



# TERMS AND CONDITIONS

## 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Bottled Goods:** the beer supplied by the supplier in bottles, which is not Cask Goods.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when U.K. clearing banks in the city of London are open for business.

**Cask Goods:** the beer supplied by the supplier in casks, kegs or similar, which is not Bottled Goods.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

**Containers:** includes all packaging of any nature, including, but not limited to kegs, bottles, casks, crates, pallets and cases.

**Confirmed Order:** a Proposed Order which has been accepted by the Supplier by the issue of an Order Confirmation.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions concluded by the issue by Supplier of the Order Confirmation.

**Customer:** the person, firm or body corporate who enters into a Contract purchases the Goods from the Supplier.

**Deposit:** has the meaning given at clause 5.

**Distributor:** any distributor, warehouse, value added reseller, logistics company (or their respective sub-contractors) who are appointed by the Supplier to warehouse, distribute or deliver the Goods (or any part of them) to the Customer.

**Distributor Contract:** the contract between the Supplier and the Distributor pursuant to which the Distributor performs services and supplies the Goods to the Customer on behalf of the Supplier.

**Force Majeure Event:** has the meaning given in clause 11.

**Goods:** the Goods (or any part of them) including Cask Goods and/or the Bottled Goods as set out in the Confirmed order.

**Minor:** any person under the age of 18 (eighteen) years.

**Proposed Order:** the Customers order for the Goods detailed on the Suppliers Order Form.

**Requisite Licences:** any licenses and authorisation required pursuant to the Licensing Act 2003 or any other applicable legislation.

**Shelf Life:** the industry-acknowledged shelf life of the Goods or the period of time agreed by the parties as being the shelf life of the Goods or on the Goods, the packaging or other documentation accompanying the Goods.

**SIBA:** The Society of Independent Brewers.

**SIBA Best Brewing Practice:** industry guidelines issued by SIBA, a copy of which can be found at [www.siba.co.uk](http://www.siba.co.uk)

**SIBA Technical Circular:** the British Beer and Pub Association technical circular no. 418 (version2) located at [www.siba.co.uk/casks/technical-circular-418/](http://www.siba.co.uk/casks/technical-circular-418/).

**Supplier:** Bowman Ales Limited (registered in England and Wales) with company number 05861077 and registered office address Clock Offices, High Street, Bishops Waltham, Hampshire. SO32 3QY.

**Supplier's Directory:** the relevant brochure, catalogue, price list or website directory issued or made available by the Supplier detailing the products available for purchase by the Customer.

**Supplier's Order Form:** the official order form of the Supplier upon which the Proposed Order must be made by the Customer.

**1.2 Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a 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.
- (d) Any phrase introduced by the terms **including, include, in particular** or similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and emails.

## **2. BASIS OF CONTRACT**

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

2.2 The Proposed Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the Proposed Order is submitted using the Supplier's Order Form or verbally by telephonic mean or by email and that the terms of the Proposed Order submitted by the Customer are complete and accurate.

2.3 The Proposed order shall only be deemed to be accepted when the Supplier issues a written a verbal acceptance of the Proposed order ("**Order Confirmation**"), at which point the Contract shall come into existence.

2.4 The Supplier shall be entitled to reject a Proposed Order for any reason, including but not limited to, where the Supplier has reason to believe that the person placing the order is a Minor or where the Customer does not possess the Requisite Licences, or that either party has other contracted restrictions forbidding such a Proposed Order.

2.5 At anytime after the issue of the Order Confirmation and prior to Delivery, the Supplier may (without any liability) cancel any Confirmed Order where it has come to the Supplier's attention that:

- (a) The person that placed the Proposed Order on behalf of the Customer was a Minor;
- (b) The Customer did not at the time of the Proposed Order or at that time did not possess the Requisite Licences;
- (c) Either party has other contracted restrictions forbidding such Confirmed Order; or
- (d) If complying with the terms of the Proposed Order would be in breach of any relevant law, legislation or code of conduct applicable to either party.

