

# Terms And Conditions of Sale

## Onepluszero Ltd

Supply B2B

### 1 Definitions

In these Conditions the following definitions apply:

“Affiliate”	means any entity that directly or indirectly controls, is controlled by or is under common control with, another entity
“Applicable Law”	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction
“Business Day”	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business <i>in England</i>
“Conditions”	means the Supplier’s terms and conditions of sale set out in this document
“Confidential Information”	means any commercial, financial or technical information, information relating to the Goods, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract
“Contract”	means the agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Quotation, and including all its schedules, attachments, annexures and statements of work
“Customer”	means the named party in the Contract which has agreed to purchase the Goods from the Supplier and whose details are set out in the Quotation
“Documentation”	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Goods
“Force Majeure”	means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier’s or its suppliers’ workforce, but excluding the Customer’s inability to pay or circumstances resulting in the Customer’s inability to pay
“Goods”	means the goods and other physical material set out in the Supplier’s quotation that has been accepted by the Customer in accordance with the Contract
“Location”	means the Suppliers Studio whose address 9 New Buildings, Seend Cleeve, SN12 6QD
“Manufacturer”	means any manufacturer onto whom the Supplier places an order
“Price”	has the meaning given in clause 3.1
“Quotation”	means an offer for the Goods from the Supplier to the Customer
“Specification”	means the description or Documentation provided for the Goods and their packaging set out or referred to in the Contract
“Supplier”	means Onepluszero Ltd (trading as Metal Sculpture and Design by James Jones) whose registered address is 9 New Buildings, Seend Cleeve, Melksham, England, SN12 6QD
“VAT”	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods
“Warranty Period”	has the meaning given in clause 9.2

### 2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer’s purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to a Quotation or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Supplier and the Customer respectively.
- 2.4 Each Quotation by the Supplier to the Customer shall be an offer to purchase the Goods subject to the Contract including these Conditions.
- 2.5 The Customer warrants that it shall provide the Supplier in writing with all relevant, full and accurate information as to the Customer’s business and needs prior to requesting or receiving a Quotation from the Supplier.
- 2.6 If the Customer is unable to accept a Quotation, it shall notify the Supplier in writing as soon as reasonably practicable.
- 2.7 The offer constituted by a Quotation shall remain in effect and capable of being accepted by the Customer for 14 Business Days from the date on which the Supplier submitted the quotation to the Customer, after which time it shall automatically lapse and be withdrawn.
- 2.8 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.
- 2.9 If the Manufacturer discontinues the sale of, or alters the Specification of, any Goods, the Supplier reserves the right (without any further liability on the part of the Supplier) to:
  - A) deliver in satisfaction of the Contract Goods conforming to the Manufacturer’s Specification prevailing at the time of delivery; or

- B) cancel the Contract and refund to the Customer (as applicable) either any deposit paid by the Customer to the Supplier.
- 2.10 Once a Customer has accepted the Supplier's quotation, the Contract shall not be cancelled by the Customer, except with the agreement in writing of the Supplier. In the event of such cancellation, the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs, damages and expenses incurred by the Supplier as a result of cancellation.

### **3 Price**

- 3.1 The Price for the Goods shall be as set out in the Quotation.
- 3.2 Unless stated otherwise, the Price is exclusive of:
  - A) packaging, delivery, insurance, shipping carriage, and all other related charges or taxes which shall be charged in addition at the Supplier's standard rates, and
  - B) VAT (or equivalent sales tax).
- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may increase the Price at any time by giving the Customer not less than 15 Business Days' notice in writing provided that the increase does not exceed 10% of the Price in effect immediately prior to the increase.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Price with immediate effect by written notice to the Customer where there is:
  - A) an increase in the direct cost to the Supplier of supplying the relevant Goods and which is due to any factor beyond the control of the Supplier;
  - B) any change in delivery dates, quantities or specification of the Goods requested by the Customer; or
  - C) any other increase in cost to the Supplier beyond its reasonable control.

