



Beyond just Tolerance.

Terms and Conditions of Sale and Services

1. DEFINITIONS

1.1 In these Conditions:

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

"**Conditions**" means these terms and conditions of sale and services as amended from time to time in accordance with clause 2.1.

"**Company**" means The European Shoe Machinery Company Limited (company number 3159789) of 63-65 Carrington Street, Kettering, Northampton, NN16 0BY.

"**Consumables**" means the consumables supplied by the Company to the Customer in accordance with the Order.

"**Contract**" means the contract between the Customer and the Company for the supply and purchase of Goods and/or Services in accordance with these Conditions and the Order to which they relate.

"**Customer**" means the person, firm or company placing the Order with the Company. "Equipment" means the equipment supplied by the Company to the Customer (including any spare parts) in accordance with the Order.

"**Force Majeure Event**" has the meaning given in clause 14.

"**Goods**" means the Equipment, Consumables and other goods (or any part of them) provided by the Company to the Customer in accordance with the Order.

"**Goods Specification**" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Company.

"**Instruction Manual**" means the instruction manual provided to the Customer by the Company.

"**Order**" means the Customer's order for the Goods and/or Services as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be.

"**Refurbished**" means Equipment which has been refurbished by the Company so that it complies with its original specification.

"**Services**" means the services (or any part of them) provided by the Company to the Customer in accordance with the Order including, without limitation, any service and maintenance services.

"**Services Specification**" means any specification for the Services that is agreed in writing by the Customer and the Company.

"**Upgraded**" means Equipment which has been upgraded by the Company so that it meets the requirements of the applicable European Directives current at the time of the sale.

"**VAT**" means value added tax chargeable for the time being.

1.2 Any reference in these Conditions to any legislation or a provision of any legislation shall be interpreted so as to include a reference to that legislation or provision as it may be amended, re-enacted or extended at the relevant time. This will also include subordinate legislation as amended or re-enacted.

1.3 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 A reference to writing or written is to include faxes and e-mails unless otherwise stated in these Conditions.

1.5 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. GENERAL

2.1 All Contracts entered into between the Company and the Customer for the supply of Goods and/or Services are subject to these Conditions. All other terms and conditions, whether expressly stipulated by the Customer or implied by trade custom, course of dealing or otherwise, are excluded. No variation to these Conditions will be effective unless agreed in writing and signed by the Company.

2.2 The Customer agrees that all descriptions and illustrations contained in the Company's catalogues, price lists, advertising matter and other publications are intended to present a general idea of the Goods and/or Services described in them and shall not form part of the Contract unless specifically incorporated therein as provided for in clause 2.7.

2.3 An Order constitutes an offer by the Customer to purchase the Goods and/or Services in accordance with these Conditions which may be accepted at the discretion of the Company and, if so accepted, will only be accepted upon these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Goods Specification or Services Specification are complete and accurate.

2.4 An Order shall only be deemed to be accepted when the Company issues written acceptance of the Order or does any act consistent with fulfilling the Order at which point and on which date the Contract shall come into existence.

2.5 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 3 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 The Customer acknowledges that in entering into the Contract, whether as a result of an evaluation process or otherwise, it has not relied on any written or oral representations made by or on behalf of the Company save as set forth in writing and expressly included in the Contract. The Company shall have no liability for any representation not so reduced to writing and incorporated in the Contract.

