

**Terms and Conditions for the Supply and Hire of Goods and Services**

(1) These are the Conditions of business of the Supplier.

(2) These Conditions along with the Formal Documentation form the basis of the Contract between the Supplier and the Customer as defined below. The Customer's attention is particularly drawn to the provisions of clause 15 (Limitation of liability).

**1 Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

**1.1 Definitions:**

- "Alternative Provider"** any freelancer, sub-contractor or assignee appointed by the Supplier to execute part of a Project in accordance with these Conditions.
- "Business Day"** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- "Business Hours"** the period from 9.00 am to 5.00 pm on any Business Day.
- "Commencement Date"** has the meaning given in clause 2.2.
- "Conditions"** these terms and conditions as amended from time to time in accordance with clause 19.8.
- "Contract"** the contract between the Supplier and the Customer for the supply of Goods or Services or Goods and Services in accordance with these Conditions and the Formal Documentation in relation to each Project.
- "Customer"** the person or firm to whom the Goods or Services or Goods and Services are hired, sold, or otherwise provided by the Supplier or an Alternative Provider.
- "Deliverables"** the deliverables set out in the Formal Documentation produced by the Supplier for the Customer.
- "Delivery Location"** has the meaning given in clause 4.2.
- "Dry Hire"** a hire of Goods that have been hired to the Customer for an agreed period for the Customer's use without the attendance, operation, or control of the Supplier or an Alternative Provider. For the avoidance of doubt, this includes situations in which the Goods have been set up by the Supplier but are operated and controlled by the Customer.
- "Engineered Hire"** the process of supplying, setting up and operating Goods and the provision of associated Services by the Supplier or an Alternative Provider to the Customer for an agreed period.
- "Force Majeure Event"** has the meaning given to it in clause 18.
- "Formal Documentation"** all documents setting out the scope of work (including any initial written correspondence between the Supplier and the Customer in relation to the preliminary stages of a Project to the extent not amended or superseded), the terms of payment, delivery, transport and insurance and any other commercial terms provided by the Supplier to the Customer or agreed by the parties in writing including but not limited to the Quotation, the Invoice(s), the Goods Specification and/or the Services Specification, the delivery note and any letter of agreement in place between the parties as amended from time to time by agreement between the parties.
- "Goods"** the goods (or any part of them) described and set out in the Formal Documentation.
- "Goods Specification"** any specification for the Goods, including any relevant plans or drawings, that is agreed by the Customer and the Supplier in the Formal Documentation.
- "Invoice(s)"** the invoice or invoices issued by the Supplier to the Customer.
- "Intellectual Property Rights"** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- "Order"** the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's Quotation or, where a Quotation is yet to be issued, the Customer's initial instructions to the Supplier at the outset of a Project, as the case may be.
- "Project"** each job undertaken by the Supplier or an Alternative Provider for the Customer including but not limited to the provision or hire of Goods, Services and/or Goods and Services, in each case as set out in the Formal Documentation.
- "Quotation"** the document setting out the scope of work, the terms of payment, delivery, transport and insurance and any other commercial terms regarding a Project provided by the Supplier to the Customer as amended from time to time by agreement between the parties.
- "Services"** the services, including the Deliverables, supplied or to be supplied by the Supplier or an Alternative Provider to the Customer as set out in the Service Specification.
- "Service Specification"** the description or specification for the Services provided by the Supplier to the Customer in the Formal Documentation.
- "Supplier"** d&b solutions UK Limited registered in England and Wales with company number 01031687 acting under its own name or under the name of any of its trading brands including but not limited to White Light, SFL, Production:AV, b&h, Congo Blue and elp or any of its subsidiaries or holding companies.
- "Supplier Materials"** has the meaning given in clause 8.1.8.
- "UK GDPR"** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- "Venue"** any whole or part of the Customer's premises whether owned, hired, leased or otherwise occupied for the purposes of conducting business, or any other premises provided by a third-party or public location used for the purpose of a Project as set out in the Formal Documentation.
- "Warranty Period"** has the meaning given in clause 5.1.

Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors and permitted assigns.

A reference to **party** or **parties** means either the Customer or Supplier or both the Customer and Supplier as the context requires.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including** or **include** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** excludes fax but not email.

Clause headings and numbers shall not affect the interpretation of these Conditions.

**2 Basis of contract**

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

2.2 The Order shall only be deemed to be accepted when the Supplier commences the work outlined in the Formal Documentation at which point, and on which date, the Contract shall come into existence (**Commencement Date**).

2.3 No Order may be cancelled after the Commencement Date without the prior written consent of the Supplier. In the event of a cancellation, the Customer shall indemnify the Supplier in full against all liabilities, costs (including the cost of all labour and material used), expenses, damages and losses (including any loss of profit) suffered or incurred by the Supplier.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures which are not included in the Formal Documentation are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.

- 2.5 Any typographical, clerical or other error or omission in any sales literature, price list, acceptance of offer, statement or other document issued by the Supplier (including any document forming part of the Formal Documentation) may be corrected by the Supplier and the Supplier shall not be liable to the Customer in respect of the same.
- 2.6 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 law, trade custom, practice or course of dealing.
- 2.7 In the event of any inconsistency between these Conditions and the Formal Documentation, the Formal Documentation will prevail.
- 2.8 The Quotation given by the Supplier shall not constitute an offer, and is only valid for the period stated in the Formal Documentation or, where no period is stated in the Formal Documentation, for 20 Business Days from its date of issue.
- 2.9 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.10 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

### **3 Goods**

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied, approved or amended by the Customer, the Customer shall indemnify the Supplier 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 and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights or any other claim arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement (including any legislation or guidance related to health & safety), or where this does not materially affect the quality of the Goods.

### **4 Delivery of Goods**

- 4.1 The Supplier shall ensure that:
- 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order and the type and quantity of the Goods; and
- 4.1.2 to the extent applicable the Formal Documentation shall state clearly any requirement for the Customer to return any flight cases to the Supplier. The Customer shall make the flight cases available for collection at such times as the Supplier shall reasonably request. Returns of flight cases shall be at the Customer's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Formal Documentation or such other location as the parties may agree or, in the alternative, where the Goods are being collected by the Customer, the Customer shall collect the Goods from the Supplier's premises as detailed in the Formal Documentation or such other location as may be agreed with the Customer before delivery (**Delivery Location**).
- 4.3 The Supplier reserves the right to recharge additional costs of delivery and collection including but not limited to reasonably incurred parking fines, waiting time and toll charges.
- 4.4 Delivery of the Goods shall be completed when the Supplier places the Goods at the Customer's disposal at the Delivery Location. For the avoidance of doubt, the Goods will be deemed to be at the Customer's disposal:
- 4.4.1 from the time and date notified to the Customer as being the time and date when the Goods will be ready for collection; or
- 4.4.2 at the time the Goods arrive at the Venue but before the Goods have been unloaded. If the Customer requests any Supplier employees or Alternative Providers to assist with the unloading of Goods, such individuals shall be deemed to be under the control of the Customer.
- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 If the Customer fails to take delivery of the Goods within one Business Day, where the Goods are to be delivered by the Supplier, and three Business Days, where the Goods are to be collected by the Customer, of the Supplier notifying the Customer that the Goods are ready for delivery or collection, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the first Business Day, where the Goods are to be delivered by the Supplier, or at 9:00 am on the third Business Day, where the Goods are to be collected by the Customer, following the day on which the Supplier notified the Customer that the Goods were ready for delivery; and
- 4.7.2 the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery or collection the Customer has not taken actual delivery of them, the Supplier may resell, hire or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

### **5 Quality of Goods**

- 5.1 The Supplier warrants that on delivery of any Goods or, where applicable, on the date on which the Supplier receives notification of practical completion in relation to the Supplier's involvement in a Project and for a period equal to that of the relevant manufacturer's warranty period in respect of the Goods used for the Project (**Warranty Period**), the Goods shall:
- 5.1.1 conform in all material respects with the Goods Specification (including the quantity of Goods to be supplied);
- 5.1.2 be free from material defects in design, material and workmanship;
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 5.1.4 be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing to the Supplier during the Warranty Period as soon as reasonably practicable after discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- 5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, as soon as reasonably practicable, repair or replace the Goods which do not comply with the warranties given above, or refund the price of such Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 5.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 5.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.6 The Supplier does not give any warranties in respect of any used, second-hand or ex-demonstration Goods other than any warranties detailed in the Formal Documentation.
- 5.7 The following provisions shall apply in relation to any returns of the Goods:

- 5.7.1 the Customer has no automatic right to return the Goods. Any returns are entirely at the Supplier's discretion;
- 5.7.2 the Customer shall not return any Goods correctly supplied in accordance with the Customer's instructions without submitting detailed reasons for requesting their return and obtaining the Supplier's prior written consent;
- 5.7.3 if any of the Goods have been returned to the Supplier, the Customer shall pay the Supplier's handling charge in respect of such return;
- 5.7.4 any Goods that have been ordered to meet a Customer specification shall not be refundable; and
- 5.7.5 nothing in this clause 5.7 shall affect the Customer's statutory rights.

## **6 Title and risk**

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for all the Goods supplied. For the avoidance of doubt, title to the Goods will only pass in circumstances where the Goods are sold by the Supplier to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.3 notify the Supplier immediately if it becomes subject to any of the events listed in clause 16.1.2 to clause 16.1.4; and
- 6.3.4 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
- 6.3.4.1 the Goods; and
- 6.3.4.2 the ongoing financial position of the Customer.
- 6.3.5 hold the Goods as the Supplier's fiduciary agent and bailee.
- 6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver to, or make any Goods in its possession available for collection and if the Customer fails to do so promptly, the Supplier may enter any premises of the Customer or of any third party where the Goods are located in order to recover them.
- 6.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any Goods to which the Supplier retains title. If the Customer does so in breach of these Conditions, all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) become immediately due and payable.

## **7 Supply of Services**

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Formal Documentation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement (including any legislation or guidance related to health & safety), or if the amendment will not materially affect the nature or quality of the Services.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 The Supplier shall use its reasonable endeavours to ensure that any issues relating to any staff or Alternative Providers under its control are contained and resolved as soon as reasonably practicable and ensure that such staff or Alternative Providers are:
- 7.5.1 professional and competent;
- 7.5.2 medically and mentally fit to execute a Project; and
- 7.5.3 properly trained, briefed and supervised.
- 7.6 The Supplier shall provide all safety, design, specification and compliance documentation which is legally required, has been reasonably requested by the Customer or has been specified within the Formal Documentation, within a reasonable and practical timescale.

## **8 Customer's obligations**

- 8.1 The Customer shall:
- 8.1.1 ensure that the terms of the Order and any information it provides in both the Service Specification and the Goods Specification are complete and accurate;
- 8.1.2 co-operate with the Supplier in all matters relating to the Services;
- 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with free access to the Venue, carparks, supply routes, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- 8.1.4 provide the Supplier with such information (including but not limited to any confidential information that may be reasonably required for the safety and administration of the Supplier's employees, Alternative Providers, the public, the staff of the Venue or any other relevant person or for the fulfilment of any of the Supplier's obligations under the Contract) as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 8.1.5 provide the Supplier with such materials (including but limited to any content and materials for which no fee is charged) as the Supplier may reasonably require to supply the Services, and ensure that such materials comply with any Supplier guidelines provided, are error free and will not compromise the Supplier's equipment in any respect;
- 8.1.6 prepare the Venue (or procure that the Venue is prepared) for the supply of the Services;
- 8.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 8.1.8 comply with all applicable laws, including health and safety laws;
- 8.1.9 keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Venue in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- 8.1.10 comply with any additional obligations as set out in the Service Specification or the Goods Specification or both; and
- 8.1.11 fully acquaint all appropriate persons with any safety and operational information provided by the Supplier.
- 8.2 The Customer shall not remove, deface or cover up any of the Supplier's labels, plates, marks or designs on any Goods nor apply any Customer mark or identifier indicating that the Goods are the Customer's property without obtaining the Supplier's written consent.
- 8.3 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.3.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 8.3.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations; and
- 8.3.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **9 Charges and payment**

- 9.1 The price for Goods and Services shall be the price set out in the Formal Documentation.
- 9.2 The Supplier shall be entitled to charge the Customer:
- 9.2.1 an overtime surcharge not exceeding 10% of the total event cost, calculated on a time spent basis, for any Project in respect of which there is an event production overrun exceeding 30 minutes of the scheduled finish time; and
- 9.2.2 any expenses reasonably incurred by the Supplier (including its employees or agents) or the Alternative Provider engages in connection with the Services.
- 9.3 The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- 9.3.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 9.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

9.3.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 The Customer shall pay each Invoice submitted by the Supplier by the due date set out in the Invoice and/or the Formal Documentation and in full and in cleared funds to a bank account nominated in writing by the Supplier. Time for payment shall be of the essence of the Contract.

9.5 If the Customer requires an Invoice to be submitted against a formal purchase order, the Customer shall be responsible for ensuring the purchase order is issued before any Goods and Services have been supplied by the Supplier.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 16, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.

9.8 The Supplier reserves the right to withhold Goods or Services pending cleared payment of any issued Invoice(s) that are overdue for settlement by the Customer irrespective of whether or not the Invoice(s) relate to the same Order.

9.9 The Customer shall be responsible for any costs associated with import duty, customs inspections, local taxes, onward delivery or any other similar charges whether incurred in the United Kingdom or in another jurisdiction.

## **10 Dry Hire**

10.1 Unless expressly modified by this clause 10, all relevant provisions of these Conditions shall also apply in relation to Dry Hire.

10.2 The Customer shall inspect the Goods upon their receipt to ensure that they satisfy its requirements.

10.3 The risk in relation to Goods passes to the Customer on completion of delivery and shall remain with the Customer until the Supplier provides the Customer with written confirmation that the Goods have been returned to the Supplier (**Dry Hire Period**).

10.4 The Customer shall maintain a policy of insurance with a reputable insurance company in relation to the Goods and shall insure the Goods against all risks for their full price for the duration of the Dry Hire Period and shall supply evidence of the same at the request of the Supplier.

10.5 The Customer shall take good and proper care of the Goods and shall ensure the Goods are used in a skilful manner by personnel with the requisite knowledge and experience to operate them for the duration of the Dry Hire Period.

10.6 Where the Dry Hire Period has not been fixed by the parties, either party may terminate the Contract by giving not less than 7 days' written notice to the other party. For the avoidance of doubt, Dry Hire charges will continue to apply to the Goods until the Supplier has provided written confirmation that the Goods have been returned.

10.7 The Customer shall immediately notify the Supplier of any fault in or need for repair of any of the Goods. The Supplier shall have no liability in respect of any fault or disrepair that the Customer has failed to bring to its attention.

## **11 Engineered Hire**

11.1 Unless expressly modified by this clause 11, all relevant provisions of these Conditions shall also apply in relation to Engineered Hire.

11.2 Risk and title to the Goods shall both remain with the Supplier at all times.

11.3 If the Supplier is required to vacate the Venue, the Goods will be on Dry Hire and the provisions of clause 10 will apply.

11.4 In the event of a cancellation of an Engineered Hire by the Customer:

11.4.1 If the cancellation occurs more than 14 days from the commencement of the Project at the Venue, 20% of the full fee (less any deposit already paid) shall become immediately due and payable;

11.4.2 If the cancellation occurs between 14 and 7 days from the commencement of the Project at the Venue, 50% of the full fee (less any deposit already paid) shall become immediately due and payable; and

11.4.3 If the cancellation occurs less than 7 days from the commencement of the Project at the Venue, the full fee shall become immediately due and payable.

## **12 Intellectual property rights**

12.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

12.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract and to use any of the Customer's Intellectual Property Rights for the purpose of providing the Services to the Customer. For the avoidance of doubt, the Customer shall retain ownership of all its pre-existing Intellectual Property Rights.

## **13 Data protection**

13.1 The following definitions apply in this clause 13:

13.1.1 **Controller, Processor, Personal Data and processing:** as defined in the Data Protection Legislation.

