
Synergy Catalyst Europe
Terms and Conditions of Sale and Warranty
Issue 2.

1. Application of Terms and Conditions

- 1.1 The Supplier shall supply and the Customer shall purchase the Goods and Services in accordance with the quotation which shall be subject to these Terms and Conditions; and
- 1.2 The Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2. Definitions and Interpretation

In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Business Day”	means any day other than a Saturday, Sunday or bank holiday;
“Commencement Date”	means the commencement date for performance of the Contract as set in the Supplier’s order acknowledgement;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Contract (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Contract”	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions as confirmed within the Supplier’s order acknowledgement;
“Contract Price”	means the price stated in the Contract payable for the Goods;
“Customer”	means the person who accepts a quotation or offer of the Supplier for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by the Supplier;
“Delivery Date”	means the date on which the Goods are to be delivered as stipulated in the Customer’s order and accepted by the Supplier;
“Goods”	means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with these Terms and Conditions;
“Month”	means a calendar month;
“Services”	means the installation services to be provided to the Customer as set out in the quotation; and
“Supplier”	means Synergy Catalyst Europe which is a trading division of Excalibre Technologies Limited, a company registered in England under company number 6459478 whose registered office is at 7 Holcot Road Coalway Gloucestershire GL16 7HJ and includes all employees and agents of Excalibre Technologies Limited.

- 2.1 Unless the context otherwise requires, each reference in these Terms and Conditions to:
 - 2.1.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 2.1.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 2.1.3 “these Terms and Conditions” is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
 - 2.1.4 a Schedule is a schedule to these Terms and Conditions; and
 - 2.1.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
 - 2.1.6 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.
- 2.2 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.3 Words imparting the singular number shall include the plural and vice versa.

2.4 References to any gender shall include the other gender.

3. **Basis of Sale and Service**

- 3.1 The Supplier's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.2 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Supplier.
- 3.3 Sales literature, price lists and other documents issued by the Supplier in relation to the Goods and Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. No contract for the sale of the Goods and Services shall be binding on the Supplier unless the Supplier has issued a quotation which is expressed to be an offer to sell the Goods and Services or has accepted an order placed by the Customer by whichever is the earlier of:
- 3.3.1 the Supplier's written acceptance;
 - 3.3.2 delivery of the Goods;
 - 3.3.3 provision of the Services; or
 - 3.3.4 the Supplier's invoice.
- 3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

4. **The Goods**

- 4.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's authorised representative.
- 4.2 The specification for the Goods shall be that set out in the Supplier's sales documentation unless varied expressly in the Customer's order (if such variation(s) is/are accepted by the Supplier). The Goods will only be supplied in the minimum units thereof stated in the Supplier's price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly
- 4.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Supplier are intended as a guide only and shall not be binding on the Supplier.
- 4.4 The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 4.5 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.
- 4.6 All Goods are supplied on the basis of information provided by the Customer who shall be solely responsible for the accuracy of such information and ensuring the suitability of such Goods supplied for its application. For the avoidance of doubt, the Supplier shall not be liable in respect of the supply of Goods as a result of the provision by the Customer of inaccurate or incorrect information or where the Goods are not suitable for its application

5. **The Services**

- 5.1 With effect from the Commencement Date the Supplier shall, in consideration of the price being paid in accordance with Clauses 6 and 7, provide the Services expressly identified in the quotation.
- 5.2 The Supplier will by its installer use reasonable care and skill to perform the Services identified in the quotation.
- 5.3 The Supplier shall use its reasonable endeavours to complete its obligations under the Contract, but time will not be of the essence in the performance of such obligations.

6. **Price**

- 6.1 The price of the Goods and Services shall be the price shown on the Supplier's quotation or such other price as may be agreed in writing by the Supplier and the Customer.
- 6.2 Where the Supplier has quoted a price for the Goods the price quoted shall be valid for 30 days only or such lesser time as the Supplier may specify.
- 6.3 The Supplier reserves the right, by giving written notice to the Customer at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and Services which are requested by the Customer, or any delay caused by any instructions of the

Customer or failure of the Customer to give the Supplier adequate information or instructions.