2.6 The Contract constitutes the complete agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.7 Any samples, descriptive matter, or advertising produced by the Supplier including those contained in the Supplier's Directory (if any) are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

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

### **3. GOODS**

3.1 The Goods are described in the Order Confirmation.

### **4. DELIVERY**

- 4.1 The Supplier shall deliver or shall procure that the relevant Distributor shall deliver the Goods in accordance with these Conditions. In the event that a Distributor is appointed the Supplier shall notify the Customer.
- 4.2 The Supplier shall ensure that each delivery of the Goods is accompanied with a delivery note shows the date of the Order Confirmation, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods including any information required under the Food Labelling Regulations 1996, special storage instructions (if any), details of Containers to be returned to the Customer, the Distributor or any third party or made available for collection by the Customer, the Distributor or any third party and, if the Confirmed order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.3 The Supplier or the Distributor (if applicable) shall deliver the Goods to the location set out in the Order Confirmation or such other location as the parties may agree (“Delivery Location”) at any time after the Supplier or Distributor (where applicable) notifies the Customer that the Goods are ready.
- 4.4 Delivery of the Goods shall be completed on the Goods arrival at the Delivery Location whether or not they are accepted by the Customer (“**Delivery Date**”).
- 4.5 Any dates quoted for delivery are approximate only, and the time of the delivery is not of the essence. The Supplier shall not be liable for any delay or failure to deliver of the Goods that is caused by:
- (a) A Force Majeure Event; or
  - (b) The Customers failure to provide the Supplier or the Distributor with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods; or
  - (c) Any act or omission by the Customer or any third party who is performing services for and acting on behalf of the (“**Customer Default**”).
- 4.6 Where any delay in delivery or failure to deliver is caused by an act or omission by the Distributor or any third party who is acting on behalf of the Distributor, the Supplier’s liability shall be limited to the lower of:
- (a) The amount for which the Distributor is liable to the Supplier for such delivery or failure to deliver under the Distributor Contract; and
  - (b) The costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.7 If the Customer fails to accept the delivery of the Goods at the Delivery Location on the Delivery Date or within three Business Days of the Supplier or the Distributor (if applicable) notifying the Customer that the Goods are ready, then, except where such failure or delay caused by a Force Majeure Event or the Supplier’s failure to comply with its obligations under the Contact:

- (a) Delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which the Supplier or the Distributor (if applicable) notified the Customer that the Goods were ready; and
- (b) The Supplier or the Distributor (if applicable) shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If 10 Business Days after the day on which the Supplier or the Distributor (if applicable) notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the customer for any excess over the price of the Goods or the Deposit or charge the Customer for any shortfall below the price of the Goods and the Deposit.

4.9 The Customer shall not be entitled to reject the Goods if the Supplier or the Distributor delivers up to and including 5% more or less than the quantity of the Goods ordered. If the Customer believes that that less than 95% of the Goods have been delivered, provided that:

- (a) The Customer gives notice to the Supplier in writing of the shortfall;
- (b) The Customer has not tapped, used or sold any of the Goods; and
- (c) The Supplier is given reasonable opportunity to inspect the Goods,

the Supplier shall, at its option, make a pro rate adjustment to the invoice relating to those Goods or deliver or instruct the Distributor to deliver (if applicable) to the Customer additional Goods equal to the amount of the shortfall, in accordance with these Conditions.

4.10 The Supplier or the Distributor (if applicable) may deliver the Goods 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.

## **5. CONTAINERS**

5.1 Where the Supplier requires the Customer to return any or all of the Containers, the Supplier or the Distributor (if applicable) shall notify the Customer of that fact.

5.2 The Supplier is entitled to charge a deposit against the return of the Containers of any amount ("Deposit") or the amount stated in the Order Confirmation which shall be payable within 1 Business Days of the date of the Order Confirmation and shall be repaid to the Customer once the Supplier or the Distributor (if applicable) has had the Containers returned in accordance with clause 5.3.

5.3 The Customer shall promptly notify the Supplier or the Distributor (if applicable) once the Containers are empty and return them to or make them available for collection by the Supplier or the Distributor (if applicable), and in the absence of such notification, the Supplier and/ or the Distributor shall be entitled to request

the return of the Containers within 30 days of the Delivery Date, even where the Containers have not been tapped and/ or are not empty.

