer shall indemnify the Supplier in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of any cancellation. However, from the date of commencement of the order or signing of the contract, whichever is earlier, a 14 day cooling off period will be allowed during which cancellations or reducing the order will be accepted by the Supplier without penalty. Any administrative costs related to this order and subsequent cancellation will duly be passed on to the customer. Unless otherwise stated, this will £50.00, plus any labour costs accrued in preparing the order and any transportation costs in relation to delivery. Without prejudice to the generality of the foregoing, should the Buyer purport without the agreement in Writing of the Supplier to cancel any order which has been accepted by the Supplier or refuse to accept delivery of any of the Products such action shall constitute a breach of the agreement and, at the option of the Supplier, the Supplier shall be entitled to require the Buyer to pay to the Supplier by way of liquidated damages an amount equivalent to 50% of the invoice value of the order so purported to be cancelled or 50% of the invoice value of the Products delivery of which is so refused (as the case may be). In the event of the Supplier so requiring the Buyer shall pay such amount to the Supplier (without any deduction) within 7 days of receiving from the Supplier written notification of the amount required to be paid. The Supplier and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage likely to be suffered by the Supplier as a result of such breach of agreement on the part of the Buyer. For the avoidance of doubt, in the event that the Supplier opts to require the Buyer to pay liquidated damages as set out above, and the Buyer duly pays such liquidated damages, neither party shall have any further liability to the other in relation to the Products in respect of which such liquidated damages are paid.

3.6 The Supplier warrants that on delivery, and for a period of 30 days from the date of delivery (warranty period), the Products shall:

(a) conform in all material respects with their description;

(b) be free from material defects;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Supplier.

3.7 The Supplier shall not be liable for the Products failure to comply with the warranty in Clause 3.6 if:

(a) the Customer makes any further use of such Products after giving a notice in accordance with Clause 3.6.

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use or maintenance of the Products or (if there are none) good trade practice. These are mentioned in the Supplier's product specification and it is the responsibility of the Buyer to request these prior to purchase;

(c) the defect arises as a result of the Supplier following any delivery or packaging instructions supplied by the Customer;

(d) the Customer alters such Products without the written consent of the Supplier; and

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

3.8 The supplier shall not be responsible for testing any products for allergens, unless specifically requested by the customer and agreed in writing.

**4. Price of the Products**

4.1 The price of the Products shall be the Supplier's quoted price. Where the Products are supplied for export from the United Kingdom, the Supplier's published export price list relating to the country of destination shall apply, wherever applicable. All prices quoted are valid for a maximum of 5 Business Days only or such period as shall be stated by the Supplier on the face of the relevant quotation or until earlier acceptance by the Buyer, after which time they may be altered by the Supplier without giving notice to the Buyer.

4.2 The Supplier reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Products to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture)or to any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate information or instructions in writing.

4.3 Except as otherwise stated under the terms of any quotation, and unless otherwise agreed in Writing between the Buyer and the Supplier, all prices are given by the Supplier are exclusive of carriage charges.

4.4 The price is exclusive of any applicable value added tax that the Buyer shall be additionally liable to pay to the Supplier.

**5. Terms of payment**

5.1 Subject to any special terms agreed in Writing between the Buyer and the Supplier the Supplier shall be entitled to invoice the Buyer for the price of the Products at any time before or after delivery of the Products.

5.2 All Invoices are payable net by bank transfer or on a pro-forma basis, unless credit facilities have been approved, in which case Invoices are payable net by the end of the month following the date of the invoice, unless otherwise agreed in writing. The Buyer shall pay all invoices without any other deductions notwithstanding that delivery may not have taken place and the property in the Products has not been passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to.

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Products (or the Products supplied under any other contract between the Buyer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Buyer) and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank PLC's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 In the event that the Supplier shall cancel the contract under the provisions of Clause 5.3.1 above the Buyer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation. Without prejudice to the generality of the foregoing, at the option of the Supplier, the Supplier shall be entitled to require the Buyer to pay to the Supplier by way of liquidated damages an amount equivalent to 50% of the invoice value of the contract so cancelled. In the event of the Supplier so requiring, the Buyer shall pay such amount to the Supplier (without any deduction) within seven days of receiving from the Supplier written notification of the amount required to be paid. The Supplier and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage likely to be suffered by the Supplier as a result of such cancellation.