### **4 Payment**

- 4.1 The Supplier shall invoice the Customer for the Goods, partially or in full, at any time following the Customer's acceptance of a Quotation from the Supplier.
- 4.2 The invoice may (at the Supplier's sole discretion) require the Customer to pay part of the Price upfront (in the form of a non-refundable deposit) before the Supplier places the order with the Manufacturer to produce the Goods. Where the Supplier requires the Customer to pay a deposit, the Supplier is not obliged to place an order with the Manufacturer to produce the Goods until the Customer has paid the deposit in full in cleared funds to the bank account nominated by the Supplier.
- 4.3 The Customer shall pay all invoices in full (or the balance of the invoices where the Customer has already paid a deposit(s)) without deduction or set-off, in cleared funds to the bank account nominated by the Supplier when the Supplier notifies the customer that the Goods are ready for Delivery, Collection or Installation.
- 4.4 The Supplier shall provide reasonable notice of the Manufacturer's indicative completion date to the Customer.
- 4.5 If the Customer fails to make payment in full by the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
  - A) cancel the order agreed in the accepted Quotation or suspend delivery to the Customer; and/or
  - B) the Supplier may, without limiting its other rights, charge interest on such sums at 8% a year above the base rate of the Bank of England from time to time in force, and interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

### **5 Credit limit**

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

### **6 Delivery / Collection / Installation**

- 6.1 Unless otherwise agreed in writing with The Supplier, the Customer shall collect the Works from the Location.
- 6.2 The Customer must inspect the Works on collection and notify any defects in the Works which are or should be apparent on inspection to The Supplier immediately on undertaking such inspection.
- 6.3 The Supplier shall use its reasonable endeavours to keep the customer informed of the estimated collection date of the Works and any such date shall be indicative only.
- 6.4 The Supplier shall not be liable for any delay in or failure of delivery caused by Force Majeure.
- 6.5 The Supplier shall not be liable for any delay in or failure of delivery caused by the Manufacturer.
- 6.6 The Supplier shall notify the Customer that the Works is ready for collection, giving the date of availability for collection.
- 6.7 Unless previously stated, The Customer will be wholly responsible for making the necessary arrangements for collection of the Works.
- 6.8 On notification, the Customer shall have 30 calendar days to collect the Works and, in this regard, time is of the essence.
- 6.9 Where the Customer fails to collect the Works within the timeframe as set out in clause 6.7, the Customer shall pay The Supplier £150/week plus all costs incurred by The Supplier Prior to delivery, collection or installation.
- 6.10 Once the 30 calendar day period has expired in accordance with clause 6.8, The Supplier may resell or otherwise dispose of the Works without any obligation or liability to the Customer, except as provided for in clauses 6.9.a and B)b. The Supplier shall:
  - A) deduct all storage charges at The Supplier's then-applicable rates and reasonable costs of resale; and
  - B) account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Works.
- 6.11 The Customer shall, unless otherwise agreed in advance with The Supplier in writing, take delivery of the Work within 1 month of being notified that it is ready for Delivery, Collection or Installation, as applicable. In the event the Customer fails to take delivery within such 1 month period (or such alternative period as has been agreed in advance with The Supplier), unless such delay is caused by The Supplier, The Supplier shall reserve the right to charge for storage of the Work at the standard rate of £150 per week.

- 6.12 In the event that The Supplier is unable to deliver the Work for 6 months after The Supplier has given notice that the Work is ready for installation or despatch, as applicable, The Supplier shall be entitled, on giving the Customer at least 1 month's written notice and without prejudice to its other rights in law or under this Contract, to resell or otherwise dispose of the Work.
- 6.13 The Customer shall prepare the site for installation of the Work in accordance with The Supplier's specifications. Should the site not be prepared as specified and as a result, The Supplier is required to perform additional work, or the installation is delayed, then The Supplier will be entitled to charge for any additional labour, mileage and materials at the standard applicable rates (as available from The Supplier on request). The Supplier will not be responsible for any work conducted by a third party in preparing the site for installation.

## 7 Risk

Risk in the Goods shall pass to the Customer from the date the Goods are ready to collect from the Studio.