## 6. QUALITY

6.1 The Supplier warrants that on the Delivery Date and for the lesser duration of;

- (a) The shelf life of the goods; or
- (b) The best before date (as shown on the journey label or on the bottle label) for both cask goods and bottles and in the case of “racked bright” beer it shall be 1 (one) week from the date of racking. (“**Warranty Period**”),
  - (i) Conform in all material respects with their description.
  - (ii) Be of satisfactory quality (within the meaning of the Sale of Good Act 1979).
  - (iii) And be of a quality in accordance with Best Brewing Practice.

6.2 Subject to clause 6.3 if:

- (a) The Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
- (b) The Supplier and/ or the Distributor is given a reasonable opportunity of testing such Goods; and
- (c) The Customer (if asked to do so by the Supplier) returns such Goods to the Supplier’s or Distributor’s place of business at the Customers cost, The Supplier shall, at its option, replace the defective Goods or require the Distributor to do so, or refund the price of the defective Goods in full.

6.3 The Supplier shall not be liable for Goods’ failure to comply with the Warranty set out in clause 6.1 in any of the following events:

- (a) The Customer makes any further use of or continues to sell such Goods after giving notice in accordance with clause 6.2;
- (b) The defect arises because the Customer failed to follow the Supplier’s or the Distributor’s (if applicable) oral or written instructions as to the storage and maintenance of the Goods or (if there is none) good trade practice regarding the same;
- (c) The customer alters or tampers with such Goods without the written consent of the Supplier;
- (d) The defect arises as a result of wilful damage, negligence, or abnormal storage conditions; or
- (e) The good differ from their description as a result of changes made to ensure they comply with applicable statutory requirements.

6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Good’s failure to comply with the Warranty set out in clause 6.1.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

## **7. TITLE AND RISK**

7.1 The risk in the Goods shall pass to the Customer on the Delivery Date.

7.2 Title to the Goods shall not pass to the Customer until:

- (a) The Supplier has received payment in full (in cash or cleared funds) for the Goods; and
- (b) Any and all Containers have been returned to the Supplier in accordance with clause 5.3

7.3 for the avoidance of doubt, title to the Containers shall not pass to the Customer or any third party and shall remain at all times with the Supplier excepting when the Containers are of a disposable design used for the sale of racked beer in 5,10 and 20 litre volume.

7.4 Until title of the Goods has passed to the Customer, the Customer shall:

- (a) Hold the Goods and any Containers on a fiduciary basis as the Supplier's bailee;
- (b) Store the Goods and the Containers separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property.
- (c) Store and sell the Goods only by means of suitable equipment and in appropriate conditions, in accordance with best industry practice.
- (d) Do not remove, deface or obscure any identifying mark on the Containers or any other packaging related to the Goods;
- (e) Maintain the Goods and any Containers in satisfactory condition and in accordance with any applicable rules and regulation whether statutory or otherwise and keep them insured against all risks for their full price from the Delivery Date; and
- (f) Notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2,

But the Customer may resell or use the Goods but for the avoidance of doubt, not the Containers, in the ordinary course of its business.

7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and any Containers and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods and Containers are stored in order to recover them.

## **8. PRICE AND PAYMENT**

8.1 The price for the Goods shall be the price set out in the Order Confirmation, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the Delivery Date.

- 8.2 The price shall be exclusive of any deposit required to be paid by the Customer in accordance with clause 5.2.
- 8.3 The Supplier may, by giving notice to the Customer at any time up to 5 Business Days before Delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) Any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) Any request from the Customer to change the delivery date(s), quantities or types of Goods ordered; or
  - (c) Any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier or the Distributor adequate or accurate information or instructions.
- 8.4 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 8.5 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). 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 Goods.
- 8.6 The Supplier may invoice the Customer for the Goods:
- (a) Upon sending the Order Confirmation to you;
  - (b) On dispatch of the Goods;
  - (c) On or after the Delivery Date; or
  - (d) At any other time.
- 8.7 Unless otherwise agreed in writing by the Supplier, the Customer shall pay the invoice in full and in cleared funds within 30 Business Days of the date of the invoice. Payment shall be made by signed and dated cheque or into the bank account nominated in writing on the invoice by the Supplier. Time is of the essence. If terms of 30 Business Days have not been agreed, then the delivery shall be wholly and without exception on a cash on delivery basis. The terms of the Transaction will always be noted on the invoice.
- 8.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest will accrue on a daily basis from the due date to the date of actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount.