**6. Packaging Variables**

6.1 The Seller offers standard packaging of Euro or Standard Pallets and Products may be packaged in paper bags, boxes, hessian sacks or bales. Should the Buyer have specific packaging requirements the Seller reserves the right to charge additional fees.

**7. Delivery**

7.1 Delivery of the Products shall be made by the Buyer collecting the Products at the Supplier's premises at any time after the Supplier has notified the Buyer that the Products are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Products to that place.

7.2 Any dates quoted for delivery of the Products are approximate only and the Supplier shall not be liable for any delay in delivery of the Products howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Supplier in writing. The Products may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Buyer. The Supplier shall be entitled to make part delivery of the Products at any time.

7.3 Where the Products are delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.4 If the Buyer fails to take delivery of the Products or fails to give in writing, adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Supplier's fault) then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

7.4.1 store the Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.4.2 sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

**8. Risk and property**

8.1 Risk of damage to or loss of the Products shall pass to the Buyer:

8.1.1 in the case of Products to be delivered at the Supplier's premises, at the time when the Supplier notifies the Buyer that the Products are available for collection; or

8.1.2 in the case of Products to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Products, the time when the Supplier has tendered delivery of the Products;

8.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, the property in the Products shall not pass to the Buyer until the Supplier has received in cash or cleared funds payment in full of the price of the Products and payment in full of all sums due from the Buyer to the Supplier whether under the Contract or by virtue of any other liability of the Buyer to the Supplier.

8.3 Until such time as the property in the Products passes to the Buyer, the Buyer shall hold the Products as the Supplier's fiduciary agent and bailee and shall keep the Products separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Supplier's property. Until that time the Buyer shall be entitled to resell or use the Products in the ordinary course of its business, but shall account to the Supplier for such part of the proceeds of sale or otherwise
of the Products, whether tangible or intangible, including insurance proceeds, as is equivalent to the invoice value of the Products and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured

8.4 Until such time as the property in the Products passes to the Buyer (and provided the Products are still in existence and have not been resold) the Supplier shall be entitled at any time to require the Buyer to deliver up the Products to the Supplier and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Products are stored and repossess the Products.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Supplier but if the Buyer does so all moneys owing by the Buyer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) become due and payable.

8.6 For the avoidance of doubt, nothing contained in this Clause 8 shall entitle the Buyer to return any of the Products to the Supplier save as expressly provided in these terms and conditions or as expressly agreed in writing between the Supplier and the Buyer.

**9. Rejections**
9.1 The Buyer may reject the Products if:

9.1.1 the Products fail to conform in all material respects with the description as stated on the Supplier's Product Specification Sheet.

9.1.2 the Products fail to conform in all material respects with the pre-shipment sample provided by the Supplier.

9.1.3 the Products have any material defects which prevents them from being sold on by or consumed by the Buyer or their Customers.

9.1.4 the Products are of unsatisfactory quality (within the meaning of the Sale of Goods Act 1979).

9.2 If the Buyer discovers a product defect as stated in Clause 9.1:

9.2.1 it is the responsibility of the Buyer to give notice to the Supplier in writing of any such defects within 48 hours of discovery in accordance with Clause 3.6.

9.2.2 the Supplier shall have 48 hours within which to acknowledge this notice.

9.2.3 following this, the Supplier will investigate the quality issue and present their findings in writing to the Buyer within a reasonable time frame.

9.2.4 should a claim be accepted by the Supplier in accordance with Clause 3.6, a Rejection Note will then be sent to the Buyer to be filled out in its entirety, stamped, signed and returned to the Supplier within 48 hours of receipt of said Rejection Note.

9.2.5 the supplier shall not be liable to accept any Rejection Notes from the Buyer for product failure to comply with the warranty in Clause 3.6 if:

(a) the Buyer fails to send the complete stamped and signed Rejection Note within the stipulated time frame of 48 hours.
(b) the Buyer makes further use of the Product after having given notice to the Supplier of said failure.
(c) the defect in question arises out of any of the provisions of Clause 3.7(b)-(d).

9.3 Dani Organics operates on a strict 'exchange only policy' subject to an upper limit determined by the Buyer at the time of investigating said quality complaint. Goods deemed to be of unacceptable quality will be replaced by an acceptable quality of product, wherever possible. No refunds or returns will be offered way of compensation unless agreed by Dani Organics in writing.

**10. Product Recall**
10.1 If the Customer [becomes aware of or] is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Products from the market (Recall Notice) it must immediately notify the Supplier in writing and attach a copy of the Recall Notice.

