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CONDITIONS OF SALE of FASSI (U. K.) LIMITED ("Conditions")

The Buyer's attention is particularly drawn to the provisions of clause 13.

1. Interpretation

1.1 In these Conditions:

'Buyer' means the person who purchases Goods or Services from the Seller;

'Buyer Data' means the data inputted by the Buyer or by the Seller on the Buyer's behalf for the purpose of using the IoC Services or facilitating the Buyer's use of the IoC Services;

'Contract' means the contract between the Seller and the Buyer for the supply of Goods and/or Services in accordance with these Conditions;

'Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures' has the meaning as defined in the Data Protection Legislation;

'Data Protection Legislation' means the UK Data Protection Legislation and any other European Union legislation relating to Personal Data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);

'Force Majeure Event' has the meaning given in clause 16.1;

'Goods' means the goods supplied by the Seller in accordance with these Conditions including any Goods supplied by the Seller in providing the Services;

'Intellectual Property Rights' means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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;

'Initial Subscription Term' means the initial term of the IoC Services as set out in the Quotation;

'IoC Services Commencement Date' means the date of commencement of the IoC Services, being the date of first use by the Buyer of the Goods on which the IoC System is installed;

'IoC Services' means the services provided by the Seller to the Buyer in relation to the Buyer's use of the IoC System;

'IoC System' means the Seller's "Internet of Cranes" system, as described on the Seller's website at <https://www.fassiuk.com/pages/ioc.html>

'Order' means the Buyer's order for the supply of Goods and/or Services, as set out in the

Buyer's written acceptance of the Quotation or the Buyer's purchase order form;

'Quotation' means the Seller's quotation for the applicable Goods and/or Services;

'Renewal Period' means the period described in clause 12.7.1;

'Revised Quotation' means a Quotation for a Renewal Period;

'Seller' means Fassi (U.K.) Limited (registered in the Register of Companies under no. 1362388) whose registered office is at The Exchange, Haslucks Green Road, Shirley, Solihull, West Midlands B90 2EL;

'Seller Materials' has the meaning given in clause 10.1.7;

'Services' means the services to be supplied by the Seller to the Buyer as set out in the Quotation which may include training services and/or installation services and including, if applicable, the IoC Services;

'Software' the online software applications provided by the Seller as part of the IoC Services;

'Subscription Fees' means the subscription fees payable by the Buyer to the Seller for the IoC Services, as set out in the Quotation;

'Subscription Term' has the meaning given in clause 12.7.1 (being the Initial Subscription Term together with any subsequent Renewal Periods);

'UK Data Protection Legislation' means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

'Virus' means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or in part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.3 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.4 a reference to writing or written includes faxes and e-mails.

2. **Quotations and Orders**

2.1 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions. The Order shall only be deemed to be accepted when the Seller:

2.1.1 issues written acceptance of the Order; or

2.1.2 if earlier, and in respect of Goods comprising parts only, otherwise delivers the Goods,

at which point and on which date the Contract shall come into existence.

2.2 These Conditions shall govern the Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, customer, practice or course of dealing.

2.3 Except as set out in these Conditions, no variation of the Contract, including the introduction of

any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Seller.

- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by an authorised representative of the Seller in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed and specified by the Seller as forming part of the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Seller'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. Accordingly, 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 Seller shall be subject to correction without any liability on the part of the Seller.
- 2.6 Any Quotation shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.7 The Buyer shall be responsible to the Seller for ensuring the completeness and accuracy of any information submitted by the Buyer to the Seller (including any specification and the terms of the Order), and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with the agreed terms.
- 2.8 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all losses (including any direct, indirect or consequential losses, loss of profit, loss or reputation and all interest, penalties and legal and other professional costs and expenses), costs (including the cost of all labour and materials used), damages, charges, expenses and other liabilities suffered or incurred by the Seller arising out of or in connection with such cancellation.
- 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. **Goods**
 - 3.1 If the Goods are to be manufactured, or any process is to be applied to the Goods, by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all liabilities, losses (including any direct, indirect or consequential losses, loss of profit, loss or reputation and all interest, penalties and legal and other professional costs and expenses), damages, costs and expenses awarded against or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Seller's use of the Buyer's specification.
 - 3.2 The quality, description and any specification for the Goods shall be set out in the Quotation, or if no Quotation is given, as described in the Seller's catalogue.
 - 3.3 The Seller reserves the right to make any changes to the specification of the Goods which are required to conform with any applicable statutory or regulatory requirements or which do not materially affect their quality or performance.
4. **Prices**
 - 4.1 The price of the Goods and/or Services, including, for the avoidance of doubt and if applicable, the IoC Services, shall be the price set out in the Quotation or, where no Quotation is given, the price listed in the Seller's published price list current at the date of delivery in respect of Goods, or in respect of Services, calculated in accordance with Seller's standard charges for services of that type.
 - 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery of Goods and/or performance of the Services, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to:

- 4.2.1 any factor beyond the control of the Seller (including any changes in laws, foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture);
 - 4.2.2 any change in the specification of the Goods and/or delivery dates or quantities of the Goods which is requested by the Buyer or any change to performance dates or the extent of the Services to be performed; or
 - 4.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods and/or Services.
- 4.3 The Seller further reserves the right to charge the Buyer for any additional fees or expenses incurred by the Seller in the performance of the Services to the extent these are caused by any change in the scope of the Services to be performed, and/or any act or omission of the Buyer, which becomes apparent during the performance of the Services.
- 4.4 The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods.
- 4.5 The price of the Goods and/or Services is exclusive of any applicable value added tax (**VAT**) chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract, the Buyer shall be liable to pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of Goods or Services.

5. **Payment**

- 5.1 Subject to any special terms agreed in writing by the Seller, for Goods which comprise of cranes and/or parts kits, the Seller shall be entitled to invoice the Buyer for payment before delivery, and the Buyer shall pay the invoice upon receipt. For the avoidance of doubt, the Seller shall be under no obligation to deliver the Goods which comprise of cranes and/or parts kits until the Buyer has paid for them in full and cleared funds.
- 5.2 For Goods which comprise of parts, the Seller shall invoice the Buyer on delivery and the Buyer shall pay the invoice within 30 days of the date of the invoice in full and in cleared funds.
- 5.3 Subject to any special terms agreed in writing by the Seller, in respect of Services (including the IoC Services), the Seller shall be entitled to invoice on acceptance of the Order by the Seller and the Buyer shall pay the invoice upon receipt in full and in cleared funds.
- 5.4 For the avoidance of doubt, where the Seller is providing services comprising of training services, the Seller shall be under no obligation to release any training certificates to the Buyer unless and until it has received payment in full from the Buyer.
- 5.5 The time of payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.6 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above NatWest Bank plc 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). The Buyer shall pay the interest together with the overdue amount.
- 5.7 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Seller may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

6. **Delivery**

- 6.1 Any dates quoted for delivery of the Goods are approximate only. Time for delivery shall not be of the essence of the Contract.
- 6.2 The Seller 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 an act or omission of the Buyer, including the Buyer's failure to provide the Seller with adequate delivery instructions or any other relevant instructions related to the supply of the Goods.

- 6.3 All or any of the Goods may be delivered by the Seller in advance of the quoted delivery date upon the Seller giving reasonable notice to the Buyer.
- 6.4 Delivery will be made to the Buyer's premises as set out in the Order, or such other location as the parties may agree, and delivery shall be completed on the Goods arrival at this location. In respect of Goods which comprise of parts, where notified by the Buyer in the Order, such Goods shall be left available for collection by the Seller at 26 Blick Road, Heathcote Industrial Estate, Warwick, CV34 6TA and this shall constitute delivery.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure Event or by reason of the Seller's default) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2 sell the Goods at the best price readily obtainable and, provided that the Buyer has paid for the Goods in full, 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.
- 6.6 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract. Failure by the Seller to deliver any one or more instalment, in accordance with these Conditions, or any claim by the Buyer in respect of any one or more instalment, shall not entitle the Buyer to cancel any other instalment.
- 7. Title and Risk**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when the Seller has attempted to tender delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for:
- 7.2.1 the price of the Goods; and
- 7.2.2 the price for all other goods agreed to be sold by the Seller to the Buyer in respect of which payment is due.
- 7.3 Until such time as the title in the Goods passes to the Buyer, the Buyer shall:
- 7.3.1 keep the Goods separate from those of the Buyer and other third parties so that they remain readily identifiable as the Seller's property;
- 7.3.2 properly maintain, store and protect the Goods and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery;
- 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clause 17.1.2 to clause 17.1.4;
- 7.3.5 give the Seller such information relating to the Goods as the Seller may require from time to time.
- 7.4 Until such time as the title in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so immediately, to enter upon any premises of the Buyer or any third party where the Goods are stored, in order to recover the Goods.
- 7.5 Without prejudice to the generality of clause 7.4, if before title in the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 17.1.2 to 17.1.4, then without limiting any other right or remedy the Seller may have:
- 7.5.1 the Buyer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

