

APPLIED PRODUCT SOLUTIONS LIMITED TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

1.1 In these Terms of sale:-

'the Buyer' shall mean the company firm or person who places an order with the Company or otherwise agrees to buy from the Company any of the Goods.

'the Company' shall mean Applied Product Solutions Limited, a company registered in England under number 3445764 and whose registered office is at 36 Mere View Industrial Estate, Yaxley, Peterborough PE7 3HS.

'Contract' shall mean the contract on these Terms for the sale by the Company to the Buyer of the Goods.

'Goods' shall mean all or any of the goods which from time to time the Company offers for sale and which form the subject matter of the Contract.

'Manufacturer' shall mean the original Company of the Goods to the Company.

'Specials' shall mean goods supplied by the Company to the Buyer at the Buyer's request that are not ordinarily held in stock by the Company in its ordinary course of business.

'Terms' these Terms of sale, as amended from time to time in accordance with clause 2.2.

'Unit' shall mean the combined framework assembly and parts which when assembled will form a unit of Goods.

2. TERMS

2.1 The Contract is governed by these Terms to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract or which are implied by trade, custom, practice or course of dealing.

2.2 No variation or addition to these Terms shall be binding upon the Company unless expressly accepted by the Company in writing by a duly authorised officer.

3. ACCEPTANCE

3.1 Unless previously withdrawn, quotations and tenders are open for acceptance for the period stated therein or if no period is stated within 30 days from the date of issue.

3.2 All orders must be accompanied by sufficient information to enable the Company to proceed without delay with the execution of the order.

3.3 Orders shall not be binding on the Company unless and until accepted by the Company and all orders are made subject to these Terms.

3.4 All Goods are offered subject to availability.

4. PRICE

4.1 All prices are exclusive of VAT, packaging, insurance and transport (which shall be payable in addition by the Buyer) and subject to variation at any time to reflect corresponding variations in the Company's own cost of materials, fuel and labour. The Company reserves the right to alter prices by giving reasonable written notice to the Buyer.

4.2 The Buyer shall be liable for any increase in price or expenses incurred by the Company arising out of any delay caused by the Buyer.

4.3 Due to the cost of handling small orders, the Company reserves the right to charge its minimum billing charge ruling on the date of order.

4.4 Unless otherwise agreed, if the Buyer orders Specials and cancels its order prior to delivery, the Company reserves the right to pass on, and the Buyer shall immediately pay, any charges incurred by the Company in connection with the order and/or supply of the Specials (including but not limited to the cost of carriage, insurance and re-stocking charges).

4.5 If the Buyer has a credit account with the Company, the Company may withdraw it or reduce the Buyer's credit limit or change the payment terms under the credit arrangement at any time.

5. TERMS OF PAYMENT

5.1 Save as set out below full payment is due, in cleared funds without any deduction, counterclaim, withholding or set-off, within thirty (30) days from the date of invoice.

5.2 If any of the events listed in clause 16 occur all sums payable by the Buyer to the Company shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

5.3 Time for payment is of the essence of the Contract. If the Buyer fails to pay on the due date for payment, the Company may (without prejudice to any of its other rights):-

5.3.1 charge interest on any amounts overdue at the rate of 4% above the Bank of England's base rate or if higher, statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) from the date of issue of the invoice until payment; and/or

5.3.2 suspend further deliveries until the payment has been made; and/or

5.3.3 cancel the Contract; and/or

5.3.4 exercise its rights pursuant to clause 6.3 below.

5.4 The Company shall have a general lien on all goods for all sums due at any time from the Buyer. The Company shall be entitled to sell the goods at the expense of the Buyer and to use the net proceeds thereof in or towards payment of such sums.

5.5 The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.

6. RESERVATION OF TITLE

6.1 Title in the Goods shall pass to the Buyer on payment of all amounts due under the Contract and all other sums due to the Company from the Buyer on any other account whatsoever.

6.2 Until such time as title in the Goods passes to the Buyer, the Buyer shall:

6.2.1 hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separately from those of the Buyer and third parties;

6.2.2 store the goods, protect, insure and identify the Goods as the Company's property;

6.2.3 not remove, deface or obscure any identifying mark or packaging to the Goods;

6.2.4 notify the Company if it becomes subject to any of the events listed in clause 16, until that time, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

6.3 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company. If the Buyer fails to do so, the Company is entitled forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

6.4 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 Company's property but if the Buyer does so all monies owing by the Buyer to the Company shall forthwith become due and payable (without prejudice to any other right or remedy the Company may have).

