

Simtec Materials Testing Ltd: Standard Terms and Conditions of Sale

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF **CLAUSE 10 (LIMITATION OF LIABILITY)**.

1. Interpretation

1.1 Definitions:

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

"Charges" the charges payable by the Customer for the supply of the Services in accordance with clause 5.

"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 13.5.

"Contract" the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions, as updated by the Supplier's Contract Review.

"Contract Review" means the Supplier's subsequent review of the Contract after provision of the Services confirming any change in the Charges and/or Specification, as requested by the Customer during the Supplier's provision of the Services, or as required to be amended in accordance with clause 3.3, and otherwise confirming the Services and Charges that were carried out.

"Control" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

"Customer" the person or firm who purchases Services from the Supplier.

"Customer Default" has the meaning set out in clause 4.1.6.

"Deliverables" the deliverables set out in the Order produced by the Supplier for the Customer, including but not limited to any reports produced for the Customer by the Supplier in respect of Samples provided by the Customer.

"Deviating Samples" Samples which may have exceeded their maximum preservation time, lack the date of sampling, are not at the appropriate temperature, have inappropriate headspace, be in inappropriate sample containers or otherwise deviate in any way, in the Supplier's opinion, from the required standard of a Sample.

"Intellectual Property Rights" patents, utility models, rights to inventions, copyright and related 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, rights in designs, 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.

"Normal Working Hours" 08:00-17:00, Monday to Friday (inclusive).

"Order" in the Customer's purchase order form; or the Customer's written acceptance of a Quotation produced by the Supplier as the case may be.

"Samples" the sample(s) for which the Customer requires the Services to be performed upon, either (i) as requested by the Customer as part of the Order, (ii) as requested as part of the Site Works, (iii) as collected by the Supplier in order to fulfil an Order; or (iv) as taken by the Customer or the Supplier in order to comply with minimum sampling rates per metric tonne, as previously agreed in writing

"Services" the testing services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

"Site Works" the provision of the Services by the Supplier at the Customer's site(s), or the Customer's end user/customer's site(s) (the **"Site"**), as further detailed within in the Quotation or otherwise agreed at Site with the Customer to comply with site requirements.

"Specification" the description or specification of the Services provided initially by the Customer to the Supplier, and then confirmed in writing by the Supplier to the Customer as part of an Order.

"Supplier" Simtec Materials Testing Ltd registered in England and Wales with company number 06401491.

"Quotation" the quotation as provided by the Supplier to the Customer in writing.

1.2 Interpretation:

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

1.2.2 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to writing or written includes email and, where appropriate, text messages or other forms of written electronic message.

2. Basis of Contract and Quotations

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

- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (by email generally, but otherwise by any written method of communication) at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Both parties acknowledge that during the provision of the Services, the scope of Services, the Specification and therefore the Charges may need to be updated, depending on the Customer's requirements for the Services. In accordance with the Supplier's UKAS accreditations, where the provision of the Services may vary throughout the provision of the Services, the Supplier will provide the Customer with a Contract Review which shall replace and update the Contract.
- 2.4 Any reference to specifications and National/International Standards within the Quotation, Specification, Order, Contract and/or Contract Review shall be interpreted in accordance with such standards/accreditations in place from time to time, and such specifications and/or standards shall be further deemed to be incorporated into these terms and conditions.
- 2.5 Any drawings, descriptive matter, or advertising issued by the Supplier are issued or published for the sole purpose of giving an indication of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 Quotations issued to a Customer are based upon the information provided to the Supplier by the Customer at the time of enquiry. However, the final costs will be measured based upon the actual quantities requested and Samples provided or requested (if the Supplier takes the samples itself) by the Customer on an ongoing basis or until the end of a project, based upon the rates as set out in the Quotation and as further confirmed in the Contract Review. Unless otherwise agreed in writing, the rates set out in any Quotation will remain valid for three calendar months from the date of issue of the Quotation.
- 2.7 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.

3. Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in any Order or Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 The Supplier will perform the Services any such place as is deemed necessary for the due performance of the contract, including at the Supplier's laboratory or, if the Services are being provided as part of any Site Works, at the Site.
- 3.6 The Supplier will be under no obligation to provide collateral warranties or letters of reliance in relation to its provision of the Services unless such additional requirements were previously requested by the Customer and quoted for and agreed in writing by the Supplier as part of a Quotation or the Order prior to the commencement of the supply of Services.
- 3.7 Any reports provided by the Supplier as part of the Deliverables may be made subject to such conditions and caveats as the Supplier deems reasonable or appropriate.
- 3.8 Where a report is issued as part of the Deliverables to the Customer following a site inspection, sampling or testing, the report will be factual only unless specifically stated at the time of Quotation. Further charges will be made should an interpretative report be required by the Customer. Indicative results may be given verbally at the Customer's own risk, but cannot be relied upon until a formal written report has been produced by the Supplier.

4. Customer's obligations

- 4.1 The Customer shall:
 - 4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate in all respects;
 - 4.1.2 co-operate with the Supplier in all matters relating to the provision of the Services;
 - 4.1.3 to the extent required for the provision of the Services, provide the Supplier, its employees, agents, consultants and/or subcontractors, with access to any Site for the provision of the Services and/or any Site Works as reasonably required by the Supplier. If the Customer requires the Supplier to make a Site visit on behalf of or with the Customer, the Customer shall ensure that all employees, or persons present on Site will co-operate with the Supplier in all matters relating to such visit;
 - 4.1.4 provide the Supplier with such information and materials (including Samples) as the Supplier may reasonably require in order to supply the Services, and ensure that such information and Samples are complete and accurate in all material respects;
 - 4.1.5 obtain and maintain, or otherwise authorise the Supplier to obtain and maintain on the Customer's behalf (at the Customer's cost), all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 4.1.6 be responsible for the transportation and delivery (including organising and arranging for third party collection) of any Samples which are required to be sent to the Supplier for the purpose of the provision of the Services. It is the responsibility of the Customer to ensure any Samples are correctly cared for during transportation (including but not limited to ensuring the correct and appropriate packaging for transportation is used) for their safe arrival at the Supplier's premises. The

Supplier will not be held responsible for any losses of either time or other financial cost implications if Samples are lost or broken in transit prior to their arrival at the Supplier's premises. The Supplier only assumes responsibility for Samples upon receipt at its premises; and

- 4.1.7 immediately inform the Supplier in advance of any intended delivery of Samples to the Supplier of any known or suspected hazard or danger, actual or potential, associated with the Services to be provided by the Supplier, any Site, Samples or testing, including but not limited to the presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons or biologically active Samples, and the Customer shall immediately inform the Supplier in advance of any intended delivery of any known or suspected high levels of contaminants within the submitted Samples.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 4.2.4 The customer shall provide the material description and the specification that needs to be applied to materials when instructed to take site samples or samples delivered to the laboratory to ensure that on issue of results the most current specifications are applied.