- 7.5.2 the Seller may at any time:
- (a) require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) if the Buyer fails to do so promptly, enter any premises of the Buyer or any premises of a third party where the Goods are stored, in order to recover them.
- 7.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) become immediately due and payable.
- 8. Returns**
- 8.1 Except in the case of any faulty or defective Goods, the Buyer shall only be permitted to return the Goods to the Seller at the Seller's sole discretion and in accordance with this clause 8.
- 8.2 If the Buyer wishes to return the Goods to the Seller, it must first contact the Seller and obtain the Seller's written agreement and a returns number.
- 8.3 The Buyer is responsible for paying any carriage and insurance costs connected with the return of the Goods to the Seller and any returned Goods must be accompanied by a packing note, stating the invoice number and date, together with the reason for return, the name of the representative at the Seller who authorised the return and the returns number provided by the Seller.
- 8.4 The Buyer may (at the Seller's discretion) be liable to pay a restocking charge of 25% of the price of the applicable Goods.
- 8.5 The Seller shall only refund the price of the Goods if the returned Goods are (in the Seller's reasonable opinion) in a good and saleable condition and (where applicable) returned in their original packaging. In the event that the returned Goods, in the reasonable opinion of the Seller, are not in a good and saleable condition and/or in their original packaging, the Seller may return such Goods to the Buyer and charge the Buyer for any additional packaging, insurance and carriage costs incurred by the Seller.
- 8.6 Except in the case of faulty or defective Goods, the Buyer shall have no right to return any Goods which are made-to-measure, bespoke or ordered to special requirements of the Buyer.
- 9. Supply of Services**
- 9.1 The Seller shall provide the Services to the Buyer in accordance with the specification for the Services set out in the Quotation in all material respects.
- 9.2 The Seller shall use reasonable endeavours to meet any performance dates for the Services agreed with the Buyer but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 9.3 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.
- 9.4 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 10. Buyer's Obligations**
- 10.1 The Buyer shall:
- 10.1.1 ensure that the terms of the Order are complete and accurate;
 - 10.1.2 co-operate with the Seller in all matters relating to the Contract;
 - 10.1.3 provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller to deliver the Goods and/or provide the Services;
 - 10.1.4 provide the Seller with such information and materials as the Seller may reasonably require to deliver the Goods and/or supply the Services, and ensure that such information is accurate in all material respects;

- 10.1.5 where applicable, prepare the Buyer's premises for the delivery of the Goods and/or supply of the Services and, in respect of the IoC Services, ensure that its network and systems comply with the relevant specifications provided by the Seller from time to time
 - 10.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the Goods are to be delivered and/or Services are to start;
 - 10.1.7 keep and maintain all materials, equipment, documents and other property of the Seller (**Seller Materials**) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation;
 - 10.1.8 without affecting its other obligations under these Conditions, comply with all applicable laws and regulations with respect to its activities under these Conditions; and to the extent permitted by law and except as otherwise expressly provided in these Conditions, be solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Seller's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Buyer's network connections or telecommunications links or caused by the internet.
- 10.2 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):
- 10.2.1 the Seller shall without limiting its other rights or remedies have the right to suspend delivery and/or performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - 10.2.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 10.2.2; and
 - 10.2.3 the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.
- 11. Quality of Goods**
- 11.1 The Seller warrants that the Goods will correspond with their description and be free from defects in design, material and workmanship at the time of delivery.
- 11.2 Subject to clause 11.3, if:
- 11.2.1 the Buyer gives the Seller notice in writing within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure that some or all of the Goods do not comply with the warranty set out in clause 11.1;
 - 11.2.2 the Seller is given a reasonable opportunity of examining such Goods; and
 - 11.2.3 the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost,
- the Seller shall, at its sole option, repair or replace the defective Goods (or the part in question) or refund to the Buyer the price of the Goods in full.
- 11.3 The Seller shall not be liable for the Goods failure to comply with the warranty at clause 11.1 if:
- 11.3.1 the Buyer makes further use of the Goods after giving notice in accordance with clause 11.2;
 - 11.3.2 any defect in the Goods arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;

- 11.3.3 the defect arises because the Buyer has failed to properly store and maintain the Goods in accordance with the Seller's oral or written instructions as to the storage, handling, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade or industry practice;
 - 11.3.4 any defect arising from fair wear and tear, wilful damage, negligence, or, abnormal working conditions;
 - 11.3.5 the total price for the Goods has not been paid by the due date for payment;
 - 11.3.6 the Buyer alters or repairs such Goods without the written consent of the Seller;
 - 11.3.7 the Goods differ from their description or specification as result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 11.4 The warranty at clause 11.1 does not extend to Goods, including any parts, materials or equipment, not manufactured by the Seller, in respect of which the Seller shall use its reasonable endeavours to pass on to the Buyer the benefit of the manufacturer's warranty or guarantee as is given by the manufacturer to the Seller in respect of such Goods.

12. IoC Services

- 12.1 In the event that the Buyer purchases the IoC Services, the provisions of this clause 12 shall be applicable.
- 12.2 The Seller shall, during the Subscription Term, provide the IoC Services to the Buyer on and subject to the terms of these Conditions.
- 12.3 The Seller shall use commercially reasonable endeavours to make the IoC Services available 24 hours a day, 7 days a week, except for any periods of maintenance, provided that the Seller has used reasonable endeavours to give the Buyer reasonable notice of such maintenance in advance. For the avoidance of doubt, the Seller shall be under no obligation to provide notice in the event of emergency maintenance being required.

12.4 General.

12.4.1 The Buyer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the IoC Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Seller reserves the right, without liability or prejudice to its other rights to the Buyer, to disable the Buyer's access to any material that breaches the provisions of this clause.

12.4.2 The Buyer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - ii. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the IoC Services in order to build a product or service which competes with the IoC Services; or

- (c) use the IoC Services to provide similar services to third parties; or
 - (d) subject to clause 19.5, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the IoC Services available to any third party; or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the IoC Services; or
 - (f) introduce or permit the introduction of, any Virus into the Seller's network and information systems.
- 12.4.3 The Buyer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the IoC Services and, in the event of any such unauthorised access or use, promptly notify the Seller.
- 12.4.4 The rights provided under this clause 12 are granted to the Buyer only and shall not be considered granted to any subsidiary or holding company of the Buyer.
- 12.5 Buyer Data.**
- 12.5.1 The Buyer shall own all right, title and interest in and to all of the Buyer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Buyer Data.
- 12.6 Seller's Obligations.**
- 12.6.1 The Seller warrants to perform the IoC services with reasonable skill and care but does not warrant that:
- (a) the Buyer's use of the IoC Services will be uninterrupted or error-free; or
 - (b) the IoC Services and/ or the information obtained by the Buyer through the IoC Services will meet the Buyer's requirements.
- 12.6.2 The Seller is not responsible for delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks or facilities, including the internet, and the Buyer acknowledges that the IoC Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 12.7 Term and Termination.**
- 12.7.1 The IoC Services shall commence on the IoC Services Commencement Date and shall continue for the Initial Subscription Term.
- 12.7.2 Upon expiry of the Initial Subscription Term (or any Renewal Period agreed under this clause 12.7), the IoC Services shall terminate automatically without notice unless, no later than 30 days before the end of the Initial Subscription Term (or any relevant Renewal Period), the Buyer requests an extension of the IoC Services beyond the Initial Subscription Term (or relevant Renewal Period), for which the Seller shall provide a Renewal Quotation.
- 12.7.3 Upon receipt by the Seller of the Buyer's written acceptance of the Renewal Quotation, the IoC Services shall be renewed for the period specified within the Renewal Quotation (each a 'Renewal Period') and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 12.7.4 If the Buyer does not accept the Renewal Quotation before the expiry of the Initial Subscription Term (or relevant Renewal Period, as applicable), the IoC Services shall terminate automatically on the expiry of the Initial Subscription Term (or relevant Renewal Period, as applicable).
- 12.7.5 In respect of the IoC Services only, and without affecting any other right or remedy available to it, the Seller may terminate the IoC Services at any time on giving 30 days written notice to the Buyer.
- 13. Liability**
- 13.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 13.1.1 death or personal injury caused by the Seller's negligence;

- 13.1.2 fraud or fraudulent misrepresentation; and
 - 13.1.3 any other liability which cannot be excluded by law.
- 13.2 Subject to clause 13.1:
- 13.2.1 the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 13.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid or payable for the Goods and/or Services under the Contract the subject of the claim.
- 13.3 All warranties, conditions, descriptions or representations, implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 13.4 This clause 13 shall survive termination of the Contract.

14. **Confidentiality**

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 14 shall survive termination of the Contract.

15. **Intellectual Property**

- 15.1 Except as otherwise agreed in writing by the Seller, all Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services shall, as between the Seller and the Buyer, be owned by the Seller.
- 15.2 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.
- 15.3 All Seller Materials are the exclusive property of the Seller.