7. RISK

7.1 Risk of damage to or loss of the Goods (including but not limited to any loan or replacement Goods) shall pass to the Buyer:-

7.1.1 in the case of Goods to be collected from the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery, or in the case of failure to take delivery of the Goods, the time the Company tendered delivery of the Goods.

8. DELIVERY

8.1 The place and date of delivery shall be agreed between the Company and the Buyer.

8.2 Delivery shall be complete on:

8.2.1 the loading of the Goods onto the carrier in the case of Goods to be delivered otherwise than at the Company's premises; or

8.2.2 the arrival of the Goods at the Company's premises in the case of Goods to be collected from the Company's premises.

8.3 In the case of damage in transit, notice of damage or breakage must be sent in writing by the Buyer both to the Company and to the carrier (if any) within three days of receipt of the Goods followed up with a written claim setting out full details of the damage or breakage within seven days of receipt of the Goods.

8.4 In the case of loss in transit or delay in delivery, notice in writing shall be sent by the Buyer to the Company and to the carrier (if any) within seven days of the date of the invoice followed up with a written claim within 14 days of the date of the invoice.

8.5 Any times or dates quoted for dispatch or delivery of the Goods given by the Company, are approximate only and the time of delivery is not of the essence. The Company shall have no liability for any delay in delivery that is caused by a Force Majeure Event, or the Buyer's failure to promote the Company with adequate delivery instructions relevant to the supply of the Goods.

8.6 Carriage will be charged extra at the prevailing rate unless otherwise agreed in writing. Where the quoted price includes freight, the Company shall determine the route. Special routing by the Buyer will be subject to a separate charge.

8.7 The Company shall have the right to dispatch any portion of the Goods covered by the Contract and to invoice the Buyer for such portion so dispatched on these terms and condition of sale, unless agreed otherwise in writing.

8.8 If for any reason the Buyer fails to take or accept delivery of the Goods at the time when the Goods are due and ready for delivery then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:

8.8.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the second business day after the day on which the Company notified the Buyer that the Goods were ready; and

8.8.2 the Company shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance) at the Buyer's risk.

8.9 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with these terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

9. SPECIFICATION

9.1 The Goods are supplied in accordance with the specification set out in the relevant catalogue of the Company's suppliers (subject to any modifications made since publication) unless the Company states otherwise on its website or in writing.

9.2 Any samples, drawings, descriptive matter or advertising issued by the Company and/or its suppliers any descriptions of the Goods contained in those catalogues or brochures are issued or published 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.

9.3 The Company reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or regulatory requirements. The Buyer shall accept the Goods so changed in fulfillment of the order unless specifically agreed otherwise in the Contract.

9.4 Where the Buyer supplies any drawings or specifications, the Buyer warrants that they are accurate. The Buyer further warrants that the drawings and specifications submitted will not infringe the intellectual property rights of third parties. The Buyer shall fully and promptly indemnify and hold the Company harmless from all claims, losses, liabilities, costs, proceedings, damages and expenses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional fees and expenses) awarded against, incurred or paid by, the Company as a result of or in connection with any alleged or actual infringement (whether or not under English law) of