- 2.8 The quality and description of any Goods and/or Services shall be as set out in the Order or otherwise agreed in writing with the Company.
- 2.9 These Conditions shall be considered as drafted with the joint participation of the parties and no provision of these Conditions shall be construed adversely to a party on the ground that such party was responsible for the preparation of these Conditions or that provision.
3. GOODS
- 3.1 The Goods are as described in the Order and any Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
4. PRICES AND PAYMENT
- 4.1 The price of the Goods and/or Services shall be the price set out in the Order.
- 4.2 Unless otherwise set out by the Company in the Order, payment in full of the price of the Goods is due on acceptance of the Order by the Company and the Goods will not be shipped to the Customer until payment in full has been received.
- 4.3 The price of the Goods may be varied at the Company's discretion in the event of any increase in the cost of labour, materials, overheads, transport, taxes, duties or any other manufacturing costs and/or any fluctuations in exchange rates affecting the cost of imported materials.
- 4.4 The prices quoted for delivery of the Goods are ex-works prices exclusive of packaging, carriage, insurance, installation costs and import duties, which will be charged for separately if required by the Customer.
- 4.5 All prices quoted are exclusive of VAT or any applicable sales tax which, if applicable, shall be charged in addition.
- 4.6 Where the Goods are not to be paid for before delivery, the Company shall be entitled to submit its invoice at any time after the Goods have left the Company's premises. Payment shall be made within 30 days of the date of the invoice, unless agreed otherwise in writing by the Company. Where any payment under these Conditions is not received by the due date the Company reserves the right to charge interest on a daily basis on the accrued sum outstanding at the rate of 8% per annum above Barclays Bank plc base rate for the time being, and/or cease to fulfil further orders placed by the Customer until payment in full of the outstanding amount has been received and/or amend its terms of payment for future delivery of goods and/or performance of services.
- 4.7 Unless expressly stated otherwise by the Company in the Order, all sums due to the Company shall be made in GB Pounds Sterling.
- 4.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counter claim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 4.9 Without prejudice to clause 4.4, for Goods shipped outside of the United Kingdom, the Customer is responsible for obtaining at its own risk and expense any import licence or other official authorisation for the importation of the Goods to the delivery destination, and shall pay all applicable duties, taxes and other official charges.
- 4.10 Should the Company be required to enforce the terms of the Order against the Customer (including without limitation to recover the price of the Goods and/or Services) then the Customer shall indemnify the Company against all costs and expenses (including professional and legal costs and expenses on a full indemnity basis) suffered or incurred by the Company arising out of or in connection with the Company enforcing the terms of the Order.
5. DELIVERY AND PERFORMANCE
- 5.1 The Company shall ensure:
- 5.1.1 each delivery of the Goods is accompanied by a delivery note which details the date of delivery, all relevant reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of the Goods remaining to be delivered; and
- 5.1.2 if the Company requires the Customer to return any packaging materials to the Company, that this fact is clearly stated on the delivery note. The Customer shall make any packaging materials available for collection at such times as the Company shall reasonably request. Return of packaging materials shall be at the Company's expense.
- 5.2 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect shall not entitle the Customer to cancel any other instalment.
- 5.3 If the Customer fails to take delivery of the Goods within 5 Business Days of the Company notifying the Customer that the Goods are ready then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- 5.3.1 delivery of the Goods shall be deemed to have been completed by 9.00am on the fifth Business Day after the day on which the Company notified the Customer that the Goods were ready; and
- 5.3.2 the Company shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.4 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused

- by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 No Order may be cancelled by the Customer unless such cancellation has been accepted in writing by the Company. The Company reserves the right to refuse to accept any cancellation. The Customer shall indemnify the Company against all losses, costs, damages, claims and expenses incurred by the Company as a result of any such cancellation.
- 5.6 Except where otherwise agreed in writing, the date of delivery or performance shall be the date upon which the Goods are shipped from the Company's premises or the Services are performed.
- 5.7 The Company will make every effort to maintain delivery and performance dates and timescales but such dates and timescales are estimates only. The Company shall not be liable for failure to deliver the Goods and/or perform the Services by such dates or within such timescales. Time of delivery or performance is not of the essence.
- 5.8 The Company will only ship Refurbished Equipment to countries where such Equipment may lawfully be sold without requiring compliance with health and safety standards or to resellers who undertake to the Company in writing that they will sell the Refurbished Equipment in such countries.
6. NON-DELIVERY AND RETURN
- 6.1 The Customer shall inspect the Goods and/or the performance of the Services immediately on delivery or performance, as the case may be. Any shortages, damage to or apparent defects must be reported in writing to the Company within 5 Business Day of delivery or performance, as the case may be. If the Customer does not give notice within such period the Goods and/or Services shall be deemed to have been accepted by the Customer.
- 6.2 If the Company accepts the Customer's claim under clause 6.1 above it shall at its option repair or replace the Goods and/or re-perform the Services provided that the Company is satisfied that the defect and/or non-performance is not due to damage in transit or due to the acts and/or omissions of the Customer or any third party. The Company shall not be liable for any further claims for direct, indirect or consequential damage or loss and its sole obligation shall be the making of such repair, replacement or re-performance, or giving of credit.
7. TITLE AND RISK
- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass until the Company has received payment in full (in cash or in cleared funds) for the Goods.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 7.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 11.2; and
- 7.3.5 give the Company such information relating to the Goods as the Company may require from time to time.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11.2 then, without limiting any other right or remedy, the Company may require the Customer to deliver up all Goods in its possession which have not been resold or irrevocably incorporated into another product and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7.5 The legal and equitable ownership of the Goods shall remain vested solely in the Company until payment in full of all amounts due in respect of the Goods has been received by the Company.
- 7.6 Notwithstanding that title to the Goods shall remain with the Company, the Goods shall be at the risk of the Customer as soon as they are delivered in accordance with clause 5 above. The Customer shall insure to their full value any Goods wherein the risk but not the title has passed to it and indemnify the Company for loss, damage to or destruction of any such Goods. Any insurance money payable to the Customer in respect of the Goods shall be held in trust for the Company.
- 7.7 In the event that payment is overdue in whole or part or the Customer becomes subject to any of the events listed in clause 11.2, the Company may without prejudice to any of its other rights recover or re-sell the Goods or any of them and may enter upon the Customer's premises by its servants or agents for that purpose and the Customer agrees to pay to the Company all costs of repossession.
- 7.8 Until title to the Goods shall pass to the Customer:
- 7.8.1 the Customer shall at the request of the Company deliver up the Goods to the Company and for such purpose the Company may at any time (and whether or not the Customer shall be in default in making payment under the Contract) in its absolute discretion recover from the Customer such Goods being in the Customer's possession and for the purpose of such recovery the Company's servants or agents may enter upon land or buildings upon or in which the Goods are situated; and
- 7.8.2 the Company shall be entitled, where the Goods have affixed or attached to or incorporated in any other products, to detach the Goods from the other products to or in which the Goods have been affixed, attached or incorporated, provided that the Goods remain identifiable as discrete goods and that any such process is reversible.
8. WARRANTY
- 8.1 The Company warrants that new Equipment will, for a period of 12 months from the date of delivery, if used in accordance with the Instruction Manual, perform in accordance with its specification. The Company warrants that the Consumables shall, for a period of 3 months from the date of delivery, be reasonably free from defects in materials and workmanship.
- 8.2 The Company warrants that Refurbished and Upgraded Equipment will, for a period of 6 months from the date of delivery, if used in accordance with the Instruction Manual, perform in accordance with their specification.
- 8.3 Second-hand used Equipment which is not Refurbished or Upgraded Equipment is sold as is and the Company gives no warranty regarding such Equipment.

- 8.4 Save for the warranty in clause 8.2, the Company gives no warranty regarding Equipment which has been Refurbished. The Company warrants that new Equipment and Equipment which has been Upgraded shall meet the requirements of the applicable European Directives at the time of sale.
- 8.5 The Company warrants that the Services will be performed with reasonable care and skill.
- 8.6 If the Goods and/or Services do not comply with the warranties in clauses 8.1, 8.2, 8.3, 8.4 and/or 8.5, then the Company shall at its option repair or replace the Goods and/or re-perform the Services without charging the Customer for the replacement cost of the materials required for such repair, replacement or re-performance. The Customer shall pay all delivery and labour charges incurred in providing such repaired or replacement Goods and/or re-performance of the Services. The Customer shall accept such repaired or replacement Goods and/or re-performed Services and the Company shall be under no further liability in respect of any loss or damage whatsoever arising from the breach of such warranty.
- 8.7 The warranties in clauses 8.1, 8.2, 8.3, 8.4 and 8.5 shall not apply in respect of:
- 8.7.1 defects and/or non-performance which would have been reasonably apparent to the Customer on reasonable examination of the Goods and/or performance of the Services on delivery or performance and which have not been notified to the Company in accordance with clause 6;
 - 8.7.2 defects or failures or non-performance (not being defects or failures or non-performance to which clause 8.7.1 applies) which are not reported to the Company within 30 days of the occurrence of the defect or the failure or non-performance becoming apparent;
 - 8.7.3 Goods which are not returned to the Company on or before the installation of the replacement Goods;
 - 8.7.4 damage caused by fair wear and tear;
 - 8.7.5 damage caused to the Goods by use of any spare parts other than those provided by the Company;
 - 8.7.6 any failure or damages due to the Goods being misused, damaged or neglected or operated contrary to any instructions issued by the Company concerning the use of the Goods or other than by properly trained operators or operating in excess of their rated capacity;
 - 8.7.7 Goods which have been modified or maintained by the Customer or any third party save for permitted day-to-day maintenance set out in the Instruction Manual; and
 - 8.7.8 Goods which have continued to be used by the Customer after the failure or defect of the Goods first became apparent.
9. LIABILITY
- 9.1 Subject to this clause 9 and clause 8, the Company gives no warranties and makes no representations in relation to the Contract and, to the fullest extent permitted by law, any warranties expressed or implied, statutory or otherwise are hereby excluded. In particular, any representation or warranty as to merchantability, satisfactory quality or fitness for any particular purpose is hereby excluded.
- 9.2 Under no circumstances shall the Company be liable for breach of contract, in tort (including negligence), breach of statutory duty or otherwise for any loss of profit, revenue, savings, goodwill, business or other financial loss of any kind, or for any indirect or consequential loss whatsoever arising out of or in connection with the Contract.
- 9.3 If, in spite of provisions in the Contract which purport to exclude or limit the Company's liability, the Company is found liable, then the Company's liability for breach of contract, in tort (including negligence), breach of statutory duty or otherwise shall be limited to the price of the Goods and/or Services in connection with which such liability arises.
- 9.4 The limitation of liability referred to in clause 9.3 shall not apply so as to exclude or restrict the Company's liability for:
- 9.4.1 death or personal injury resulting from the negligence of the Company, its servants or agents;
 - 9.4.2 the breach of the Company's implied undertaking as to title;
 - 9.4.3 fraud or fraudulent misrepresentation;
 - 9.4.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 9.4.5 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.5 This clause 9 shall survive termination of the Contract.
- 9.6 The Customer shall co-operate with the Company in any necessary risk assessment to be performed before commencement of the Services, and shall be responsible for the health and safety of the Company's employees on the Customer's premises. The Customer shall provide such support and assistance as the Company's employees shall reasonably require while on the Customer's premises. The Customer shall indemnify the Company against all losses arising from the performance of the Services including the death or injury of any of the Company's employees, unless such loss is solely due to the Company's negligence.
- 9.7 The Customer acknowledges and agrees that it is a business customer by virtue of the Goods and/or Services being received by it for its business purposes.
- 9.8 The Customer acknowledges that:
- 9.8.1 it has read and fully understood the limitations and exclusions of the obligations and liabilities of the Company set out in these Conditions;
 - 9.8.2 it has freely agreed to them;
 - 9.8.3 they are reasonable and formed the basis for setting the price of the Goods and/or Services;
 - 9.8.4 it freely accepts the risks associated with them; and
 - 9.8.5 it is able to insure itself against all or some of those risks should it so desire.
10. INTELLECTUAL PROPERTY
- Copyright, design right and all other rights in any designs, technical specifications, drawing, documents and other items of information produced by the Company for the Customer and in the Instruction Manual shall belong to and vest in the Company absolutely and exclusively. The Customer shall not reproduce, sell, rent or lease such items or information without the prior written consent of the Company.