8.9 The Customer shall pay all amounts due under the Contact in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part, The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **9. CUSTOMERS INSOLVENCY OR INCAPACITY**

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other Contact between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

9.2 For the purposes of clause 9.1, the relevant events are:

- (a) The Customer has failed to return or make available for collection any Containers within a reasonable amount of time. Following a request for their return pursuant to clause 5.3.
- (b) The Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or has having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) The Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (e) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (f) A creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- (g) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or an administrator is appointed over the customer;
- (h) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (i) A person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (j) Any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(i) (inclusive);
- (k) The Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (l) The Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contact has been placed in jeopardy; and
- (m) (being an individual) the customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

9.3 Termination of the Contact, however arising, shall not affect any of the parties rights and remedies that have accrued as at termination. Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 10. LIMITATION OF LIABILITY

10.1 Nothing in these conditions shall limit or exclude the Supplier's liability for:

- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) Fraud or fraudulent misrepresentation;
- (c) Breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) Defective products under the Consumer Protection Act 1987.

10.2 Subject to clause 10.1:

(a) The Supplier under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

- (i) Loss of profit; or
- (ii) Any indirect or consequential loss arising under or in connection with the Contract; and

(b) Subject to clause 10.2(c), the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether on contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of

(i) £5,000,000 or:

(ii) three times the price of the Contract to which the liability relates.

- (c) Where the Customer has sustained losses as a result of an act or omission of the Distributor, arising under or in connection with the Contract, tort (including negligence), breach of statutory duty, or otherwise, the Supplier's total liability to the Customer shall in no circumstances exceed the lower of:
- (i) £5,000,000 or;
  - (ii) Three times the price of the Contract to which the liability relates; or
  - (iii) The amount for which the Distributor is liable to the Supplier in respect of the losses incurred by the Customer under the Distributor Contract.

## 11. FORCE MAJEURE

11.1 A party, provided that it has complied with the provisions of clause 11.3, shall not be in breach of these Conditions nor liable for any failure or delay in performance of any obligations under these Conditions)and, subject to clause 11.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**)m including but not limited to any of the following:

- (a) Acts of God, flood, earthquake, windstorm or other natural disaster;
- (b) Epidemic or pandemic;
- (c) War, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (d) Terrorist attack, civil war, civil commotion or riots;
- (e) Nuclear, chemical or biological contamination or sonic boom;
- (f) Any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent;
- (g) Fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party) or accidental damage;
- (h) Loss at sea;
- (i) Extreme adverse weather conditions
- (j) Interruption or failure of utility service, including but not limited to electric power, gas or water;
- (k) Any labour dispute, including but not limited to strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as such party);
- (l) Non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause) and
- (m) Collapse of building structures, failure of plant machinery, machinery, computers or vehicles.

11.2 The corresponding obligations of the other party or parties will be suspended to the same extent as those of the party first affected by the Force Majeure Event.

- 11.3 Any party that is affected by a Force Majeure Event shall not be in breach of this agreement provided that:
- (a) It notifies the other party in writing of the nature and extent of the Force Majeure Event causing its delay or failure in performance within three Business Days of its awareness of the existence of the Force Majeure Event; and
  - (b) It has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that it is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

If the Force Majeure Event prevails for a continuous period of more than 2 months, any party may terminate this agreement by giving 14 days written notice to the other party. On the expiry of this notice period, this agreement will terminate. Such termination will be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

## **12. GENERAL**

### **12.1 Assignment and subcontracting.**

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **12.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received; if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or recorded delivery, 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 email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **12.3 Severance.**

- (a) If any court or competent authority finds
- (b) That any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be

deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- (c) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

12.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts in England and Wales.

