

## ProVu Communications Limited

### Terms and Conditions for the Supply of Goods, Software and Services

#### 1. Interpretation

#### 2. Definitions:

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

**“Conditions”**: these terms and conditions as amended from time to time in accordance with clause 17.7.

**“Contract”**: the contract between ProVu and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**“Customer”**: the person or firm who purchases the Goods and/or Services from ProVu, either for its own use or on behalf of an End User.

**“Data Protection Legislation”**: (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**“Deliverables”**: the deliverables set out in the Order, as supplied by ProVu for the Customer.

**“Delivery Location”**: has the meaning given in clause 4.1.

**“End User”**: where the Customer is not to be the user of the Goods and/or Services, a person or entity who places an order for the Goods and/or Services with the Customer, which order is sub-contracted by the Customer to ProVu.

**“Force Majeure Event”**: has the meaning given to it in clause 16.

**“Goods”**: the equipment (or any part of it) supplied by ProVu which could include VoIP hardware by way of sale or rental and any other equipment, machinery or spares and may also include non-standard or branded goods specifically obtained or prepared by ProVu for the Customer.

**“Goods Specification”**: any specification for the Goods as provided by ProVu, including any relevant plans or drawings.

**“Intellectual Property Rights”**: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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, Software and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of ProVu's quotation, as the case may be.

**“ProVu”**: ProVu Communications Limited (also trading as ProTalk, ProSys and Provoip) registered in England and Wales with company number 3748320.

**“Services”**: the services, including the Deliverables, supplied by ProVu to the Customer as set out in the Service Specification, which may include consultancy services (including arranging delivery and collection services via third parties).

**“Service Specification”**: the description or specification for the Services provided in writing by ProVu to the Customer.

**“Software”**: any software provided by ProVu, including any of ProVu's proprietary software or a third party's software.

2.1 Interpretation:

- (a) Any reference to the **Customer** in these Conditions shall, where the context so permits and where the Customer is purchasing the Goods and/or Services on behalf of a third party, be deemed to include a reference to the **End User**.
- (b) 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.
- (c) A reference to **writing** or **written** includes fax and email.

**3. Basis of contract**

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

3.2 The Order shall only be deemed to be accepted when ProVu issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").

3.3 Any drawings, descriptive matter or advertising issued by ProVu and any descriptions of the Goods, Software or Services contained in ProVu's catalogues or brochures are provided for the sole purpose of giving an approximate idea of the Goods, Software and/or Services so described. They shall not form part of the Contract nor have any contractual force.

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

3.5 Any quotation given by ProVu shall not constitute an offer, and, unless otherwise agreed in writing, is only valid for a period of 20 Business Days from its date of issue.

3.6 No Order may be cancelled without ProVu's prior written consent. If cancellation is agreed, the Customer shall make payment to ProVu of all costs reasonably incurred by ProVu in fulfilling the Order up until the date of amendment or cancellation.

**4. Goods and Software**

4.1 The Goods are as described in ProVu's catalogue or on ProVu's website but ProVu reserves the right to amend the specifications of the Goods and/or Services if required by any applicable statutory or regulatory requirement.

- 4.2 If any Goods ordered are stored by ProVu at the Customer's request or after notice has been given that the Goods are ready for despatch the Customer shall reimburse ProVu for all reasonable storage costs and expenses (including any necessary insurance).
- 4.3 ProVu warrants that any Software supplied or licensed by it will operate substantially in accordance with, and perform, the material functions and features as may be specified.
- 4.4 Where the Customer takes any Software from ProVu, the Customer shall abide by any third party software supplier's terms of use and, in respect of any Software:
- (a) the Customer shall not modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights in the Software except and only to the extent that it is expressly permitted by applicable law;
  - (b) the Customer shall not carry out any dishonest or fraudulent action through the account management capabilities of the Software and any such activity will entitle ProVu to suspend or terminate the Services or the use of any Software.

## **5. Delivery of Goods**

- 5.1 ProVu shall deliver the Goods (or arrange for the Goods to be delivered) to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after ProVu notifies the Customer that the Goods are ready. If a courier delivers Goods to the main entrance of the Delivery Location, delivery to a receptionist in such event shall be deemed to be effective delivery. Unless the Customer arranges its own delivery of the Goods, any costs associated with the delivery (and where appropriate, the export and import of the Goods) shall be invoiced to the Customer. Delivery of Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. ProVu shall not be liable for any delay in or failure of delivery caused by a Force Majeure Event or the Customer's failure to provide ProVu with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If the Customer changes the delivery address or date or delivery fails for some reason that is not attributable to ProVu and ProVu incurs costs from the carrier, ProVu reserves the right to charge the Customer for such costs.
- 5.3 If ProVu 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.

- 5.4 If the Customer (or the End User, where appropriate) fails to accept delivery of the Goods within three Business Days of ProVu notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by ProVu's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which ProVu notified the Customer or End User that the Goods were ready; and
  - (b) ProVu shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.5 If after ten Business Days after ProVu notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, ProVu may resell or otherwise dispose of part or all of the Goods and, after deducting any reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.6 If a Customer requires ProVu to deliver the Goods in instalments, such instalments shall be invoiced and paid for separately. Each delivery will attract a separate delivery charge and consequently the total separate delivery charges may be in excess of the delivery charge agreed when the order was confirmed. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.7 The Customer shall be responsible for inspecting the Goods on arrival and shall notify ProVu immediately if there is any damage, discrepancy or shortage or within 7 days after receipt of notice of despatch in the event of non-arrival.
- 5.8 Entirely at ProVu's discretion, ProVu may allow the Customer (or the End User, if different) to return Goods (at the Customer's cost) after delivery, provided they are unused and in pristine, unopened condition. ProVu will levy a restocking fee of 15% of the sales value of such Goods. If restocking is agreed, ProVu will only issue a credit note after the Goods have been returned and checked for damage.
- 5.9 If agreed between ProVu and a Customer, ProVu shall hold Goods on a Customer's behalf (at ProVu's risk) ("**Consignment Goods**") and deliver such quantities of the Consignment Goods as the Customer may request from time to time. The Customer shall be responsible for the individual delivery charges arising in respect of each delivery and any fulfilment costs. In the event of any loss of or damage to the Consignment Goods whilst in ProVu's possession, the maximum liability of ProVu to the Customer or the End User in all circumstances shall be the replacement cost of the Consignment Goods and if ProVu was not the supplier of such Consignment Goods, the Customer shall provide evidence to ProVu of the cost of the Consignment Goods.

## 6. Quality of Goods

6.1 Provided that the End User has provided all required facilities for the Goods to operate normally and provided that, where appropriate, software on any hardware is kept up to date, ProVu warrants that on delivery, and for the warranty period provided by individual product manufacturers in respect of particular products (including where any extended manufacturer's warranty is taken by the End User) ("**warranty period**"), the Goods shall:

- (a) conform in all material respects with the Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979),

and where there is no such manufacturer product warranty, ProVu warrants that the Goods shall be free of defects in workmanship and materials for the period of 12 months after despatch. Where agreed between ProVu and the Customer and upon payment of the relevant sums to ProVu, ProVu may provide additional warranties following the expiry of any manufacturer's warranty.

6.2 Subject to clause 5.3, ProVu shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

- (a) the Customer or the End User gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) ProVu is given all requested information and a reasonable opportunity of examining such Goods (in its place of operation, if appropriate); and
- (c) the Customer or the End User (if asked to do so by ProVu) returns such Goods to ProVu's place of business at the Customer's cost,

and further detail of ProVu's warranty policy is available at [www.ProVu.co.uk/returns](http://www.ProVu.co.uk/returns)

6.3 ProVu shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the End User makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the End User failed to follow ProVu'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, including, but not limited to, if a waterproofed item is installed incorrectly;
- (c) the defect arises as a result of ProVu following any design or Goods Specification supplied by the Customer;
- (d) the Customer or the End User alters, adds to or repairs such Goods without the written consent of ProVu;

- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions including, but not limited to, if a non-waterproof item is used outside; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.4 Except as provided in this clause 5, ProVu shall have no liability to the Customer or the End User in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

6.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by ProVu.

## **7. Title and risk**

7.1 The risk in the Goods shall pass to the Customer on completion of delivery where ProVu has arranged delivery or upon transfer of the Goods to the Customer's delivery agent where the Customer arranges its own delivery.

7.2 Where Goods are rented from ProVu, title shall be retained by ProVu at all times.

7.3 Save as provided in clause 6.2, title to the Goods shall not pass to the Customer or End User until ProVu receives payment in full (in cash or cleared funds) for (i) the Goods; and (ii) any other goods that ProVu has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

7.4 Until title to the Goods has passed to the Customer, the Customer (or, if different, the End User) shall:

- (a) store the Goods separately from all other goods held by the Customer and not interfere with them in any way and so that they remain readily identifiable as ProVu's property;
- (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on ProVu's behalf from the date of delivery;
- (c) notify ProVu immediately if it becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d); and
- (d) give ProVu such information relating to the Goods as ProVu may require from time to time.

7.5 Subject to clause 6.6, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before ProVu receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as ProVu's agent; and
- (b) title to the Goods shall pass from ProVu to the Customer immediately before the time at which resale by the Customer occurs.

- 7.6 If before title to the Goods passes to the Customer or the End User, the Customer or the End User becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d), then, without limiting any other right or remedy ProVu may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) ProVu may at any time:
    - (i) require the Customer or, if different, the End User to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party (including that of the End User) where the Goods are stored in order to recover them.

## **8. Supply of Services**

- 8.1 ProVu shall supply the Services to the Customer or, where appropriate, the End User as set out in the Service Specification and the Services will be provided using reasonable care and skill. ProVu shall be entitled to sub-contract the delivery of the Services.
- 8.2 ProVu shall use all reasonable endeavours to meet any agreed performance dates for the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

## **9. Customer's obligations**

- 9.1 The Customer shall (and, if the Customer is not the End User, the Customer shall ensure that the End User, where appropriate, shall):
- (a) ensure that the terms of the Order are complete and accurate;
  - (b) co-operate in all matters relating to the provision of the Goods and the Services;
  - (c) provide ProVu, its employees, agents, consultants and subcontractors, with access to the relevant premises and facilities as reasonably required by ProVu to, where appropriate, provide the Services;
  - (d) provide ProVu with accurate information and any materials as ProVu may reasonably require to supply the Services;
  - (e) prepare the premises for the operation of the Goods or the supply of the Services;
  - (f) ensure that all software updates in respect of hardware are applied promptly after release;



- (g) keep all equipment, documents and other property of ProVu (including the Goods where ownership of the Goods is not to pass) (“**ProVu Materials**”) in safe custody at its own risk, maintain the ProVu Materials in good condition until (where appropriate) returned to ProVu, and not dispose of or use the ProVu Materials other than in accordance with ProVu's written instructions or authorisation.

9.2 If ProVu'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 (or, in each case, by the End User) to perform any relevant obligation (“**Customer Default**”):

- (a) without limiting or affecting any other right or remedy available to it, ProVu shall have the right to suspend performance of the Services until the Customer or End User remedies the Customer Default, and the Customer Default shall relieve ProVu from the performance of any of its obligations whilst such Customer Default continues;
- (b) ProVu shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer Default; and
- (c) the Customer shall reimburse ProVu on written demand for any costs or losses sustained or incurred by ProVu arising directly or indirectly from the Customer Default.

## 10. Charges and payment

10.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in ProVu's published price list as at the date of the Order;
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer; and
- (c) shall not include any costs associated with taxes or export/import duties where Goods are being sent abroad, all of which shall be arranged and paid for by the Customer or End User.

10.2 The charges for Services and the Software shall be as set out in the Service Specification:

10.3 ProVu reserves the right to:

- (a) make a reasonable increase in the charges for the Services and/or the provision of the Software on an annual basis with effect from each anniversary of the Commencement Date;
- (b) 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 ProVu that is due to:
  - (i) any factor beyond the control of ProVu (including foreign exchange fluctuations, increases in taxes and duties, and increases imposed by its suppliers);
  - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or

- (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give ProVu adequate or accurate information or instructions in respect of the Goods.