11. TERMINATION

- 11.1 If the Customer becomes subject to any of the events listed in clause 11.2, the Company may terminate the Contract with immediate effect by giving written notice to the Customer.
- 11.2 For the purposes of clause 11.1, the relevant events are:
- 11.2.1 the Customer suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or a limited partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (by being a partnership) has any partner whom any of the foregoing apply;
 - 11.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 11.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed or an order is made for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 11.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - 11.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 11.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - 11.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - 11.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 11.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.8 inclusive;
 - 11.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 11.2.11 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - 11.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 11.3 Without limiting its other rights or remedies, the Company may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 11.2.1 to 11.2.12, or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay an amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 11.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 11.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. PRICE MATCH GUARANTEE

- 12.1 The Company offers a price match guarantee to its customers in respect of goods.
- 12.2 If the Customer buys Goods from the Company and finds the product cheaper elsewhere within 14 days of its Order to the Company, the Company will deduct or refund the difference.
- 12.3 The product must be available for sale and in stock to qualify for the price match guarantee.

13. SERVICE AND MAINTENANCE

- 13.1 These Conditions apply to any service and maintenance Order entered into between the Customer and the Company in respect of such Services.
- 13.2 The price, package and performance times in respect of any service and maintenance Services shall be as set out in the service and maintenance Order. Performance times are subject to clause 5.7.
- 13.3 The Company reserves its right to increase its price for service and maintenance Services. The Company will give the Customer written notice of any such increase at least 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Company in writing within 2 weeks of the date of the Company's notice and the Company shall have the right without limiting its other rights or remedies to terminate the Contract by giving 1 week's written notice to the Customer.
- 13.4 Unless otherwise stated in the Order, the Company shall invoice the Customer in respect of all Services on a monthly basis in arrears. The Customer shall pay each invoice submitted by the Company within 30 days of the date of the invoice.
- 13.5 Either party may terminate a Contract for service and maintenance Services by giving the other party not less than 1 month's written notice.

14. FORCE MAJEURE

The Company shall not be liable to the Customer for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond

a party's reasonable control, which by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or sub-contractors.

15. ASSIGNMENT AND OTHER DEALINGS

- 15.1 The Company may at any time assign, transfer, mortgage, charge, sub-contract or deal in any manner with all or any of its rights or obligations under the Contract.
- 15.2 The Customer may not assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

16. NOTICES AND ENTIRE AGREEMENT

- 16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office, principal place of business, fax number, e-mail address or other such address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices served by fax or e-mail will be deemed received when sent, subject to issue of a valid transmission slip, or, if served by post, will be deemed received 5 Business Days after posting.
- 16.2 The Contract constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.
- 16.3 The provisions of this clause 16 shall not apply to the service of any proceedings or other documents in any legal action.

17. SEVERANCE

- 17.1 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 17 shall not affect the validity and enforceability of the rest of the Contract.
- 17.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. WAIVER

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. PUBLICITY

The Company reserves the right unless otherwise informed in writing by the Customer to use the Customer's name and logos for its own promotional materials.

20. THIRD PARTY RIGHTS

Nothing in the Contract is intended to confer any benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have the right to enforce any rights under the Contract, except where otherwise agreed in writing.

21. LAW AND JURISDICTION

The Contract shall be governed by the laws of England and Wales and, subject as provided hereafter, both parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or relating to the Contract or the relationship between the Customer and the Company. Nothing in this clause 21 shall limit the right of the Company to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such jurisdiction.