

## TERMS AND CONDITIONS

### 1 DEFINITIONS

**Company, RoSPA, we or us** shall mean RoSPA Play Safety (Playsafety Ltd), or any agents or employees thereof.

**You Customer** shall mean the, any person, business or firm and any person acting on behalf of and with the authority of the customer, or any person purchasing inspection, training or consultancy services from the Company.

The Company's activities are carried out under an exclusive licence arrangement with the Royal Society for the Protection of Accidents to enable us to trade, as RoSPA Play Safety.

**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

**Commencement Date:** has the meaning given in clause 2.2.

**Terms:** these terms and conditions as amended from time to time.

**Contract:** the contract between the Company and the Customer for the supply of Services in accordance with these Terms.

**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 Default:** has the meaning set out in clause 4.2.

**Deliverables:** the reports, training materials and any other deliverables set out in the Order or as part of the Services produced by the Company for the Customer.

**Intellectual Property Rights:** patents, 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 Services as set out in the Customer's purchase order form, the Customer's written acceptance of a quotation by the Company as the case may be.

**Owner/Operator:** the owner or operator responsible for the equipment for whom the Customer purchases the Services.

**Services:** the inspection, consultancy or training services as the case may be, including the Deliverables, supplied by the Company to the Customer as set out in the Order.

### 2 BASIS OF CONTRACT

2.1 By placing an order for Services You are offering to purchase Services in accordance with these Terms.

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

2.3 Any samples, drawings, descriptive matter or advertising on its website or issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Terms 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.

2.5 We reserve the right to update these Terms from time to time and the terms in place at the time of you placing an Order shall apply to the Contract.

2.6 You agree to keep us up to date with any changes in your contact details. This includes the provision of a working email address that You regularly check.

2.7 Annual inspection reports and other such Deliverables and invoices will be sent to the last address notified to the Company. To protect yourself all changes in contact details must be in writing (eg. email, letter).

2.8 You undertake that all details You provide to the Company for the purpose of ordering services are true and correct.

2.9 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 60 Business Days from its date of issue.

2.10 The Company shall be entitled to process your data and maintain it on the Company's database. Our privacy policy, giving details of why and how We use your data are contained within our privacy policy available here:

<https://www.rospace.com/help-information/privacy/>

### 3 SUPPLY OF SERVICES

- 3.1 The Company shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Company shall use all reasonable endeavours to meet any performance dates which it has specified to the Customer in writing but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Company reserves the right to amend the Services 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 Company shall notify the Customer in any such event.
- 3.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

### 4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
  - a) ensure that the terms of the Order and any information it provides in respect of the Services are complete and accurate;
  - b) co-operate with the Company in all matters relating to the Services;
  - c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company;
  - d) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - e) if the Services are to be performed at the Customer's premises, to prepare such premises for the supply of the Services;
  - f) 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; and
  - g) keep all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.
- 4.2 If the Company'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**):
  - a) without limiting or affecting any other right or remedy available to it, the Company 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 Company's performance of any of its obligations;
  - b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

### 5 PAYMENT

- 5.1 In consideration for the provision of the Services.
- 5.2 Unless otherwise agreed by the Company in writing payment for the Company's Services shall be made in full and cleared funds on or before the 30th day after the invoice date.
- 5.3 The Charges shall be as stated in the Order or as otherwise confirmed in the Company's acceptance of the Order.
- 5.4 The Company reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date up to an amount in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 5.5 A credit or administration charge may be charged on any amount owing after the due date at the rate of 5% per month calculated on a daily basis.
- 5.6 If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 14, the Customer shall pay statutory compensation and interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 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%.

- 5.7 Any expenses, disbursements and legal costs incurred by the Company in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.8 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 Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.9 The Company's preferred method of payment is by BACS or CHAPS.
- 5.10 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.11 Receipts will be issued by email only on request
- 5.12 If You are based outside the United Kingdom You will be required to make payment in advance. Independent, non-public bodies based in mainland Scotland, the Scottish islands, N Ireland and the Channel Islands may be required to pay for our Services at the time of booking. If payment is due in advance the Company will let You know and an invoice will be raised upon receipt of your Order. Payment will be required before any confirmation of a booking can be issued.
- 5.13 The Company may at its discretion allocate any payment received from the Customer towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated.
- 5.14 The Company may at any time, without notice to the Customer set off any liability of the Customer to the Company against any liability of the Company to the Customer whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract.
- 5.15 Please note that the Customer may not use or rely on the contents of the report or any of its advice contained therein until such time as the Charges for the Services in respect of that report has been paid in full and cleared funds.