- 6.4 Except as otherwise stated under the terms of any quotation and unless otherwise agreed in writing between the Customer and the Supplier, all prices are inclusive of the Supplier's charges for packaging and transport.
- 6.5 The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to the Supplier.

7. Deposit and Payment

- 7.1 The Customer shall pay to the Supplier such deposit as may be required when the Contract is entered into and as shall be confirmed in writing. Any deposit paid shall be non-refundable save where the Supplier is for whatever reason unable to supply the Goods in accordance with the quotation or where delivery is delayed by more than 30 days from the latest agreed date for delivery.
- 7.2 The Customer shall pay the full price or balance (allowing for the deposit paid) of the price for the Goods (less any discount or credit allowed by the Supplier, but without any other deduction, credit or set off) by cleared funds prior to delivery of the Goods, whether to the Customer or installer unless by the express prior written agreement of the Supplier. Payment shall be made on the due date notwithstanding that delivery or provision may not have taken place and/or that the property in the Goods has not passed to the Customer. The time for the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 7.3 All payments shall be made to the Supplier as indicated on the form of acceptance or invoice issued by the Supplier.

8. Delivery and Performance

- 8.1 Delivery of the Goods shall be made by the Supplier delivering the Goods to the place specified in the quotation.
- 8.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Supplier in writing. The Goods may be delivered by the Supplier in advance of the Delivery Date upon giving reasonable notice to the Customer.
- 8.3 If the Customer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the Supplier shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 10.1 risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to the Supplier all costs and expenses including storage and insurance charges arising from such failure.

9. Installation Warranty

- 9.1 Where installation of the goods by the Supplier forms part of the contract the Supplier warrants that upon completion of provision of the Services by its installer the installation will operate correctly and in accordance with the requirements of the OEM manufacturer of the Goods. The Supplier will where a claim for breach of this warranty is made in writing and received by the Supplier within the warranty period repair or make good the installation.
- 9.2 This warranty shall as appropriate be varied or excluded and the Supplier shall not be liable in respect of or where:-
 - 9.2.1 additional or replacement mounting parts are recommended at the time of installation which the Customer declines to have fitted;
 - 9.2.2 any tampering, removal or refitting of the installation has occurred;
 - 9.2.3 any alteration to the exhaust system has occurred without the express prior written agreement of the supplier);
 - 9.2.4 any unauthorised repairs are carried out;
 - 9.2.5 consumable parts, including flex pipes;
 - 9.2.6 wear and tear;
 - 9.2.7 where the Supplier has advised the engine or application is in an unfit condition; and
 - 9.2.8 loss or damage is caused to the installation by reason of the Customer's failure to check mounting parts, clamps and the like as part of routine maintenance and safety procedures.
- 9.3 No warranty is given by the Supplier under this clause 9 where the Supplier has not undertaken installation of the goods. .

10. Risk and Retention of Title

- 10.1 Risk of damage to or loss of the Goods shall pass to the Customer at:
 - 10.1.1 in the case of Goods to be delivered at the Supplier's premises, the time when the Supplier notifies the Customer that the Goods are available for collection; or
 - 10.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.
- 10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in

full of the price of the Goods.

- 10.3 Until payment has been made to the Supplier in accordance with these Conditions and title in the Goods has passed to the Customer, the Customer shall be in possession of the Goods as bailee for the Supplier and the Customer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Supplier and shall insure the Goods against all reasonable risks.
- 10.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 10.5 The Supplier reserves the right to repossess any Goods in which the Supplier retains title without notice. The Customer irrevocably authorises the Supplier to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which the Supplier retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-Clause 10.3.
- 10.6 The Customer's right to possession of the Goods in which the Supplier maintains legal and beneficial title shall terminate if:
 - 10.6.1 the Customer commits or permits any material breach of his obligations under these Terms and Conditions;
 - 10.6.2 the Customer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;
 - 10.6.3 the Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
 - 10.6.4 the Customer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

11. Assignment

- 11.1 The Supplier may assign the Contract or any part of it to any person, firm or company without the prior consent of the Customer.
- 11.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