5. Samples, Storage and Disposal

- 5.1 If the Customer supplies Samples to the Supplier as part of the Site Works, the Supplier shall accept any Samples by signing a daily progress sheet at the Site from a Site representative (including, but not limited to, a site foremen, supervisor or contracts manger).
- 5.2 If the Customer supplies Samples to the Supplier, the Supplier shall store such Samples as follows:
 - 5.2.1 soil and aggregate Samples will be stored under suitable conditions for 14 calendar days from the report issue date;
 - 5.2.2 water Samples will be stored under suitable conditions for 14 calendar days from the report issue date; and
 - 5.2.3 asphalt Samples will be stored under suitable conditions for 7 calendar days from the report issue date.
- 5.3 To the extent that the Supplier is required to store Samples for longer periods by prior agreement with the Customer, the Supplier will pass on storage charges to the Customer payable against each Sample stored.
- 5.4 The Supplier will assess all Samples as to whether they are suitable for testing prior to carrying out all of the Services and shall contact the Customer as appropriate if the Supplier becomes aware of any Deviating Samples. The Supplier will continue to test all Samples, regardless as to whether such Samples are deemed to be Deviating Samples, unless otherwise instructed by the Customer.
- 5.5 To the extent that the Customer supplies Deviating Samples to the Supplier, the Customer will be liable for the costs of the analysis of any Deviating Samples as additional costs as part of the supply of Services being provided by the Supplier. If Deviating Samples jeopardise the validity of the reported test results as part of the provision of the Services, the Supplier will not be held liable for any additional testing and associated costs required or incurred by the Customer for such additional testing.
- 5.6 Samples sent into the Supplier but which are not tested will be disposed of by the Supplier at the same time as the tested batch of Samples from the same delivery/day.
- 5.7 For the avoidance of any doubt, the Customer will be charged disposal charges for any Samples (including Deviating Samples) disposed of by the Supplier, unless otherwise agreed in writing by the Supplier. A disposal fee will be charged per sample location for all Samples supplied by the Customer (unless otherwise agreed).
- 5.8 The Supplier reserves the right to dispose of Samples (including Deviating Samples) after 28 days from the date they are received at the Supplier's premises where no testing has taken place and/or no instructions are received by the Supplier from the Customer without further queries or referrals being made to the Customer.

6. Testing Site Works

- 6.1 All Site Works will be carried out within the number of visits to site stated in the Quotation (if appropriate) and during Normal Working Hours unless stated otherwise in writing within the Quotation. A shift stand down charge of £325.00 per technician may apply following night time working when less than five consecutive nights are worked for the Customer.
- 6.2 It is the responsibility of the Customer to notify the Supplier, prior to any Site Works commencing, of any site specific hazards which may exist and which may affect the Supplier's operations in the provision of the Services. The Supplier shall be entitled to be paid for any standing time or aborted visits caused by lack of notification of site hazards in accordance with this clause 6.
- 6.3 The Supplier will provide safety equipment and training for its employees in order to carry out the Services as part of any Site Works in a safe manner, provided that at the time of Quotation and Order, the Supplier is made aware by the Customer of the requirements in order for the Services to be performed in a safe working environment. If the Customer fails to make

the Supplier aware of such requirements at such time, the Supplier shall be entitled to invoice the Customer for such additional costs as are incurred.

- 6.4 Access to the Site for the provision of Site Works, including traffic management, access to plant and operatives, scaffolding work platforms etc. will be provided by the Customer at no cost to the Supplier unless specifically identified by the Supplier as being included in the Quotation price.
- 6.5 If during the course of the provision of the Services it is deemed that access arrangements to the Site are unsafe, the provision of the Services will be stopped immediately. Charges will be made for reimbursement of the Supplier's costs associated with such disruption.
- 6.6 Should a shift be cancelled by the customer after 12pm the previous working day of the booked site visit, the supplier will be entitled to be paid a cancellation fee of 100% of the mobilisation fee. The cost of this should be included in the quotation issued to the customer. If the technician has arrived onsite then the mobilisation, time on site and any other costs incurred by the supplier will be charged to the customer due to the cancellation.
- 6.7 Should a night shift be cancelled by the customer after 5pm the previous working day of the booked site visit, the supplier will be entitled to be paid a cancellation fee of 100% of the mobilisation fee. The cost of this should be included in the quotation issued to the customer. If the technician has arrived onsite then the mobilisation, time on site and any other costs incurred by the supplier will be charged to the customer due to the cancellation.