10.2 Unless required by law, the Customer may only undertake a recall or withdrawal of the Products from the market with the written permission of the Supplier and in accordance with the provisions laid out in this agreement.

10.3 The Supplier may issue a notice to recall or withdraw the Products from the market (Voluntary Recall Notice) if:

(a) the supply or use of the Products infringes, or may infringe, a third party's intellectual property rights;

(b) the Products are, or may be, unsafe;

(c) the Products are, may be, or may become illegal or non-compliant with any law, regulation or government agency or industry standard;

(d) a defect in the Product may cause harm to the Supplier's reputation or brand; or

(e) any other reasonable ground.

10.4 The Customer must:

(a) comply with any Recall Notice [or Voluntary Recall Notice]; and

(b) give such assistance as the Supplier reasonably requires, to recall or withdraw the Product from the market, and comply with the Supplier's instructions about the process of implementing that recall or withdrawal.

(c) share all test results and other communication in relation to the product recall. The Supplier's liability will be limited to the cost of the product, and the seller will only take responsibility if it can be proven the recall was a direct result of the product sold to the Buyer. Any recall must take place within the shelf life of the product. The Customer will have a 30-day time frame in which to do so.

**11. Retained samples**:
11.1 For the purpose of verification of product quality, the Seller will retain lot samples of Products sold for the period of the shelf life of the product. Should a dispute concerning quality arise, further sample testing will be undertaken by the Seller and it reserves the right to instruct a laboratory of its choosing. The Buyer will be bound by results of the sample testing.

11.2 In the event that the results of the Buyer and the Seller are contradictory, a 3rd party lab shall be appointed to carry out a final test. The costs of this test shall be borne equally between both parties.

**12.Sample testing:**
The Buyer is required to carry out its own sample testing within 30 days of delivery of the product and should any issues arse the Buyer must communicate all results within 2 working days of the results being received in order to allow the Seller to consider a refund or replacement.

**13. Warranties and liability**
13.1 Subject to the conditions set out below the Supplier warrants that the Products will correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade and will be free from defects in material and workmanship at the time of delivery.

13.2 The above warranty is given by the Supplier subject to the following conditions:

13.2.1 the Supplier shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer:

13.2.2 the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alternation or repair of the Products without the Supplier's approval.

13.2.3 the Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment.

13.2.4 the above warranty does not extend to Products not manufactured by the Supplier, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.

13.3 Subject as expressly provided in these Conditions, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13.4 Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

13.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Products or their failure to correspond with specification or lot sample provided shall (whether or not delivery is refused by the Buyer) be notified to the Supplier within 30 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection). If delivery is not refused, and the Buyer does not notify the Supplier accordingly, the Buyer shall not be entitled to reject the Products and the Supplier shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Products had been delivered In accordance with the Contract.

13.6 Any claim by the Buyer which is based on short delivery or non-delivery shall be notified to the Supplier in Writing (in the case of short delivery) within 7 days of delivery and (in the case of non-delivery) within 30 days of receipt by the Buyer of the Supplier's Invoice for the Products which the Buyer claims have not been delivered. If the Buyer does not notify the Supplier accordingly the Buyer shall not be entitled to reject any Products that have been delivered and the Supplier shall have no liability for such short delivery or non-delivery.

13.7 Where any valid claim in respect of any of the Products which is based on any defect in the quality or condition of the Products or their failure to meet specification is notified in writing to the Supplier in accordance with these Conditions, in particular Clause 3.6 and Clause 9.2; the Supplier shall be entitled to replace the Products or (refund to the Buyer the price of the Products if agreed in writing and if there is no replacement available) (or a proportionate part of the price), but the Supplier shall have no further liability to the Buyer.

13.8 Except in respect of death or personal injury caused by the Supplier's negligence, the Supplier shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever(and whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Buyer, except as expressly provided in these Conditions.

**14. Customer's Obligations**

14.1 The Customer shall:

(a) ensure that the terms of the Order are complete and accurate, which includes but not limited to:

(i) timely payment as per the terms agreed.
(ii) reasonable checking of goods within 30 days of receipt and giving notice to the Seller within this time period.
(iii) taking possession of the goods.
(iv) approving specifications, samples and analyses within 5 business days of receipt.
(v) honour all contracts with the Supplier.
(vi) any other responsibilities which help the Seller in the fulfilment of their obligations.

(b) co-operate with the Supplier in all matters relating to the Products supplied;

(c) provide the Supplier with such information as the Supplier may reasonably require in order to supply the Products, and ensure that such information is complete and accurate in all material respects;

(d) comply with all applicable laws, including health and safety laws;

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

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 13; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred, including but not limited to storage fees, by the Supplier arising directly or indirectly from the Customer Default.

**15. Export terms**

15.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and theses Conditions, the latter shall prevail.

15.2 Where the Products are supplied for export from the United Kingdom, the provisions of this clause shall (subject to any special terms agreed in writing between the Buyer and the

Supplier) apply, notwithstanding any other provisions of these conditions.

15.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and notifying to the Supplier the requirements of any such legislation or regulations requiring action on the part of the Supplier and for the payment of any duties in connection with the Products.

15.4 Unless otherwise agreed in Writing between the Buyer and the Supplier the Products shall be delivered FOB from the air or sea port of shipment and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of the Products Act 1979.

15.5. The Buyer shall be responsible for arranging for testing and inspection of the Products at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Products which would be apparent on inspection and which is made after shipment, or in respect of damage during transit.

15.6 Payment of all amounts due to the Supplier shall be made in such manner as shall be agreed between the Supplier and the Buyer in Writing.

**16. Limitation of Liability: the customer's attention is particularly drawn to this clause.**

16.1 The Supplier has obtained Public Liability insurance cover in respect of its own legal liability for individual claims not exceeding £5,00000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

16.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited toliability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

16.3 This Clause sets out specific heads of excluded loss [and exceptions from them]:

(a) Subject to Clause 16.2, the types of loss listed in Clause 16.4(c) are wholly excluded by the parties[, but the types of loss and specific losses listed in Clause 13.4(d) are not excluded].

(b) [If any loss falls into one or more of the categories in Clause 13.4(c) and also falls into a category, or is specified, in Clause 13.4(d), then it is not excluded.

(c) The following types of loss are wholly excluded:

(i) Loss of profits.

(ii) Loss of sales or business.

(iii) Loss of agreements or contracts.

(iv) Loss of anticipated savings.

(v) Loss of use or corruption of software, data or information.

(vi) Loss of or damage to goodwill.

(vii) Indirect or consequential loss.

(d) [The following types of loss and specific loss are not excluded:

(i) Sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Services not provided in accordance with the Contract.

(ii) Wasted expenditure.

(iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include [but are not limited to] consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.

(iv) Losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include [but not be limited to] demands, fines, penalties, actions, investigations or proceedings, including [but not limited to] those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.

16.4 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in Clause 3. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3[, 4] and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

16.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of [the event having occurred **OR** its having grounds to make a claim in respect of the event] and shall expire [NUMBER] months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

16.6 This Clause 15 shall survive termination of the Contract.

**17. Termination**

17.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 3 months' written notice.

17.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 15 business days after receipt of notice in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

17.3 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:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment; or

(b) there is a change of control of the Customer.

17.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods 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 14.2(b) to Clause 14.2(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

**18. Consequences of Termination**

18.1 On termination of the Contract:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods 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.

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

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

**19. Force Majeure**

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

19.2 The Supplier shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Products if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:

19.2.1 Act of God, explosion, flood, tempest, fire or accident;

19.2.2 war or threat of war, sabotage, insurrection, civil disturbance, or requisition;

19.2.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

19.2.4 import or export regulations or embargoes;

19.2.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);

19.2.6 difficulties in obtaining raw materials labour, fuel, parts or machinery;

19.2.7 power failure or breakdown in machinery.

**20. General**

20.1 Assignment and other dealings

(a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, 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].

20.2 Notices.

(a) Any notice [or other communication] given to a party under or in connection with this agreement shall be in writing and shall be:

(i) 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

(ii) sent by fax to its main fax number or sent by email to the address of the respective account manager.

(b) Any notice [or communication] shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address];[and]

(ii) if sent by [pre-paid first-class post or other] next working day delivery service, at [9.00 am] on the [second] Business Day after posting [or at the time recorded by the delivery service][;[and]

(iii) if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 20.2(b)(iii), business hours means 8:30am to 5.00pm Monday to Thursday and 8:30am to 3:30pm Friday on a day that is not a public holiday in the place of receipt.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

(d) [[A notice given under this agreement is not valid if sent by email.]]

20.3 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.

20.4 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 right or remedy. 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.

20.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

20.6 Entire agreement.

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misrepresentation] based on any statement in the Contract.

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

20.7 Third parties rights.

a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) [The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.]

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

20.9 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.

20.10 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.