12. Defective Goods

- 12.1 The Supplier warrants that upon delivery the Goods will be free from defects in materials or workmanship.
- 12.2 Any claim by the Customer for breach of this warranty must be made in writing and received by the Supplier within 1 year from the date of delivery.
- 12.3 The Supplier shall then at its option:-
 - 12.3.1 either repair or replace free of charge defective Goods (or the components thereof) excluding the costs of labour and on-site support; or
refund or credit to the Customer the price for those Goods (or components thereof, as appropriate) which are defective provided all defective components are returned to the Supplier and the Supplier endorses such warranty claim in writing; any such refund shall be calculated by reference to the original price paid for the Goods on a retrospective scale basis which will equate to the nearest whole 1/12th of the warranty term remaining when the claim is made and the Supplier shall have no further liability to the Customer.

Any of the following will reduce the effectiveness or damage the Goods and will void the warranty whether or not the Customer has made the Supplier aware of this in advance or otherwise:

- a. Failure to follow maintenance and operating procedures recommended by the OEM manufacturer to ensure engine or other industrial process longevity.
- b. Failure to inspect and maintain the catalyst in accordance with the operating instructions and at least once every 12 months.
- c. Failure to keep a record of engine maintenance and convertor back pressure..
- d. Failure to adhere to Operating Instruction and/or Installation Manual as provided or available on request
- e. Incorrect installation of the system or installation without prior written approval.
- f. Fitment of the system to an engine model, exhaust system or other industrial process other than that specified on ordering. The system must not be transferred to another application without prior written approval.
- g. That the engine does not comply with the emission level under which it has been certified. This includes engines which have been modified by "chip tuning" whereby the engine OE settings have been electronically altered to improve performance.
- h. Excessive particulate emissions due to poor engine or process operation and maintenance.
- i. Use of fuel other than that for which the engine or process is calibrated; fuel containing over 50ppm Sulphur; fuel containing supplementary additives used without prior written permission; fuel blended with lubricating oil or contaminated with other oils or fluids. Alterations or attempts to repair without prior written approval.
- j. Progressive engine failure, which allows lubricating oil, fuel, or coolant to be present in the engine, in excess of engine manufacturer's recommendations.

- k. Excessive lubricating oil consumption of engine due to wear or overfilling of crankcase. Over fuelling which leads to raw unburned fuel reaching the catalyst.
- l. Operation outside of the raw emission and system or process parameters as detailed in the quotation or order acceptance.
- m. Modification without prior written approval.
- n. Physical damage caused by misuse or abuse
- o. Damage caused by improper cleaning procedures.
- p. Any other damage howsoever caused that is not within the control of the supplier

12.4 Warranty Limitations

- a. The following contaminants are known catalyst deactivators and contribute to shortened catalyst life: heavy and base metals such as lead, mercury, arsenic, antimony, sodium, potassium, lithium, zinc, copper, tin, iron, nickel and chrome; sulphur, silicon, phosphorous and fluorine, chlorine, bromine and iodine. Hence, the contents of these contaminants in the catalyst shall not singularly or collectively accumulate to such a level that exceeds 350mg/m³ or 10 mg/ft³ of catalyst as determined by ICP-OES (inductive couple plasma - optical emissions spectroscopy), glow discharge mass spectrophotometry or other analytical method approved by the Seller to provide the required selectivity and sensitivity. The presence of contaminant in excess of these levels void this warranty, unless otherwise expressly agreed to in writing by Supplier.
- b. Exposure to excessive temperature significantly lowers catalyst life. Therefore, operation of the catalytic reactor shall not exceed 621 degrees Centigrade on a continuous basis, and shall not exceed 649 degrees Centigrade for 10 minutes, and shall not exceed 677 degrees Centigrade. Catalyst operating temperatures in excess of these values shall void this warranty. It is recommended that the system be operated at temperatures above 321 degrees Centigrade to minimize the potential for masking. At temperatures below 321 degrees Centigrade catalyst masking by sulphur and particulate may result and may require periodic catalyst washing to maintain performance.
- c. The catalyst should be operated in exhaust streams which are free of dust and other particulate matter. Exposure to such particulate contamination may result in temporary catalyst masking or blinding, and may require Customer, at Customer's expense, to periodically clean, or have cleaned, the catalyst according to procedures specified by Supplier.
- d. Seller does not guarantee the Catalyst against abrasion, corrosion, erosion or deposition. Portions of the Catalyst which are not of Seller's manufacture are not covered by this warranty as to defects in materials and workmanship.
- e. Seller requires that the exhaust gas velocity and concentration distribution at the entrance plane of the Catalyst be $\pm 15\%$ RMS of the average and that less than 15% of the points measured are $\pm 15\%$ of the average. Measurements methods shall be in accordance with EPA Test Methods #1 and #2.
- f. Failure to operate the catalyst in accordance with the process parameters, operation and maintenance manual, any specific instructions given for a said application, and warranty conditions will automatically void this warranty.