7. Asbestos Containing Materials

- 7.1 Where a Customer requires the Supplier to disturb the fabric of a structure as part of the provision of Services, the Customer shall provide all information regarding the presence of any asbestos containing materials within the area the Supplier will be working, including so far as is required under Regulation 4 (duty to manage) of the Control of Asbestos Regulations 2012.
- 7.2 Working areas must be clean, clear and prepared for test by the Customer (or its employees, subcontractors or third parties) at no cost to the Supplier prior to the Supplier's arrival on Site to perform the Services. The Customer shall indemnify the Supplier against all claims, demands, proceedings, damages, costs and expenses arising from any damage, delays, costs and expenses necessarily and unavoidably caused to any party by the Supplier in carrying out the Services ordered.
- 7.3 The Supplier will be responsible for temporary reinstatement of core holes and any other excavation necessary to obtain Samples only. Permanent reinstatement shall be the responsibility of the Customer and at no cost to the Supplier.

8. Charges and payment

- 8.1 The Charges for the Services shall be set out in the Quotation and the Order and/or the Contract Review.
- 8.2 Unless otherwise agreed with the Customer as part of their Order, payment for the Services shall be received by the Supplier in advance of the Supplier providing the Services to the Customer. Alternatively, and at the Supplier's sole discretion, and subject to the Supplier receiving a satisfactory credit check in relation to the Customer, the Supplier may invoice the Customer monthly in arrears for Services and the Customer shall pay each invoice submitted by the Supplier within 30 days of the date of any invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer. Each invoice shall be paid 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.
- 8.3 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.
- 8.4 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 11, 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 8.4 will accrue each day at 2% a year above Barclays's Bank plc base rate from time to time, but at 2% a year for any period when that base rate is below 0%.
- 8.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Intellectual property rights

- 9.1 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.
- 9.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.2.
- 9.4 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 for the purpose of providing the Services.

10. Limitation of liability

10.1 References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; and/or (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10.3 Subject to clause 10.2, the Supplier's total liability to the Customer for any part of the Services shall not exceed the equivalent invoice value of the relevant batch of analysis which forms part of the Services in question.

10.4 Neither the Supplier, nor any of its officers, employees, agents or subcontractors shall be liable to the Customer or any third party for:

- 10.4.1 any indirect or consequential losses including, but not limited to, loss of profit, loss of sales or business, loss of or damage to goodwill, loss of contracts, loss of savings and/or loss of use or corruption of data or information; or
- 10.4.2 any actions taken, or not taken, on the basis of any reports issued by the Supplier, nor for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to the Supplier by the Customer or any third party.

10.5 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

11. Termination

11.1 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:

- 11.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- 11.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- 11.1.3 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.

11.2 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:

- 11.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 11.2.2 there is a change of control of the Customer.

11.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services 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 11.1.2 to clause 11.1.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12. Consequences of termination

12.1 On termination or expiry of the Contract:

- 12.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services 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;
- 12.1.2 the Customer shall return all of the Supplier's materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safekeeping and will not use them for any purpose not connected with the Contract.

12.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or 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. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13. General

13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13.2 **Assignment and other dealings.** 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. 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.

13.3 **Confidentiality.**

13.3.1 Subject to clause 13.3.3, neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract. Each party may only disclose the other party's confidential information to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3.2 For the avoidance of doubt, all reports, records, paper and electronic that originate from the Supplier or on the Supplier's behalf pursuant to the Contract are provided solely for the benefit of the Customer, and shall not be disclosed to any third parties without the prior written consent of the Supplier.

13.3.3 The Supplier reserves the right to store, use or publish any test results it may carry out as part of the Services in an anonymised form which does not identify the Customer or the Site.

13.4 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

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

13.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

13.7 **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 this Agreement. If any provision or part-provision of this Contract deleted under this clause 13.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.8 **Notices.** Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice or communication shall be deemed to have been received (i) if delivered by hand, at the time the notice is left at the proper address; or (ii) 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.

13.9 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

13.10 **Governing law and Jurisdiction.** 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. 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.