## **6 CANCELLATION OF SERVICES**

### **6.1 Cancelling Inspections**

- a) Cancellation of Orders within 24 hours of the intended commencement of the Services will be subject to full fee.
- b) Cancellation of Orders for inspection Services may be made by telephone but must also be immediately confirmed by email.
- c) If on reaching a site for inspection, on a date previously agreed with You, the inspector finds the site not complete, is unable to gain access to the site or is unable to inspect for any other reason outside of our control, the full fee shall be payable.

### **6.2 Cancelling Training at a RoSPA Play Safety Venue**

- a) Transfers are not permitted. To change an Order for training from one course to another, the original Order must first be cancelled and a new Order for training on a revised date is to be made. Usual cancellation and booking fees apply.
- b) The following cancellation charges apply once an Order for training Services has been confirmed If your written cancellation is received by us:
  - more than 6 weeks prior to the Services date , an amount equivalent to 25% of the Charges shall be paid together with a £25 administration fee + VAT shall be payable to us
  - - 6 weeks prior to the Services date a charge equivalent to 50% of the Charges together with a £25 administration fee + VAT shall be payable to us
  - Less than 3 weeks or closer prior to the Services date a charge equivalent to - 100% of the Charges shall be paid together with a £25 administration charge + VAT shall be payable to us
  - 100% of the Charges will be payable for non-attendance on the day shall be payable to us.

### **6.3 Cancelling Training on Clients' Premises**

- More than 3 weeks prior to the Services start date - an amount equivalent to 25% of the Charges plus a £25 admin fee + VAT shall be payable to us
- Less than 3 weeks prior to the Services start date an amount equivalent to 50% of the Charges plus a £25 admin fee + VAT shall be payable to us
- working days (or closer) prior to the Services start date - 100% of the Charges plus + VAT shall be payable to us

- 6.4 With respect to the cancellation of any Services in respect of training courses, the date of cancellation will be taken as the date we receive your written confirmation provided this is received during normal working hours on any Business Day. Any written notices received after normal working hours shall be deemed to be received on the next Business Day.
- 6.5 We reserve the right to cancel or postpone a course at our sole discretion and in such case we will notify you as soon as possible.
- 6.6 In the event that a course is cancelled by Us We will refund any monies that you have paid to us in advance.
- 6.7 We cannot be held responsible for any costs incurred due to a cancelled event.
- 6.8 Certificates for any successfully completed training courses shall be sent to you once full payment for the training Services has been received in full and cleared funds.
- 6.9 Delegate substitutions are accepted prior to the start of the course Services with no additional charge.
- 6.10 Where examinations (whether by an internal or external examining authority) form part of, or are taken following a course under the Services, no refund of fees can be given in the event a delegate fails to reach the standard required.
- 6.11 The examiners' decisions are final.
- 6.12 Where examinations take place on behalf of an external body, examination certificates will be held by the Company and not forwarded until payment in full is received by the Company.
- 6.13 Please ensure you notify us if any of your delegates have a learning difficulty, disability and/or a medical condition and if appropriate we shall make reasonable adjustments to accommodate such.
- 6.14 Please note that we are unable to book accommodation for the Customer which shall be the Customer's responsibility.
- 6.15 Course literature is our Intellectual Property and is subject to copyright and may not be reproduced without our prior written consent.

## **7 AUTOMATIC ORDERS**

- 7.1 Where you Order play area inspection Services to be undertaken annually until further notice, it is your responsibility to notify the Company of any change in contact details.
- 7.2 The Company will send You a reminder email to the email address provided by You with respect to the inspection Services. The Company shall aim to provide such a reminder approximately 40 days before the earliest scheduled date for the inspection Services.
- 7.3 Unless You give the Company two weeks written notice in writing that the inspection Services are not required the inspection Services will take place and You are responsible for payment of the relevant Charges.

## **8 APPOINTMENTS**

- 8.1 You may request an appointment as part of certain inspection Services for which a fee is payable. The inspector will make every reasonable attempt to contact You to arrange a suitable time for such appointment however such times are estimates only and whilst we will do our best to accommodate a preferred time and date, we cannot guarantee that an inspection will be carried out at that time.
- 8.2 The Company cannot be held responsible where it was not possible to make an appointment.
- 8.3 In the event of an appointment request it is essential that You provide a contact telephone number which will normally be answered during normal hours on a Business Day.

## **9 INSPECTIONS**

- 9.1 The inspections are undertaken using the Register of Play Inspectors International's (RPII) inspection scope.
- 9.2 **Compliance with Standards**
  - a) Inspections are undertaken with reference to the appropriate RPII standards, which are listed next to each item. Compliance with these standards is not mandatory in law, but it is useful to know whether items comply or not. If we think a change is needed, then this is noted in our report. Non-compliance does not necessarily mean that a change is needed. Where a standard is undated the current version is applied, unless overlap periods are allowed by the standards committee at the time of update. The information provided herein is to assist the Owner/Operator to fulfil its responsibilities as detailed in the relevant standards. Other standards referenced within the listed standards do not form part of this inspection, unless otherwise stated in these Terms or by us in writing.
  - b) The listed standards are relevant to all installations of equipment which are publicly accessible, including public parks, pay to play parks, schools, nurseries, public houses, holiday parks, indoor play centres, farm parks and the like. All equipment used in publicly accessible areas should meet with the requirements of the relevant listed standard.

- c) Additionally, EN 1176-7 provides guidance on installation, inspection, maintenance and operation to owners/operators of equipment and ancillary items. In the United Kingdom the National Foreword forms an important part to the understanding and implementation of the recommendations set out in EN 1176-7. It clarifies the application of the document within the UK as best practice guidance, as the document has been used since its initial publication. Therefore the EN 1176-7 contains no requirement in the UK and needs to be read and implemented as guidance, with the use of the terms 'shall' therefore becoming a recommendation, as in the term 'should'.
- d) Domestic equipment falls outside the scope of standards for publicly accessible spaces. Domestic play equipment has its own standard (BS EN 71 – Safety of Toys). Where domestic equipment can be identified this will be acknowledged in the report, but compliance may be assessed to the applicable standard relating to publicly accessible equipment.
- e) When water play items, including spray parks, are inspected any comments concerning compliance within the inspection will refer to EN 1176. We have not assessed these against the requirements of EN 17232 (Water play equipment and features).
- f) Compliance with standards is not always a clear-cut thing. Some interpretation can be needed, and our interpretation may differ from the interpretation of others. In some cases, We may decide not to note non-compliance in cases where We think it may mislead or be unhelpful so to do.

### 9.3 What We Inspect

- a) Annual and Post Installation Inspections will take into consideration compliance with current standards and defects related to wear and vandalism. Items not listed in the report have not been included in the inspection. The inspection will cover the playground equipment and the active area up to 3.0 metres around, or the fence line if closer.
- b) Operational inspections only take into consideration defects related to cleanliness, equipment ground clearances, ground surface finishes, exposed foundations, sharp edges, missing parts, excessive wear (of moving parts), structural integrity, wear and vandalism. Routine visual inspections (if undertaken) relate only to the most obvious defects such as broken or missing parts, vandalism and issues created by severe weather conditions (the intention is to identify hazards created by storm damage).
- c) The inspection is non-dismantling, non-destructive and does not include for any structural, toxicology or impact assessments defined in the standard; however, the inspector will undertake a manual test for stability and if equipment fails under manual load, or any other hazard is identified as an unacceptable risk, the Owner/Operator will be notified as soon as practicably possible.
- d) The inspector will access all reasonably accessible equipment and will assess all reasonably accessible parts above the standing surface. Where it is not possible to access parts of the equipment without employing an alternative means of access the report will record the action required by the Owner/Operator to ensure the continued safe use of the equipment. Ancillary equipment will be assessed using the inspector's knowledge and experience of the standards named in this document to ensure as far as is reasonably practicable the continued safe use of the items concerned.
- e) The Owner/Operator is responsible for the overall safety of the equipment and area.
- f) Inspectors who are trained to use ladders may use them where it is safe to do so, but if members of the public are present on-site ladders may not be used to access the equipment.

### 9.4 What We Don't Inspect

The inspector will not undertake nor be responsible nor liable for any of the following works unless specifically agreed in writing by us at the time of confirmation of Order:

- a) Checking the depth and underlying structural integrity of any surface areas and/or carrying out any testing of impact absorbing properties of any surfaces.
- b) The identification of any corrosion, rot or other deterioration in any apparatus or equipment other than by an external inspection or the inspection of any equipment (or part thereof) that is underground.
- c) Tightening any bolts, hinges or other fixing devices on any apparatus or equipment.
- d) Assessing or inspecting any electrical installations contained on any site and/or apparatus and/or equipment.
- e) Assessing or inspecting any water supplies and/or water features and/or any associated computerised systems (including carrying out any programming).
- f) The Owner/Operator should have a 'design risk assessment' provided by the manufacturer/designer of the area for the equipment and location in which the facility is installed.
- g) We have inspected without dismantling or destruction and so some aspects of the relevant standards may not be testable on site.

- h) The operator is responsible for managing risks of their provision and is required by law to carry out a 'suitable and sufficient assessment' of the risks associated with a site or activity and this inspection shall be considered as contributing to the operator's discharge of this responsibility.

#### 9.5 Exposure to Risk

Exposure to acceptable levels of risk and challenge is essential to children's development and allows them to exercise their right to play. Therefore, it can be judged that levels of risk above low risk can be acceptable. The risk scores shown allow the operator to make a judgement after first considering the benefit of the activity to which the risk score relates.

#### 9.6 Ownership

There may be cases where We report issues that are not the site owner's responsibility. It is not necessarily possible for us to determine who owns what, and in any case We need to bring all risks to your attention if they can affect the safety of the site's users.

#### 9.7 Contemporaneous Findings

- a) Our report shows the findings at the time of inspection. Subsequent events may affect the condition of the site and it is the Customer's (or Owner/Operator as the case may be) responsibility to ensure that it carries out its own regular inspections of the equipment as required.
- b) Suggested remedial actions are to the best of our knowledge and experience.
- c) The Owner/Operator should seek the advice of the manufacturer or a competent person when undertaking repairs and/or modifications to equipment.

#### 9.8 Timber

- a) Where timbers are set into the ground it is not always possible to determine levels of decay.
- b) The Owner/Operator should ensure it conducts appropriate inspections to identify decay before it becomes a problem.
- c) We can undertake more in-depth testing of your playground timbers using resistance penetration testing in return for our current Charges.
- d) Timber is known to decay from the inside out. This makes it very important that You ensure proper testing and inspection is undertaken of your playground timbers, especially where defects may be hidden inside the structures. Resistance penetration testing can help to identify defects before they become outwardly apparent but can also confirm the condition of good timbers to prevent premature replacement with its associated costs.
- e) The testing is undertaken using a specialist machine, which uses electronically controlled drill resistance measurement. The drill is fine enough that it does not cause permanent damage to reduce the lifespan of the equipment. Please contact us for pricing and further information.

#### 9.9 Planting and Trees

- a) Where planting or trees are mentioned in our report please be advised that We do not undertake any arboricultural, horticultural or toxicological assessment of suitability or condition.
- b) You must ensure You undertake suitable inspections from an appropriate expert.

#### 9.10 How This Inspection Contributes to Your Annual Main Inspection

- a) The Owner/Operator is responsible for following the guidance of the relevant standards. The standards give guidance on the installation, inspection, maintenance and operation of the various types of facility.
- b) The Customer should be aware that we cannot undertake all requirements of the Annual Main Inspection. The inspection guidance is listed in Table 1 below, with an indication of which parts will be included in your RoSPA inspection [the items in the first column are the items which comprise an "Annual Main Inspection", the second column shows which elements form part of a RoSPA inspection, items with a cross are not included, some items may have limitations as shown in the notes to the Table 1].
- c) The Owner/Operator is responsible for carrying out the requirements of the Annual main Inspection that we are unable to undertake and we shall not be liable to the Customer or Owner/Operator in this regard.
- d) The standards also contain additional parts which the Owner/Operator should follow.

**Table 1**

Inspection Recommendations of relevant standards These form the Annual Main Inspection	Included in RoSPA Inspection?
6.1 d) Overall levels of safety of equipment (see note 1)	✓ [1]
6.1 d) Overall levels of safety of foundations (see note 1)	✓ [1]
6.2 d) Overall levels of safety of playing surfaces (see note 2)	✓ [2]

6.1 d) Compliance with the relevant parts of the standard and or risk assessment (see note 3)	✓ [3]
6.1 d) Effects of weather	✓
6.1 d) Presence of rot, decay or corrosion (see note 1)	✓ [1]
6.1 d) Assessment of repairs made or added or replaced components (see note 4)	✓ [4]
6.1 d) Excavation or dismantling/additional measures	✗
6.2.1 Assessment of glass reinforced plastics (see note 5)	✓ [5]
6.2.1 Inspection of one post equipment (see note 1)	✓ [1]
6.2.4 Undertaking the Operators inspection protocol	✓
6.2 c) Presence of rot or corrosion (see note 2)	✓ [2]
6.2 c) Assessment of repairs made/added or replaced components (see note 5)	✗
<p>N.B. The clause numbers above are taken from BS EN 1176-7:2020. The content is equally applicable to all other relevant standards. Playgrounds contains a range of equipment from different manufacturers and installed over a number of years; operators should implement any guidance provided by the manufacturer. Item specific detail is not readily available to RPII Playground Inspectors, whose report contributes to the operator's overall Annual Main Inspection as details in the relevant standard.</p> <p>Notes</p> <p>[1] A manual test only is undertaken for stability. Wear and instability are only detectable where readily apparent without dismantling or destruction and without the use of tools, excavation or specialist equipment. Rot and corrosion are tested for with a hammer and/or steel rod. Decay in timber may exist which can only be found with specialist equipment. We therefore cannot be held responsible for the presence of such decay.</p> <p>[2] Only the visible condition and dimensional compliance of surface extent is considered. Neither testing of impact attenuating properties nor measurement of the thickness of bound surfaces are undertaken on annual inspections. We can conduct impact testing for additional fees.</p> <p>[3] The inspection assesses compliance where this can be tested on site using manual methods without dismantling, destruction and without the use of tools or specialist equipment</p> <p>[4] The operator should use manufacturer's recommended parts, or equivalent. We are unable to verify if such parts have been used, and any subsequent change in quality or performance</p> <p>[5] Visible glass fibres will be noted in reports. The operator is responsible for repairs or replacement.</p>	

## **10 USE OF WEBSITE CONTENT**

- 10.1 We aim to keep [www.rospa.com/play-safety](http://www.rospa.com/play-safety) up to date but We don't provide any guarantees, conditions or warranties that the information will be current; secure; accurate; complete; or free from viruses.
- 10.2 We are not liable for any loss or damage that may arise from using [www.rospa.com/play-safety](http://www.rospa.com/play-safety)

## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 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 Company.
- 11.2 The Company grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free 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.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 11.2.
- 11.4 The Customer grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Company for the term of the Contract for the purpose of providing the Services to the Customer.

## **12 DUTY OF CARE**

- 12.1 The Company has a legal duty of care to report all issues that they consider might have a measurable impact on site safety.
- 12.2 It is your duty to consider all issues contained in an inspection report and take appropriate action, having assessed for yourselves the risks reported, the financial implications, and the practicality under local circumstances.