- 12.5 The Customer shall be responsible for ensuring that, except to the extent that instructions as to the use or storage of the Goods are contained in the packaging or labelling of the Goods, any use or storage of the Goods by the Customer is in compliance with all applicable statutory requirements and that handling or storage of the Goods by the Customer is carried out in accordance with directions given by the Supplier or any competent governmental or regulatory authority and the Customer will indemnify the Supplier against any liability loss or damage which the Supplier might suffer as a result of the Customer's failure to comply with this condition.

13. Customer's Default

- 13.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 13.1.1 cancel the order or suspend any further deliveries or provision of Goods and Services to the Customer;
 - 13.1.2 appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and
 - 13.1.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 2% per annum above Lloyds TSB plc's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 13.2 This condition applies if:
- 13.2.1 the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
 - 13.2.2 the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
 - 13.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer;
 - 13.2.4 the Customer ceases, or threatens to cease, to carry on business; or
 - 13.2.5 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 13.3 If sub-Clause 13.2 applies then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any

previous agreement or arrangement to the contrary.

14. **Liability**

- 14.1 The Supplier will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of the Contract (or these Terms and Conditions), be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Supplier's servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and Services.
- 14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 The Customer shall indemnify the Supplier against all damages, costs, claims and expenses suffered by or arising from loss or damage to any equipment (including that of third parties) caused by the Customer, its agents or employees.
- 14.4 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
- 14.5 The Supplier shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if the delay or failure was due to any cause beyond the Supplier's reasonable control.
- 14.6 Nothing in these Terms and Conditions excludes or limits the liability of the Supplier:
 - 14.6.1 for death or personal injury caused by the Supplier's negligence;
 - 14.6.2 for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability; or
 - 14.6.3 for fraud or fraudulent misrepresentation.
- 14.7 Subject to the remaining provisions of this Clause 14:
 - 14.7.1 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and
 - 14.7.2 the Supplier shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

15. **Confidentiality**

- 15.1 Each Party undertakes that, except as provided by sub-Clause 15.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Contract and 2 years after its termination:
 - 15.1.1 keep confidential all Confidential Information;
 - 15.1.2 not disclose any Confidential Information to any other person;
 - 15.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions and the Contract;
 - 15.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 15.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-clauses 15.1.1 to 15.1.4 above.
- 15.2 Either Party may:
 - 15.2.1 disclose any Confidential Information to:
 - 15.2.1.1 any sub-contractor or supplier of that Party;
 - 15.2.1.2 any governmental or other authority or regulatory body; or
 - 15.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by these Terms and Conditions and the Contract, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 15.2.1.2 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause 15, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
 - 15.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Contract, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.
- 15.3 The provisions of this Clause 15 shall continue in force in accordance with their terms, notwithstanding the termination of the Contract for any reason.

16. **Communications**

- 16.1 All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 16.2 Notices shall be deemed to have been duly given:
- 16.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
- 16.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- 16.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 16.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 16.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

17. **Force Majeure**

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

18. **Waiver**

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

19. **Severance**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

20. **Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

21. **Law and Jurisdiction**

- 21.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 21.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales