

# TERMS & CONDITIONS OF SUPPLY

The Customer's attention is particularly drawn to the provisions of clause 16 (Limitation of liability).

## 1. INTERPRETATION

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

### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.  
**Conditions:** these terms and conditions as amended from time to time in accordance with clause 20.8.  
**Contract:** the contract between FACER 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 FACER.  
**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).  
**Deliverables:** the deliverables set out in the Order produced by FACER for the Customer.  
**Delivery Location:** has the meaning given in clause 4.2.  
**FACER:** A.R.FACER Limited (trading as FACER) registered in England and Wales with company number 00343096.  
**FACER Materials:** has the meaning given in clause 10.1(g)(iii).  
**Facility:** FACER's warehouse at Unit 1a Bath Lane, Stanningley Road, Leeds, England, LS13 3AT or such other warehouses or storage facilities under the control of FACER from time to time.  
**Force Majeure Event:** has the meaning given to it in clause 19.  
**Goods:** the goods (or any part of them) set out in the Order.  
**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is provided in the Order or agreed in writing by the Customer and FACER.  
**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and 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.  
**Maximum Storage Period:** any maximum storage period for the Goods set out in the Order, or, where no maximum storage period is set out in the order, three months from the date on which FACER notified the Customer that the Goods held in accordance with clause 8 were ready for delivery.  
**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of FACER's estimate, the Customer's purchase order form or the Customer's oral order request.  
**Origination:** any custom or original tool that is unique to the Customer and is required by FACER to deliver the Services, including custom or original cutters, cutting formes, foils and emboss dies and plates.  
**Originations Disposal Date:** the earlier of: (a) in FACER's reasonable opinion, the Origination no longer being fit for purpose (whether due to general wear and tear or for any other reason which FACER at its sole discretion considers applicable); or (b) 24 months after the last use of the Origination in relation to any order placed by the Customer.  
**Services:** the services, including the Deliverables, supplied by FACER to the Customer as set out in the Service Specification.  
**Service Specification:** the description or specification for the Services provided in writing by FACER to the Customer.  
**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.  
**Warehousing Services:** any part of the Services which expressly involve warehouse storage of the Goods at the Facility prior to delivery.

### 1.2 Interpretation:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).  
(b) A reference to a party includes its successors and permitted assigns.  
(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.  
(d) 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.  
(e) A reference to writing or written includes email but not fax.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.  
2.2 The Order shall only be deemed to be accepted when FACER issues written acceptance of the Order at which point and on which date the Contract shall come into existence.  
2.3 Any samples, proofs, drawings, descriptive matter or advertising issued by FACER and any descriptions of the Goods or illustrations or descriptions of the Services contained in FACER's advertising materials or on FACER's website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.  
2.4 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 law, trade custom, practice or course of dealing.  
2.5 Any estimate given by FACER shall not constitute an offer, and is only valid for a period of 30 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.

## 3. GOODS

3.1 The Goods are described in the Goods Specification.  
3.2 The Customer acknowledges that FACER will interpret the Goods Specification in producing the Goods and that there may be a range of possible interpretations. The Customer has no right to reject the Goods on the basis of style or composition provided that the Goods have been provided in accordance with the Goods Specification.  
3.3 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify and keep indemnified FACER against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by FACER arising out of or in connection with any claim made against FACER for actual or alleged infringement of a third party's intellectual property rights, and claims that the Goods are illegal, defamatory or libellous in nature, arising out of or in connection with FACER's use of the Goods Specification. This clause 3.3 shall survive termination of the Contract.  
3.4 FACER reserves the right to amend the Goods Specification:  
(a) if required by any applicable statutory or regulatory requirement; or  
(b) in so far as any amendment will not materially affect the nature or quality of the Goods, and FACER shall notify the Customer in any such event.

## 4. DELIVERY OF GOODS

4.1 FACER shall ensure that:  
(a) each delivery of the Goods is accompanied by a delivery note which shows the order number, the delivery or dispatch date, the delivery address and the type and quantity of the Goods (including the code number of the Goods, where applicable); and  
(b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to FACER. The Customer shall make any such packaging materials available for collection at such times as FACER shall reasonably request. Returns of packaging materials shall be at FACER's expense.  
4.2 FACER shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after FACER notifies the Customer that the Goods are ready.  
4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.  
4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. FACER shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide FACER with adequate instructions that are relevant to the supply of the Goods.  
4.5 If FACER 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. FACER 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 FACER with any relevant instruction related to the supply of the Goods.  
4.6 If the Customer fails to accept delivery of the Goods within three Business Days of FACER notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by FACER'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 FACER notified the Customer that the Goods were ready; and  
(b) FACER shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).  
4.7 If ten Business Days after the day on which FACER notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, FACER may dispose of part or all of the Goods and charge the Customer for all related costs and expenses (including reasonable storage and disposal costs).  
4.8 If FACER delivers up to and including 10% more than the quantity of Goods ordered the Customer may not reject them and FACER shall be entitled to make a pro rata adjustment to the invoice for the Goods. The Customer shall promptly notify FACER if an excess quantity of the Goods has been delivered.  
4.9 If FACER delivers up to and including 10% less than the quantity of Goods ordered the Customer may not reject them.  
4.10 FACER 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 in an instalment shall not entitle the Customer to cancel any other instalment. If the Customer requests that the Goods are delivered in instalments, FACER shall be entitled to charge the Customer



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packaging, insurance and transportation costs for each instalment. For the avoidance of doubt, should FACER and the Customer agree to the Goods being delivered in parts to different Delivery Locations, that shall count as the Goods being delivered by instalments and this clause shall apply.

