

The Customer's attention is particularly drawn to the provisions of *clause 11* (Limitation of liability).

1. Definitions and interpretation

1.1 The following definitions apply in these Conditions:

"Business Day":

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

"Certificate of Acceptance":

the form by which the Customer shall accept the Equipment, such form being in the form of that appended to these Conditions.

"Commencement Date":

has the meaning given in clause 2.2.

"Conditions":

these terms and conditions as amended from time to time in accordance with clause 15.7.

"Contract":

the contract between the Supplier and the Customer for the supply to the Customer (whether by way of sale or hire) of Equipment and/or Services in accordance with these Conditions.

"CPA Conditions":

the Construction Plant-hire Association Model Conditions for the hiring of plant (with effect from July 2011).

"Customer":

the person or firm who purchases (or takes on hire) the Equipment and/or who purchases Services from the Supplier.

"Delivery Location":

has the meaning given in clause 4.1.

"Equipment":

the equipment (or any part of it) set out in the Order.

"Force Majeure Event":

has the meaning given to it in clause 14.

"Hire Contract":

that Contract which is a Hire Contract (the expression 'Hire Contract' being construed and interpreted in accordance with clause 2.7).

"Intellectual Property Rights":

patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in computer software 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 supply of Equipment and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation.

"Services":

the services supplied by the Supplier to the Customer as set out in the Service Specification.

"Service Specification":

the description or specification for the Services provided or to be provided by the Supplier to the Customer in writing.

"Supplier":

TRACTO-TECHNIK UK LIMITED incorporated and registered in England and Wales with company number 01676000.

"Supplier Materials":

has the meaning given in clause 8.1.6.

"Warranty Period":

in the case of a Hire Contract, the period agreed for the relevant hire or, if shorter, the period specified by Supplier in the Supplier's quotation or in any other document prior to the Order;

in the case of any other Contract for the supply of Equipment, 12 months or such shorter period (if any) as the Supplier shall have specified in the Supplier's quotation or in any other document prior to the Order.

1.2 In these Conditions:

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 party includes its personal representatives, successors and permitted assigns;

1.2.3 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;

1.2.4 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;

1.2.5 a reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier or any manufacturer of the Equipment (to be supplied by the Supplier under the Contract) including weights dimensions and specifications and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's or manufacturer's catalogues or brochures or otherwise (and whether in paper format or held in an electronic medium) are issued or published for the sole purpose of giving an approximate idea of the Equipment and/or Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for the period set out in the quotation, or, if no specific time is stipulated, for a period of 30 days from its date of issue or as otherwise agreed by the Supplier and Customer in writing.

2.6 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

2.7 Where the Contract is for the supply of Equipment by way of hire (and whether or not that Contract also provides for the supply of Services) then the CPA Conditions shall, subject as provided in these Conditions, also apply to that Contract (the '**Hire Contract**') and shall be deemed incorporated therein.

2.8 If there is any inconsistency between any of the provisions expressly set out in these Conditions and the provisions of the CPA Conditions, then the express provisions of these Conditions shall prevail.

2.9 Each of the references in the CPA Conditions to:

2.9.1 "Contract" shall be construed and interpreted as referring to the Contract;

2.9.2 "Hirer" shall be construed and interpreted as referring to the Customer; and

2.9.3 "Owner" shall be construed and interpreted as referring to the Supplier.

2.10 Without prejudice to the operation of clause 2.8, the following parts of the CPA Conditions of the CPA Conditions shall not apply to the Hire Contract:

2.10.1 clause 1.(a), clause 1.(c), clause 1.(e), and clause 1.(f) in section 1 (Definitions);

2.10.2 section 2 (Extent of the Contract);

2.10.3 section 3 (Acceptance of Plant);

2.10.4 section 35 (Dispute Resolution).

2.11 In the definition of "Plant" in clause 1.(g) in section 1 (Definitions) of the CPA Conditions, each of the references to 'Plant' shall each be construed and interpreted as a reference to the Equipment which is the subject of the Hire Contract.

2.12 If the Contract is a Hire Contract then, unless otherwise agreed by the Supplier in writing, the Equipment (where that includes a drill rig or drill unit or other system) will be supplied by the Supplier with up to two individual operators per item of Equipment and the Customer shall pay the Supplier's charges for the provision of such personnel and who will operate the relevant Equipment when the same falls to be operated during the period of hire.

3. Equipment

3.1 The Equipment is described on the Supplier's website, advertising or other literature supplied to the Customer by the Supplier.

3.2 The Supplier reserves the right to amend the specification or design of the Equipment entirely at its own discretion and/or if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

3.3 Before first use of the Equipment, the Customer shall sign, date and return the Certificate of Acceptance to the Supplier

4. Delivery of Equipment

4.1 The Supplier shall deliver the Equipment to the relevant location agreed between the Supplier and the Customer prior to the Supplier having accepted the relevant Order or to such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Equipment is ready.