13.1.2 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

13.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

13.3 Without prejudice to the generality of clause 13.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to the Supplier for the duration and purposes of the Contract.

13.4 Without prejudice to the generality of clause 13.2 the Supplier shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to the Customer for the duration and purposes of the Contract.

13.5 Both Parties agree that the Customer is not instructing the Supplier to act as a Processor on its behalf. In the event that the Customer, acting as Controller, instructs the Supplier to become a Processor in relation to this Contract, then the parties shall enter into a data processing agreement (DPA) in accordance with Article 28 of UK GDPR. For the avoidance of doubt the Supplier cannot process any Personal Data, in the capacity as a Processor until such a DPA has been entered into and the Customer shall not compel the Supplier to process such Personal Data until such time.

## **14 Confidentiality**

14.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.

14.2 Each party may disclose the other party's confidential information:

14.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **15 Limitation of liability**

15.1 References to liability in this clause 15 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

15.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

15.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

15.3.1 death or personal injury caused by negligence;

15.3.2 fraud or fraudulent misrepresentation;

15.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

15.3.4 defective products under the Consumer Protection Act 1987.

15.4 Subject to clause 15.2 and clause 15.3, the Supplier's total liability to the Customer in respect of all breaches of duty or contract occurring within any contract year shall not exceed the a sum equal to total charges for all sums paid by the Customer under the Contract and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.

15.5 The Supplier's liability under clause 15.4 shall be reduced by amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

15.6 Subject to clause 15.2 and clause 15.3, this clause 15.6 sets out specific heads of excluded loss in respect of which the Customer is unable to bring claims:

15.6.1.1 loss of profits;

15.6.1.2 loss of sales or business;

15.6.1.3 loss of agreements or contracts;

15.6.1.4 loss of anticipated savings;

15.6.1.5 loss of use or corruption of software, data or information;

15.6.1.6 loss of or damage to goodwill; and

15.6.1.7 indirect or consequential loss.

15.7 The Customer agrees to indemnify the Supplier in respect of all reasonably incurred additional costs including but not limited to any excess cost payable pursuant to any claims under the Supplier's insurance policy, the theft or damage of the Goods and any third-party damages or liability arising out or in connection with the Contract.

15.8 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, save where the Goods are sold to a consumer (as defined in the Consumer Rights Act 2015), the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15.9 This clause 15 shall survive termination of the Contract.

## 16 Termination

16.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

16.1.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

16.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

16.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

16.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

16.1.5 the other party is associated with, formally accused of, or commits a serious breach security, safeguarding, or health & safety legislation.

16.1.6 the other party is associated with, formally accused of, or commits any fraudulent or illegal act.

16.1.7 the other party behaves in a manner that is likely to or materially adversely affects its good reputation as a result of their continued association.

16.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

16.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 16.1.2 to clause 16.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 17 Consequences of termination

17.1 On termination of the Contract:

17.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid Invoices and interest and, in respect of Services and Goods supplied but for which no Invoice has been submitted, the Supplier shall submit an Invoice, which shall be payable by the Customer immediately on receipt;

17.1.2 unless expressly stated otherwise in these Conditions or in the Formal Documentation, the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Venue and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

17.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

17.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 18 Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended for a reasonable period following the notification of the nature and extent of a Force Majeure Event by the affected party to the other party.

## 19 General

### 19.1 Assignment and other dealings

19.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

19.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

### 19.2 Notices.

19.2.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

19.2.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company), its principal place of business or any other address agreed in writing by the parties; or

19.2.1.2 sent by email to the email addresses agreed in writing by the parties (or an address substituted in writing by the party to be served);

19.2.2 Any notice shall be deemed to have been received:

19.2.2.1 if delivered by hand, at the time the notice is left at the proper address;

19.2.2.2 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; or

19.2.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

19.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 19.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

### 19.4 Waiver.

19.4.1 Except as set out in clause 2.10, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

19.4.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**19.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**19.6 Entire agreement.**

19.6.1 The Contract constitutes the entire agreement between the parties.

19.6.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**19.7 Third party rights.** The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**19.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**19.9 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**19.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.