- any third party's intellectual property rights. This clause 9.4 shall survive termination of the Contract.
- 9.5 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer.
- 9.6 Where the Company supplies drawings and specifications (**Design Specification**) for approval on request of the Buyer, the Buyer assumes all design responsibility when approving and reviewing such documentation. The Company shall have no liability to the Buyer in respect of any Design Specification's suitability, content or fitness for the Buyer's purpose.
- 10. SUITABILITY FOR PURPOSE**
- 10.1 It is entirely the Buyer's responsibility to ensure that the kind and/or class of the Goods ordered by it are suitable for its purpose. The Company shall not be under any liability for any loss or damage (howsoever arising) from or attributable to any advice, statements or representations given by the Company, its employees or agents to the Buyer in respect of the Goods whether regarding performance, capability or suitability for any purpose. Such liability is hereby expressly excluded to the fullest extent permitted by law.
- 10.2 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by a duly authorised officer. In entering into the Contract, the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.
- 10.3 Any advice or recommendation given by the Company, its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed by a duly authorised officer is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 10.4 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 Company shall be subject to correction without any liability on the part of the Company.
- 11. FORCE MAJEURE**
- 11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11.2 The Company shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 11.3 If the Force Majeure Event prevents the Company from providing any Goods for more than [four] weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.
- 12. INDEMNITY**
- The Buyer shall fully indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other reasonable professional costs and expenses) suffered or incurred by the Company as a result of any failure by the Buyer to perform any of its obligations under the Contract including (without limitation) the payment of reasonable storage charges while any of the Goods remain on the Company's premises after risk has passed to the Buyer.
- 13. COMPLIANCE WITH INSTRUCTIONS AND SAFETY**
- 13.1 The Buyer shall ensure that the Goods are installed, used and maintained strictly in accordance with the instructions and recommendations provided by the Company and/or the relevant manufacturer both for the safety of users and third parties and also to prevent damage to the Goods.
- 13.2 The Buyer acknowledges that the Company has no control over the installation, use or maintenance of the Goods by the Buyer therefore, save as set out in clause 19.2 below, the Company shall have no liability whatsoever to the Buyer for any costs, expenses, losses or liabilities incurred by the Buyer or any other third party as a result of the Buyer's failure to comply with this clause 13.
- 14. WARRANTY**
- 14.1 The Company warrants that on delivery[, and for a period of [12] months from the date of delivery (**warranty period**),] the Goods shall:
- 14.1.1 conform in all material respects with their description and any applicable specification; and
- 14.1.2 be free from material defects in design, material and workmanship; and
- 14.1.3 [be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)]; and]
- 14.1.4 [be fit for any purpose held out by the Company].
- 14.2 Subject to clause 14.3, if:
- 14.2.1 the Buyer gives notice in writing [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 14.1;
- 14.2.2 the Company is given a reasonable opportunity of examining such Goods; and
- 14.2.3 the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost,
- the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full in accordance with clause 15 below.
- 14.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 14.1 if:
- 14.3.1 the Buyer makes any further use of such Goods after giving a notice in accordance with clause 14.2;
- 14.3.2 the defect arises because the Buyer failed to follow the Company's (or any manufacturer's) oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 14.3.3 the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
- 14.3.4 the Buyer alters or repairs such Goods without the written consent of the Company;
- 14.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 14.3.6 the Goods differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
- 14.3.7 the Buyer has failed to comply with clauses 13 and/or 14.5; or
- 14.3.8 the failure results from the use of the Goods in conjunction or in combination with other products not sold by the Company.
- 14.4 Except as provided in this clause 14, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 14.1.
- 14.5 For the avoidance of doubt, the following shall apply to all warranty claims:
- 14.5.1 where a part of a Unit is found not to be of satisfactory quality or does not comply fully with its specification the warranty set out in this clause applies only to that part and not the entire Unit;
- 14.5.2 items replaced under warranty are only warranted for the remainder of the warranty period on the Goods originally sold under the Contract;
- 14.5.3 the Buyer shall be responsible for all postage, carriage or delivery of an item in connection with a warranty claim;
- 14.5.4 the Company reserves the right to make site visits in order to inspect installations in the case of any warranty claim;
- 14.5.5 all Goods returned under warranty must have gas or liquid connections sealed to prevent ingress of any foreign body or moisture; and
- 14.5.6 the Company is not responsible for any labour charges incurred in replacing items under warranty unless otherwise agreed by the manufacturer.
- 14.6 No warranty shall apply in respect of Goods which have not been paid for in full.
- 14.7 If the Company considers, in its absolute discretion, that there is no valid warranty claim, the Buyer shall be liable to pay to the Company such amount as represents the costs incurred by the Company in dealing with the warranty claim within 30 days of receipt of the Company's request for such payment.
- 15. WARRANTY PROCEDURE**
- 15.1 Where any item is found to be defective in accordance with the provisions of clause 14 within the warranty period, a replacement should be ordered from the Company with a clear statement that the order is for a warranty replacement giving the name of the individual whom the Company can contact for information.
- 15.2 Advanced replacement products will not be provided in respect of Goods that are normally repaired. The Company will however, endeavour to supply a loan replacement until the item has been repaired and returned following receipt of defective products returned to the Company under the warranty procedure.
- 15.3 Any replacement or loan item will be dispatched with an invoice and a warranty claim form will be included. Such replacement or loan items may be new or second hand and shall be subject to these Terms as if they had been the original Goods supplied.
- 15.4 The completed claim form must be returned by the Buyer together with the defective item (if not already supplied to the Company), within 30 days of dispatch of the claim form by the Company.
- 15.5 Invoices for replacement items are payable according to the Company's normal terms, regardless of the state of progress of the warranty claim.
- 15.6 When the claim has been duly processed and liability has been accepted under the warranty set out in clause 14 by the Company, a credit note will be issued to cover the cost of the replacement item or (in the case of a repair) the Company return the original item duly repaired. In the case of a repair, the Buyer must then return to the Company any loan replacement items provided by the Company or pay for such equipment at the Company's prevailing price.
- 16. BUYER'S INSOLVENCY**
- 16.1 If prior to delivery or dispatch of the Goods the Buyer becomes subject to any of the following, or the Company reasonably believes that the Buyer is about to become subject to any of them any notified the Buyer accordingly, then without limiting any of its rights or remedies, the Company may cancel or suspend further deliveries without liability and all outstanding sums shall become immediately due and payable by the Buyer.
- 16.2 For the purposes of clause 16.1 the relevant events are:
- 16.2.1 is the subject to bankruptcy petition or order;
- 16.2.2 has a Receiving Order made against him or being a Company shall pass a resolution for winding-up or suffer a wind-up order to be made against it; or
- 16.2.3 have a Receiver or Administrator or similar officer appointed over the whole or any part of its assets or enter into any form of arrangement with its creditors or cease or threaten to cease to carry on in business or suffers any other form of insolvency;
- 16.2.4 the Buyer suspends, or threatens to suspend, payments of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of sections 123 or 268 of the Insolvency Act 1986;
- 16.2.5 the other party 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;