## 8 Title

- 8.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods and the Customer has collected the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall:
- A) hold the Goods as bailee for the Supplier;
  - B) store the Goods separately from all other material in the Customer's possession;
  - C) take all reasonable care of the Goods and keep them in the condition in which they were delivered;
  - D) insure the Goods from the date of collection: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
  - E) ensure that the Goods are clearly identifiable as belonging to the Supplier;
  - F) inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clause 14; and
  - G) on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 8.3 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, or the Customer has or is likely to become subject to any of the events specified in clause 14, the Supplier may (i) require the Customer (at the Customer's expense) to re-deliver the Goods to the Supplier and (ii) if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## 9 Warranty

- 9.1 The Supplier warrants that the Goods (excluding consumable Goods) shall conform in all material respects to the order agreed in the accepted Quotation and Specification and be free from material defects in material and workmanship.
- 9.2 The warranties in clause 9.1 shall be effective for 12 months (the Warranty Period) ) from when the final balance of payment is made, prior to Delivery, Collection or Installation.
- 9.3 The Customer warrants that it has provided the Supplier in writing with all relevant, full and accurate information as to the Customer's business and needs.
- 9.4 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, repair, replace, or refund the Price of any of the Goods that do not comply with clause 9.1 provided that the Customer:
- A) serves a written notice on the Supplier within two Business Days of discovery of the defect and during the Warranty Period;
  - B) provides the Supplier with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
  - C) gives the Supplier (or any third party appointed by the Supplier) a reasonable opportunity to examine the defective Goods; and
  - D) (where required) returns the defective Goods to the Supplier at the Customer's expense.
- 9.5 The provisions of these Conditions, including the warranties set out in clause 9.1 shall apply to any of the Goods that are repaired or replaced with effect from the date of delivery of the repaired or replaced Goods.
- 9.6 The Supplier shall not be liable for any failure of the Goods to comply with clause 9.1:
- A) where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
  - B) to the extent caused by the Customer's failure to comply with the Supplier's advice or instructions in relation to the Goods, including any advice or instructions on installation, storage or maintenance;
  - C) to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Goods;
  - D) where the defect in the Goods is aggravated by the Customer (in circumstances where the defect should have been reasonably identified by the Customer) and the Customer continues to use the Goods;
  - E) where the Customer (or a third party on behalf of the Customer) modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or
  - F) where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 9.1.
- 9.7 Except as set out in this clause 9:
- A) the Supplier gives no warranties and makes no representations in relation to the Goods; and
  - B) shall have no liability for their failure to comply with the warranty in clause 9.1.
  - C) and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 9.8 The Supplier shall notify the Customer that the Goods are ready for collection (following repair or replacement in accordance with this clause 9), giving the date of availability for collection. The Customer will be wholly responsible for making the necessary arrangements for collection of the Goods.
- 9.9 On notification, the Customer shall have 48 hours to collect the Goods and, in this regard, time is of the essence.

- 9.10 Where the Customer fails to collect the Goods within the timeframe as set out in clause 9.9, the Customer shall be charged all costs incurred by the Supplier (or that any manufacturer may pass on to the Supplier) as a result of the failure to collect the Goods from the Location (including, without limitation, storage and insurance costs) for a period of no more than 7 calendar days.
- 9.11 Once the 7 calendar day period has expired in accordance with clause 9.10, the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer, except that the Supplier shall transfer to the Customer any sums received for reselling or disposing the Goods to a third party after deduction of all storage costs (including, without limitation, insurance costs) and reasonable costs of resale.

