



Scandura Ltd

Terms and Conditions of Trading

1. Interpretation

1.1 Definitions:

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given in clause 10.1.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: 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: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Specification: the specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

Supplier: Scandura Ltd (registered in England and Wales with company number 3008159).

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 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 contract

2.1 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 law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained on the Supplier's website or in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

2.7 The Customer shall, if so requested by the Supplier, provide two satisfactory written trade references and a banker's reference.

3. Goods

3.1 The Goods are described in the Specification.

3.2 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Specification or any process specified by the Customer. This clause 3.2 shall survive termination of the Contract.

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

3.4 The Customer agrees that any moulds, tools or other apparatus made or acquired by the Supplier in relation to the manufacture of the Goods are, and shall at all times remain, the property of the Supplier regardless of any charge (whether in whole or in part) made to the Customer in respect thereof.

4. Delivery

4.1 The Supplier shall ensure that:

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

(b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 Unless the Supplier has agreed to deliver the Goods to the Customer in accordance with clause 4.3, the Customer shall collect the Goods from the Supplier's premises at St James Road, Corby, Northamptonshire, NN18 8AW, United Kingdom, or such other location as may be advised by the Supplier prior to delivery (**Delivery Location**) within three Business Days of the Supplier notifying the Customer that the Goods are ready.

4.3 If the Supplier has agreed to do so, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready. The Customer shall notify the Supplier promptly in writing if the Goods shall not have been delivered 10 Business Days after Supplier notifies the Customer that the Goods are ready.

4.4 Where clause 4.2 applies, delivery is completed on the completion of loading of the Goods at the Delivery Location.

4.5 Where clause 4.3 applies, delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions, Specification or any other instructions that are relevant to the supply of the Goods. The Supplier shall be entitled to bring forward any date for delivery upon reasonable prior notice to the Customer.

4.7 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions, Specification or any other instructions that are relevant to the supply of the Goods.

4.8 If the Customer fails to collect or accept delivery of the Goods (as the case may be) within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.9 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted (as the case may be) actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.10 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

4.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

5.1 The Supplier warrants that it complies with ISO 9001 and that, on delivery, the Goods shall:

(a) conform in all material respects to the Specification (subject to any changes to the Specification agreed between the parties); and

(b) be free from material defects in material and workmanship,

provided always that the Supplier gives no warranty in relation to the Goods being free from defects in design (whether material or otherwise), on the basis that the design is provided by the Customer as part of the Specification.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to the Supplier within 14 days from the date of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business, which the Supplier shall arrange at the Supplier's cost (if the Customer chooses instead to arrange the return of such Goods itself, the return shall be at the Customer's own expense), the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 Without prejudice to the generality of clause 5.6, the Supplier gives no warranty as to the service life of the Goods or their suitability for any particular purpose or use under any specific conditions, notwithstanding that any such purpose or conditions may be known to the Supplier.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.8 The provisions set out in this clause 5 shall not apply to Goods that are not manufactured by the Supplier (**Resold Goods**). In respect of Resold Goods, the Customer shall be entitled only to the benefit of such warranty or guarantee (if any) as is given by the manufacturer of the Resold Goods.
- 5.9 Whilst the Supplier may (but shall not be obliged to) provide technical advice and assistance in respect of the Goods, if requested to do so, the Customer acknowledges and agrees that any such advice or assistance is given on a goodwill basis without additional charge, that it is for the Customer to decide whether or not to accept or rely on such advice or assistance, and that the Seller shall have no liability whatsoever to the Customer in respect thereof. The Customer acknowledges this to be fair and reasonable in the circumstances.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer (notwithstanding their incorporation into any other goods) until the earlier of:
- (a) the Supplier receives payment in full (in cash or cleared funds) for:
 - (i) the Goods; and
 - (ii) any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
 - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as the Supplier's agent; and
 - (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer:
- (a) the Supplier may by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.6 In clause 6.5(b), "irrevocably incorporated into another product" means that the Goods absolutely cannot be physically removed from that other product regardless of practicality, effort or cost, and not that it is difficult, time-consuming or costly to do so or that doing so would damage, reduce the value of, or otherwise damage, destroy, degrade or impair the product into which the Goods have been incorporated.
- 6.7 The notice referred to in clause 6.5(b) shall be deemed to have been served immediately prior to the occurrence of any of the events referred to in clause 9.1(b) to 9.1(n) (inclusive).
- 7. Price and payment**
- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's agreed price list for the Customer in force as at the date of delivery.
- 7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification;
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;
 - (b) is on an "ex works basis" (unless otherwise agreed by the Supplier in writing);
 - (c) excludes the cost of any certificate of conformity, which shall be invoiced to the Customer;
 - (d) excludes the cost of pallets and returnable containers, which shall be invoiced to the Customer (credit for which will be given to the Customer if they are returned to the Supplier, at the Customer's cost and expense, prior to the due date for payment); and
 - (e) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery, provided that, if the Customer fails to collect or accept delivery of the Goods (as the case may be), the Supplier shall be entitled to invoice the Customer for the Goods on or at any time after the date on which the Supplier notified the Customer that the Goods were available for collection or the Supplier attempted to deliver the Goods to the Customer (as the case may be).
- 7.5 The Customer shall pay each invoice submitted by the Supplier:
- (a) no later than the last day of the month following the month in which the invoice is dated; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 7.6 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 9 (Termination):
- (a) 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 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - (b) the Supplier shall be entitled to withhold the delivery of any outstanding instalment of the Goods and/or the delivery of any other goods that the Customer has ordered from the Supplier.
- 7.7 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).
- 7.8 The Supplier shall be entitled, in its sole discretion, to appropriate any payment made by the Customer (whether under the Contract or any other contract between the parties) to any sum due under this Contract or any other contract between the parties, regardless of any purported appropriation by the Customer.
- 8. Limitation of liability**
- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 8.3 Subject to clause 8.2, the Supplier's total liability to the Customer shall not exceed 125% of the price paid or payable for the Goods.
- 8.4 Subject to clause 8.2, the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 8.5 This clause 8 shall survive termination of the Contract.
- 9. Termination**
- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of that party being notified in writing to do so;
 - (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer (being a company, partnership or limited liability partnership);
- (g) the holder of a qualifying floating charge over the assets of the Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
- (i) the Customer (being an individual) is the subject of a bankruptcy petition, application or order;
- (j) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(j) (inclusive);
- (l) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (m) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;
- (n) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation; or
- (o) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(o) (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of 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.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 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.
- 10. Force majeure**
- 10.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service.
- 10.2 Provided it has complied with clause 10.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 10.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 10.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving four weeks' written notice to the Affected Party, provided that the Supplier shall have the right to deliver to the Customer such Goods as have already been manufactured in accordance with 4 and the Customer shall pay for such Goods in full in accordance with clause 7.
- 11. Dispute resolution procedure**
- 11.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) and one party gives written notice of the existence of such Dispute in accordance with sub-clause (a) below then the parties shall follow the procedure set out in this clause 11:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Purchasing Manager of the Supplier and Sales Manager of the Customer shall attempt in good faith to resolve the Dispute;
- (b) if the Purchasing Manager of the Supplier and Sales Manager of the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Purchasing Director of the Supplier and Group Sales Director of the Customer who shall attempt in good faith to resolve it; and
- (c) if the Purchasing Director of the Supplier and Group Sales Director of the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within seven days service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 21 days after the date of the ADR notice.
- 11.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 12.10, which clause shall apply at all times.
- 11.3 If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that period, or the mediation terminates before the expiry of that period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 12.10.
- 12. General**
- 12.1 **Assignment and other dealings.**
- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 12.2 **Intellectual property rights and confidentiality.**
- (a) The Customer acknowledges and agrees that the Supplier owns the Intellectual Property Rights in all documents, drawings, specifications and other materials prepared by the Supplier and that nothing in the Contract grants or assigns to the Customer any rights or licence in respect of them.
- (b) The Customer 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 Supplier, except as permitted by clause 12.2(c).
- (c) The Customer may disclose the Supplier's confidential information:
- (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Customer's rights or carrying out its obligations under the Contract. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Supplier's confidential information comply with this clause 12.2; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (d) The Customer shall not use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 12.3 **Entire agreement.**
- (a) This 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 agrees that it 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 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 12.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.7 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract 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 email to the address notified by the recipient for that purpose.
- (b) Any notice or communication shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 11.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (iii) if sent by 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 12.7(b)(iii), business hours means 9.00am to 5.00pm Monday to 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.
- 12.8 **Third party 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.
- 12.9 **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.
- 12.10 **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 this Contract or its subject matter or formation.