- 16.2.6 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 other party other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.7 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- 16.2.8 the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 16.2.9 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 16.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 16.4 Without limiting its other rights or remedies, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Company 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 clause 16.2.1 to clause 16.2.9, or the Company reasonably believes that the Buyer is about to become subject to any of them.
- 16.5 On termination of the Contract for any reason:
- 16.5.1 the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 16.5.2 the Buyer shall return all of the Company Materials and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 16.5.3 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
- 16.5.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

17. RETURNED GOODS

New and unused Goods cannot be returned except when defective or as previously agreed in advance. Subject to their return in perfect and resalable condition, a re-stocking charge will be made of 25% which shall be payable by the Buyer.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 The Company acts as a wholesaler and accordingly cannot give any guarantee or indemnity to the Buyer in respect of any claim by a third party of actual or alleged infringement of any patent, registered design, trade mark or rights affecting the Goods.
- 18.2 No right or licence is granted under these Terms to the Buyer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use or resell the Goods.

19. LIMITATION OF LIABILITY

- 19.1 Subject to clause 19.2:
- 19.1.1 the Company 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
- 19.1.2 the Company'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 £500.00.
- 19.2 Nothing in these Conditions shall limit or exclude the Company's liability for:
- 19.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 19.2.2 fraud or fraudulent misrepresentation;
- 19.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 19.2.4 defective products under the Consumer Protection Act 1987.
- 19.3 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.
- 19.4 This clause 19 shall survive termination of the Contract.
- 19.5 Except as set out in clauses 14, 19.1, 19.2 and 19.6 the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 19.6 The Buyer acknowledges that the above provisions of this clause 19 are reasonable and reflected in the price for the Goods. Accordingly, the Buyer accepts such risk and/or insures against such risks.
- 19.7 Where the Goods are sold under a consumer transaction, the statutory rights of the Buyer are not affected by these Terms.

20. 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 20 shall survive termination of the Contract.

21. GENERAL

21.1 Assignment and other dealings

- 21.1.1 The Company 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.
- 21.1.2 The Buyer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

21.2 Notices

- 21.2.1 Any notice or other communication given to a party under or in connection with this 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 or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax [or e-mail].
- 21.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.1.1; if sent by pre-paid 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.

- 21.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

21.3 Severance

- 21.3.1 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.
- 21.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.4 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.

21.5 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.

21.6 Third Parties

A person who is not a party to the Contract shall not have any rights to enforce its terms.

21.7 Governing law and Jurisdiction

- 21.7.1 These Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 21.7.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).