16. **Force Majeure**

- 16.1 The Seller 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 Seller's obligations under the Contract, if the delay or failure was due to any cause beyond the Seller's reasonable control including:
 - 16.1.1 Act of God, explosion, flood, tempest, fire or accident;
 - 16.1.2 weather conditions that, in the reasonable opinion of the Seller, make it unsafe or unreasonable to perform the Contract;
 - 16.1.3 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 16.1.4 compliance with any acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind implemented by any governmental, parliamentary, or local authority;
 - 16.1.5 changes to import or export regulations or embargoes;
 - 16.1.6 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

- 16.1.7 difficulties in obtaining material supplies, labour, fuel, parts or machinery;
 - 16.1.8 power failure, failure of a utility service or transport network, or breakdown of any plant or machinery;
 - 16.1.9 default of suppliers or subcontractors, (**'Force Majeure Event'**).
- 16.2 If the Force Majeure Event prevents the Seller from providing any of the Services and/or Goods for more than 6 weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Buyer.
17. **Termination**
- 17.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 17.1.1 the other party is in breach of its obligations under the Contract and, if such breach is remediable, fails to remedy such breach within 15 days of being notified to do so;
 - 17.1.2 the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of a solvent amalgamation or reconstruction);
 - 17.1.3 an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the other party;
 - 17.1.4 the other party ceases, or threatens to cease, to carry on business;
 - 17.1.5 an event occurs or proceedings are taken in relation to the other party in any jurisdiction which has an effect similar or analogous to clauses 17.1.2 to 17.1.4, or a party reasonably apprehends that any of the events set out in clauses 17.1.2 to 17.1.4 is about to occur in relation to the other party.
- 17.2 Without limiting its other rights or remedies, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clauses 17.1.2 to 17.1.4, or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 17.3 On termination of the Contract for any reason:
- 17.3.1 the Buyer shall immediately pay to the Seller all of the Seller's unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
 - 17.3.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 17.3.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 17.4 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
18. **Data Protection**
- 18.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 18, 'Applicable Laws' means (for so long as and to the extent that they apply to the Seller) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and 'Domestic UK Law' means the UK Data Protection Legislation and any other law that applies in the UK.
- 18.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Seller is the Processor.

- 18.3 Without prejudice to the generality of clause 18.1, the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to the Seller and/or lawful collection of the Personal Data by the Seller on behalf of the Buyer for the duration and purposes of the Contract (including the IoC Services).
- 18.4 Without prejudice to the generality of clause 18.1, the Seller shall, in relation to any Personal Data processed in connection with the performance by the Seller of its obligations under the Contract:
- 18.4.1 process that Personal Data only on the documented written instructions of the Buyer unless the Seller is required by Applicable Laws to otherwise process that Personal Data. Where the Seller is relying on Applicable Laws as the basis for processing Personal Data, the Seller shall promptly notify the Buyer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Seller from so notifying the Buyer;
 - 18.4.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 18.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 18.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:
 - (a) the Buyer or the Seller has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Seller complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Seller complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data;
 - 18.4.5 assist the Buyer, at the Buyer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 18.4.6 notify the Buyer without undue delay on becoming aware of a Personal Data Breach;
 - 18.4.7 at the written direction of the Buyer, delete or return Personal Data and copies thereof to the Buyer on termination of the Contract unless required by Applicable Law to store the Personal Data; and
 - 18.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 18 and allow for audits by the Buyer or the Buyer's designated auditor (at the Buyer's cost) and immediately inform the Buyer if, in the opinion of the Seller, an instruction infringes the Data Protection Legislation.
- 18.5 Any third party processor of Personal Data appointed by the Seller under these Conditions shall be subject to the consent of the Buyer.
19. **General**
- 19.1 **Notices.** Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified

pursuant to this provision to the party giving the notice, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in this clause 19.1; if sent by prepaid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 19.2 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.
- 19.3 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.4 **Severance.** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 19.5 **Assignment.** The Contract is personal to the Buyer, and the Buyer shall not assign, transfer, charge, subcontract, declare a trust over or in any way deal with all or any of its rights or obligations under the Contract without the Seller's prior written consent. The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 19.6 **Third Party Rights.** The parties do not intend any third party rights to be created under or pursuant to the Contract and a person who is not a party to the Contract shall not have any rights to enforce its terms.
- 19.7 **Governing Law and Jurisdiction.** The Contract shall be governed by the laws of England, and both parties agree to submit to the exclusive jurisdiction of the English courts.