## **13 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 13.1 References to liability in this clause 13 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.3 Nothing in this clause 13 shall limit the Customer's payment obligations under the Contract.
- 13.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- death or personal injury caused by negligence;
  - fraud or fraudulent misrepresentation; and
  - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 13.5 Subject to clause 13.2 (No limitation in respect of deliberate default), and clause 13.4 (Liabilities which cannot legally be limited), the Company's total liability to the Customer:
- for damage to property caused by the negligence of its employees and agents in connection with the Contract shall not exceed £50,000 for any one event or series of connected events;
  - for loss or damage caused by the negligence of its employees and agents in connection with an inspection report provided as part of the Services shall not exceed £1 million pounds for any one event or series of connected events;
  - for all other loss or damage which does not fall within subclause (a) or (b) shall not exceed an amount equivalent to the total fees paid to the Company prior to the 12 months from the date on which the liability arose.
- 13.6 Subject clause 13.2 (No limitation in respect of deliberate default), clause 13.3 (No limitation of customer's payment obligations) and clause 13.4 (Liabilities which cannot legally be limited), this clause sets out the types of loss that are wholly excluded:
- loss of profits.
  - loss of sales or business.
  - loss of agreements or contracts.
  - loss of anticipated savings.
  - loss of use or corruption of software, data or information.
  - wasted expenditure.
  - loss of or damage to goodwill; and
  - indirect or consequential loss.



- 13.7 The Company has given commitments as to compliance of the Services under these Terms. In view of these commitments, the terms implied by 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.
- 13.8 Nothing in this clause shall reduce or limit a party's obligation to mitigate its losses.
- 13.9 Unless the Customer notifies the Company that it intends to make a claim in respect of an event within the notice period, the Company 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 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 13.10 This clause 13 shall survive termination of the Contract.

#### **14 TERMINATION**

- 14.1 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:
- 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;
  - 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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];
  - 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
  - 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.
- 14.2 Without affecting any other right or remedy available to it, the Company 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 or
  - there is a change of control of the Customer.
- 14.3 Without affecting any other right or remedy available to it, the Company may terminate the Contract on giving not less than 3 months' written notice to the Customer.
- 14.4 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services under the Contract or any other contract between the Customer and the Company 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 clauses 14.1 c) or clause d), or the Company reasonably believes that the Customer is about to become subject to any of them; and
  - the Company reasonably believes that the Customer is about to become subject to any of the events listed in clause 14.1b).

#### **15 CONSEQUENCES OF TERMINATION**

- 15.1 On termination or expiry of the Contract:
- the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - the Customer shall return all of the Company Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises 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 the Contract.
- 15.2 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.
- 15.3 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.

## 16 FORCE MAJEURE

- 16.1 The Company shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control, such as (but without limitation) extremes in weather, storm damage, disease, Acts of God, actions by any governmental authority (whether valid or invalid), governmental laws and regulations not presently in effect, fires, floods, windstorms, explosions, riots, natural disasters, terrorism etc.
- 16.2 Failure by the Company to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations the Company has under this contract.
- 16.3 If any provision of any contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

## 17 GENERAL

### 17.1 Assignment and other dealings.

- a) The Company 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.
- b) 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 Company.

### 17.2 Confidentiality.

- a) Each party undertakes that it shall not at any disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 17.2(b).
- b) Each party may disclose the other party's confidential information:
  - i. 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 17.2; and
  - ii. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - iii. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 17.3 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.
- c) Nothing in this clause shall limit or exclude any liability for fraud.

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

17.5 **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. 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.

17.6 **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 this Contract deleted under this clause 17.6 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.

### 17.7 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 email to the address specified in the Order and Order acceptance respectively.
- b) 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;

- 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; or
  - iii. 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. In this clause 17.7 (b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- c) This clause 17.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**17.8 Third party rights.**

- a) 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.
- b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**17.9 Multi-tiered dispute resolution procedure**

- a) If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it, including discussions with insurers (**Dispute**) then except as expressly provided in these Terms, the parties shall follow the procedure set out in this clause:
  - i. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, a Senior Officer of the Customer and Senior Officer of the Company shall attempt in good faith to resolve the Dispute;
  - ii. if the Senior Officer of the Customer and Senior Officer of the Company are for any reason unable to resolve the Dispute within 90 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 60 days after the date of the ADR notice.
- b) No party may commence any court proceedings under clause 17.11 (Jurisdiction) (in relation to the whole or part of the Dispute until 180 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- c) If the Dispute is not resolved within 180 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 180 days, or the mediation terminates before the expiration of the said period of 180 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 17.11 (Jurisdiction).

**17.10 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.

**17.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have non-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.