4.2 Delivery of the Equipment shall be completed on the Equipment's arrival at the Delivery Location or if the Customer or Customer's representative collects the Equipment at the time it is loaded onto the vehicle of the collecting person.

4.3 Any dates quoted for delivery of the Equipment 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 Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.4 If the Supplier fails to deliver the Equipment, 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 Equipment. The Supplier shall have no liability for any failure to deliver the Equipment 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 for the Equipment or any relevant instruction related to the supply of the Equipment.

4.5 If the Customer fails to accept delivery of the Equipment within three Business Days of the Supplier notifying the Customer that the Equipment is ready for despatch or if the Customer does not facilitate delivery of the Equipment at the Delivery Location or as applicable the Customer fails to collect the Equipment, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:

- 4.5.1 delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and
- 4.5.2 the Supplier shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If five Business Days after the Supplier notified the Customer that the Equipment was ready for delivery (or if applicable collection) the Customer has not accepted delivery of (or collected) it, the Supplier may resell part or all of the Equipment.
- 4.7 The Supplier may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.8 The Customer shall without delay and in any event within 10 days of Delivery of the Equipment notify the Supplier in writing of any patent or latent defect in the Equipment and if so required by the Supplier make the Equipment available for inspection and testing by the Supplier or a representative of the manufacturer.
- 4.9 If the Supplier transports the Equipment to a Delivery Location that is away from the Supplier's premises, the Customer shall ensure that facilities are available at the Delivery Location for the Equipment to be unloaded from the vehicle used by the Supplier for such transportation.
- 5. Quality of Equipment**
- 5.1 The Supplier warrants that on delivery and for the Warranty Period the Equipment shall:
- 5.1.1 conform in all material respects with its description;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace any defective Equipment, or refund the price of the defective Equipment in full if:
- 5.2.1 the Customer gives notice in writing (within the Warranty Period) promptly following discovery that some or all of the Equipment does not comply with the warranty set out in clause 5.1;
- 5.2.2 the Supplier is given a reasonable opportunity of examining such Equipment;
- 5.2.3 the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost; and
- 5.2.4 the Customer shall (if asked to do so by the Supplier) provides full written details of the training of all operatives who have used the Equipment since it was first delivered to the Customer.
- 5.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty in clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Equipment after giving a notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or those of the manufacturer or (if there are none) good trade practice;
- 5.3.3 the Customer modifies or alters the Equipment or carries out repairs to Equipment without the prior written consent of the Supplier;
- 5.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.3.5 the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 The Supplier shall be afforded a reasonable period of time to carry out any repairs or improvements or to obtain replacement parts before the Customer shall seek to contend that the Supplier has failed to comply with its obligations under clause 5.2 Any parts removed from any Equipment and replaced will become the property of the Supplier if replaced in such circumstances or pursuant to any warranty claim where the Supplier is carrying out such works.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 5.1.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier pursuant to the Contract save that the Warranty Period will not, for the avoidance of doubt, recommence on the date of such supply and accordingly the warranty given in clause 5.1 shall apply to such repaired or replaced Equipment for only the remainder of the Warranty Period (if any) which subsists at the date of such supply.
- 6. Title and risk**
- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Title to the Equipment (in the case of a Contract other than a Hire Contract) shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment, in which case title to the Equipment shall pass at the time of payment. In the case of a Hire Contract, title to the Equipment shall not at any stage pass to the Customer and instead shall at all times remain vested in the Supplier.
- 6.3 Until title to the Equipment has passed to the Customer, the Customer shall:
- 6.3.1 store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- 6.3.3 maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4; and
- 6.3.5 give the Supplier such information relating to the Equipment as the Supplier may require from time to time.
- 6.4 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, then, without limiting any other right or remedy the Supplier may have:
- 6.4.1 the Customer's right to use them in the ordinary course of its business ceases immediately; and
- 6.4.2 the Supplier may at any time:
- 6.4.2.1 require the Customer to deliver up all Equipment in its possession; and
- 6.4.2.2 if the Customer fails to do so promptly, enter any premises or any property of the Customer or of any third party where the Equipment are stored in order to recover them.
- 7. Supply of Services**
- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects and shall use all reasonable endeavours to meet any performance dates for the Services agreed in writing by the Supplier with the Customer but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.2 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. Customer's obligations**
- 8.1 The Customer shall at its sole cost:
- 8.1.1 ensure that the terms of the Order and any information it provides in the Service Specification are complete and accurate;
- 8.1.2 co-operate with the Supplier in all matters relating to the Services;
- 8.1.3 provide the Supplier its employees, agents, consultants and subcontractors with such facilities and information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 8.1.4 (to the extent that the Services fall to be provided at any premises away from the Supplier's premises) prepare the Customer's premises or other relevant premises for the supply of the Services and comply with all applicable laws, including health and safety laws;
- 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 8.1.6 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- 8.1.7 comply with any additional obligations as set out in the Service Specification; and
- 8.1.8 not adapt or modify any Equipment or otherwise carry out any activity which could be a breach of the Intellectual Property Rights of the Supplier the manufacturer or any third party.
- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 9. Charges and payment**
- 9.1 The price for Equipment:
- 9.1.1 shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order; and
- 9.1.2 shall be exclusive of all costs and charges of shipping, packaging, insurance, transport of the Equipment (which are payable by the Customer in addition).
- 9.2 The charges for Services shall be calculated on a time (including without limitation travel time) and materials basis:
- 9.2.1 the charges shall be calculated in accordance with the Supplier's hourly fee rates or as applicable fixed and variable service costs from time to time published by the Supplier;
- 9.2.2 the Supplier's normal hours are those in the period from 8.00 am to 5.00 pm on Business Days;
- 9.2.3 the Supplier shall be entitled to charge an overtime rate (in addition to the rates payable under clause 9.2.1) of 50 % of the hourly fee rate on a pro-rata basis for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and
- 9.2.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.3 The Supplier reserves the right to:
- 9.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index or Average Earnings Index;
- 9.3.2 increase the price of the Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to the Supplier that is due to:
- 9.3.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or

- 9.3.2.2 any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Equipment.
- 9.4 In respect of Equipment supplied otherwise than under a Hire Contract, the Supplier shall invoice the Customer in accordance with the terms specified by the Supplier prior to it accepting the Order. Unless otherwise agreed by the Supplier in writing, the Customer shall pay to the Supplier the full sum due under the Contract before the Supplier shall be obliged to deliver the Equipment. If any part of the payment for the Equipment, its delivery or otherwise is deferred by agreement until after delivery, the Customer shall pay the Supplier the relevant sums on the days agreed for such payment or if delivery occurs before payment notwithstanding that no deferral has been agreed the full sum due to the Supplier will be due and payable upon delivery of the Equipment. In respect of Services, and unless otherwise agreed in writing, the Supplier shall invoice the Customer on the earlier of completion of performance of Services and at the end of each month during which the Services are supplied.
- 9.5 Subject as mentioned in 9.5 the Customer shall pay each invoice submitted by the Supplier:
- 9.5.1 within the number of days specified by the Supplier prior to the Supplier accepting the Order or, in the absence of any such specification, within 30 days of the date of the invoice; and
- 9.5.2 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.
- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.
- 9.7 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 12 (Termination), 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 9.7 will accrue each day at 6% a year above the base lending rate of Lloyds Bank plc and further any other sums due from the Customer to the Supplier shall become immediately due and payable (unless the Supplier otherwise agrees).
- 9.8 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).
- 10. Intellectual property rights**
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier and nothing shall be construed as conferring any licence or the grant of any rights in favour of the Customer in relation to Intellectual Property Rights whether relating to the Services or Equipment supplied.
- 10.2 If the Equipment is to be manufactured or any process applied to it by or for the Supplier in accordance with a specification provided by the Customer the Customer shall indemnify the Supplier against any loss damages costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim by a third party for infringement of the Intellectual Property Rights of any third party.
- 11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE 11.**
- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for things which cannot be legally limited (including without limitation):
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 11.1.2 fraud or fraudulent misrepresentation;
- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).
- 11.2 Subject to clause 11.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 11.2.1 loss of profits;
- 11.2.2 loss of sales or business;
- 11.2.3 loss of agreements or contracts;
- 11.2.4 loss of anticipated savings;
- 11.2.5 loss of use or corruption of software, data or information;
- 11.2.6 loss of or damage to goodwill; and
- 11.2.7 any indirect or consequential loss.
- 11.3 Subject to clause 11.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the price paid by the Customer for the supply of the Equipment or for the provision of the Services under the Contract.
- 11.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 This clause 11 shall survive termination of the Contract.
- 12. Termination**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- 12.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 12.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 12.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment or if on reasonable grounds the Supplier believes that the Customer will not be able to pay any amounts will be due in future under the terms of the Contract.
- 12.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them or will not be able to pay any amounts will be due in future under the terms of the Contract.
- 13. Consequences of termination**
- 13.1 On termination of the Contract:
- 13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Equipment 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;
- 13.1.2 the Customer shall return all of the Equipment which has not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises or other property and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 14. Force majeure**
- Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 15. General**
- 15.1 Assignment and other dealings**
- 15.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 15.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 15.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.3 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 15.5 Entire agreement.**
- 15.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- 15.5.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 15.6 **Third parties rights.** 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.
- 15.7 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 15.8 **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.
- 15.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.