10.4 In respect of Goods, unless otherwise agreed in advance or there is an authorised credit account, the Customer shall pay for the Goods in advance of delivery. Where credit terms apply and unless otherwise agreed, the Goods shall be paid for within 30 days of despatch. No Goods shall be despatched if any credit limit would be exceeded or if any other invoices for the Customer are overdue. In respect of Services, ProVu shall invoice the Customer on completion of the Services.

10.5 The Customer shall pay each invoice submitted by ProVu:

- (a) unless otherwise agreed in writing, within 30 days of the date of the invoice or in accordance with any credit terms agreed by ProVu;
- (b) in the currency set out on the invoice; and
- (c) in full and in cleared funds to a bank account nominated in writing by ProVu by a method acceptable to ProVu,

and time for payment shall be of the essence of the Contract.

10.6 Unless otherwise stated, 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”) and the Customer shall pay to ProVu any VAT as is chargeable.

10.7 If the Customer fails to make a payment due to ProVu under the Contract by the due date, then, without limiting ProVu's other remedies (including informing credit reference agencies), 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 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

10.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding.

## **11. Intellectual property rights**

All Intellectual Property Rights in or arising out of or in connection with the Services or Software shall be owned by ProVu or ProVu's licensors and nothing in these Conditions shall be construed so as to transfer such ownership.

## **12. Data protection and data processing**

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 12.2 ProVu shall only use personal data supplied to it by the Customer for the purposes of fulfilling the Contract, for assessing any level of credit to extend and personal data will not be otherwise transferred to a third party except as required in connection with Order fulfilment (for example, to delivery agents) or as may be permitted by law.
- 12.3 The Customer will ensure that it has all necessary consents and notices in place to enable lawful transfer of personal data to ProVu to enable ProVu to fulfil the Order.

## **13. Confidentiality**

- 13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, method of doing business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 13.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract, each party ensuring such people to whom it discloses the other party's confidential information comply with this clause 12; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **14. Limitation of liability**

- 14.1 Nothing in these Conditions shall limit or exclude ProVu's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

14.2 Subject to clause 13.1, ProVu shall not be liable to the Customer (or, for the avoidance of doubt, the End User, if different), whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for (a) loss of profits; (b) loss of sales or business, (c) loss of anticipated savings, (d) loss of use or corruption of software or data, (e) loss of or damage to goodwill, or (f) any indirect or consequential loss.

14.3 Subject to clause 13.1, ProVu's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to:

- (a) in the case of direct physical damage to any tangible property (other than the Goods) to the extent it results from the negligence of ProVu, or of its employees, agents or contractors, be limited in respect of any one claim or series of claims arising out of the same event or circumstances, to £1 million; and
- (b) in the case of any other claim or series of claims arising out of the same event or circumstances be limited to the amount of the price paid by the Customer for the Goods pursuant to the Contract.

14.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.5 This clause 13 shall survive termination of the Contract.

## **15. Termination**

15.1 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:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
- (b) 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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) 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
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.2 Without affecting any other right or remedy available to it, ProVu 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.

15.3 Without affecting any other right or remedy available to it, ProVu may suspend the supply of Services or access to Software or further deliveries of Goods under the Contract or any other contract between the Customer and ProVu 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 14.1, or ProVu reasonably believes that the Customer is about to become subject to any of them.

## **16. Consequences of termination**

16.1 On termination of the Contract, the Customer shall immediately pay to ProVu all outstanding unpaid invoices and interest and, in respect of Services, Software and Goods supplied but for which no invoice has been submitted, ProVu shall submit an invoice, which shall be payable by the Customer immediately on receipt.

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

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

## **17. 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, including delays or defaults of suppliers or the default of any sub-

contractor, strike, trade or customs dispute, flood, accident to plant or machinery, shortage of materials or labour.

## **18. General**

18.1 **Assignment and other dealings.** The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

### **18.2 Notices.**

(a) 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); or sent by fax to its main fax number or sent by email to the address specified in any Order or Order acknowledgment documentation.

(b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or courier, at 9.00 am on the second Business Day after posting or at the time recorded by the courier service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.

18.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

18.4 **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 breach or default. 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 right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **18.5 Entire agreement.**

(a) 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.

(b) 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 based on any statement in the Contract.

18.6 **Third parties rights.** 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.

18.7 **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).

18.8 **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 English law. Each party irrevocably agrees that the courts of England 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.