## **10 Indemnity and insurance**

- 10.1 The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.
- 10.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## **11 Limitation of liability**

- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clauses 11.4 and 11.5, the Supplier shall have no liability whatsoever for any type of loss incurred by the Customer.
- 11.3 Subject to clauses 11.4 and 11.5, the Supplier shall not be liable for consequential, indirect or special losses and for the avoidance of doubt, the Supplier shall not be liable for any of the following (whether direct or indirect):
- A) any minor variations in colour between the Goods and any samples or illustrations
  - B) natural ageing processes that affect the look, colour or structure of any materials, surface finishes or patinas.
  - C) loss of profit;
  - D) loss of revenue;
  - E) loss or corruption of data;
  - F) loss or corruption of software or systems;
  - G) loss or damage to equipment;
  - H) loss of use;
  - I) loss of production;
  - J) loss of contract;
  - K) loss of commercial opportunity;
  - L) loss of savings, discount or rebate (whether actual or anticipated);
  - M) harm to reputation or loss of goodwill; and/or
  - N) wasted expenditure.
- 11.4 The limitations of liability set out in clauses 11.2 to 11.3 shall not apply in respect of any indemnities given by the Customer under the Contract.
- 11.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- A) death or personal injury caused by negligence;
  - B) fraud or fraudulent misrepresentation;
  - C) any other losses which cannot be excluded or limited by Applicable Law;
  - D) any losses caused by wilful misconduct.

## **12 Confidentiality and announcements**

- 12.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- A) any information which was in the public domain at the date of the Contract;
  - B) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - C) any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
  - D) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This clause 12 shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.
- 12.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

## **13 Force majeure**

- 13.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 7 calendar days, either party may terminate the Contract by written notice to the other party.
- 13.2 The Supplier shall be released from any contractual obligations it has under this Contract if the relationship that the Supplier has with the Manufacturer is terminated for any reason.

## 14 Termination

- 14.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- A) the Customer commits a material breach of the Contract and such breach is not remediable;
  - B) the Customer commits a material breach of the Contract which is not remedied within 14 Business Days of receiving written notice of such breach;
  - C) the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 calendar days after the date that the Supplier has given notification to the Customer that the payment is overdue; or
  - D) any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 14.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- A) stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - B) is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
  - C) becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - D) becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
  - E) becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - F) becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - G) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - H) has a resolution passed for its winding up;
  - I) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - J) is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - K) has a freezing order made against it;
  - L) is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
  - M) is subject to any events or circumstances analogous to those in clauses 14.2.a to 14.2.l in any jurisdiction; or
  - N) takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses A) to M) including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 14.3 The Supplier may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of control.
- 14.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 14, it shall immediately notify the Supplier in writing.
- 14.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## 15 Notices

- 15.1 Any notice given by a party under these Conditions shall:
- A) be in writing and in English;
  - B) be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - C) be sent to the relevant party at the address set out in the Contract.
- 15.2 Notices may be given, and are deemed received:
- A) by hand: on receipt of a signature at the time of delivery;
  - B) by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting; and
  - C) if sent by email.
- 15.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 15.1 and shall be effective:
- A) on the date specified in the notice as being the date of such change; or
  - B) if no date is so specified, *ten* Business Days after the notice is deemed to be received.
- 15.4 This clause 15 does not apply to notices given in legal proceedings or arbitration.

## 16 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

## 17 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

## 18 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## 19 Entire agreement

- 19.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 19.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 19.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **20 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

## **21 Assignment**

The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, it may withhold or delay at its absolute discretion.

## **22 Set-off**

- 22.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.
- 22.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **23 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **24 Capacity of Supplier**

The Supplier contracts as a principal and not as an agent of the Manufacturer of the Goods and has no authority to make any representation or otherwise act on behalf of the Manufacturer of the Goods and has no authority to make any representation or otherwise act on behalf of the Manufacturer of the Goods.

## **25 Equitable relief**

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **26 Severance**

- 30.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 30.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **31 Waiver**

- 31.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 31.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

## **32 Compliance with law**

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **33 Conflicts within Contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Quotation, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

### **34 Costs and expenses**

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

### **35 Third party rights**

- 35.1 Except as expressly provided for in clause 35.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 35.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

### **36 Dispute resolution**

- 36.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 36.
- 36.2 The parties shall use all reasonable endeavours to reach a negotiated resolution.
- 36.3 A party may not serve or may not issue formal legal proceedings until 21 days after it has made a written offer to the other party seeking a negotiated settlement to the dispute.

### **37 Governing law**

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

### **38 Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).