## 5. QUALITY OF GOODS

5.1 FACER warrants that on delivery the Goods shall:

- conform in all material respects with their description and any applicable Goods Specification;
- be free from material defects in design, material and workmanship;
- be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- be fit for any purpose held out by FACER.

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

- the Customer gives notice in writing 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;
- FACER is given a reasonable opportunity of examining such Goods; and
- the Customer (if asked to do so by FACER) returns such Goods to FACER's place of business at the Customer's cost.

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

- the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
  - the defect arises because the Customer failed to follow FACER's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice;
  - the defect arises as a result of FACER following any drawing, design, proof or Goods Specification supplied or approved by the Customer, or offered for approval to the Customer where the Customer has asked FACER to proceed without reviewing the same;
  - the defect arises as a result of FACER following any drawing, design, proof or Goods Specification supplied or approved by the Customer in an electronic format as it appears to FACER on FACER's systems and software;
  - the Customer alters or repairs such Goods without the written consent of FACER;
  - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, FACER shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by FACER.

## 6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until FACER receives payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as FACER's property;
- not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on FACER's behalf from the date of delivery;
- notify FACER immediately if it becomes subject to any of the events listed in clause 17.2(b) to clause 17.2(c); and
- give FACER such information as FACER may reasonably require from time to time relating to:
  - the Goods; and
  - the ongoing financial position of the Customer.

6.4 At any time before title to the Goods passes to the Customer, FACER may require the Customer to deliver up all Goods in its possession 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 (so long as the Goods have not been resold to that party) in order to recover them.

## 7. SUPPLY OF SERVICES

7.1 FACER shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Customer acknowledges that FACER will interpret the Service Specification in providing the Services and that there may be a range of possible interpretations. The Customer has no right to reject the Services, the Deliverables or the Goods (as applicable) on the basis of style or composition provided that the Services have been provided in accordance with the Service Specification. When style or composition is left to FACER's judgment, any requested amendments which are agreed to by FACER will be subject to additional charges

7.3 FACER shall use reasonable endeavours to meet any performance dates for the Services specified in FACER's estimate or communicated in writing to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.4 FACER reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and FACER shall notify the Customer in any such event.

7.5 FACER warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. STORAGE SERVICES

8.1 Where an Order includes Warehousing Services, the provisions of this clause 8 shall apply in relation to the Goods that are subject to the Warehousing Services and prevail over any contradictory provisions in clause 4. For the avoidance of doubt, this clause 8 shall not apply to any Goods which are not subject to the Warehousing Services.

8.2 FACER shall store the Goods at the Facility and await the Customer's instruction as to the required delivery dates for the Goods. The Customer may request to receive the Goods in whole or in instalments. Once the Customer requests delivery of the Goods in whole or in part, the relevant provisions of clause 4 shall apply to the Goods which have been requested.

8.3 FACER shall be entitled to charge the Customer packaging, insurance and transportation costs for each delivery save where such charges are expressly included in the price.

8.4 On not less than five Business Days' notice to FACER, the Customer and its employees, agents and representatives may access the Facility during Business Hours for the purpose of inspecting the Goods.

8.5 The Customer shall ensure that when visiting the Facility its employees, agents and representatives shall:

- co-operate as far as may be reasonably necessary with FACER's employees;
- act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of FACER; and
- comply with all rules and regulations issued from time to time by FACER relating to the use and security of the Facility.

8.6 Subject to clause 8.7, FACER shall:

- store the Goods in its possession separately from all other items held by FACER so that they remain readily identifiable as the Goods relating to the Order;
- not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- keep and maintain the Goods in good condition.

8.7 If the Customer has not accepted delivery of the Goods by the end of the Maximum Storage Period, FACER may inform the Customer that the Maximum Storage Period has expired and notify the Customer that the Goods are ready to be delivered to the Customer, and the provisions of clauses 4.6 and 4.7 shall apply. For the avoidance of doubt, FACER shall have no liability to the Customer whatsoever in respect of FACER exercising any right to dispose of the Goods and the Customer shall pay FACER for the Goods and Services in full (including reasonable storage and disposal costs).

8.8 Subject to clause 8.6:

- FACER may use such methods for the storage and handling of the Goods as it in its absolute discretion considers appropriate; and
- FACER shall have a discretion as to where in the Facility it shall store the Goods and it may, without notice to the Customer, move the Goods from one part of the Facility to another part of the Facility.

## 9. ORIGINATIONS

9.1 If the Order requires Originations, any Origination which the Order expressly states is to be paid for by the Customer will be retained by FACER for, where possible, use in producing other goods substantially similar to the Goods for the Customer until the Originations Disposal Date.

9.2 From the Originations Disposal Date, FACER shall be entitled to recycle or dispose of the Originations at its sole discretion and with no liability to the Customer whatsoever. FACER shall use reasonable endeavours to notify the Customer before disposal if FACER is exercising its right under this clause 9.2.

9.3 If FACER exercises its right under clause 9.2 and the Customer later requires an Origination which is identical or substantially similar to a recycled or disposed of Origination, the Customer acknowledges and agrees that it shall have to pay FACER for any new Originations at the price which FACER charges for applicable Originations at the time that it is needed.

## 10. CUSTOMER'S OBLIGATIONS

10.1 The Customer shall:

- ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- where the Order has been made orally, immediately inform FACER if FACER's written acceptance of the Order does not properly reflect the terms of their Order;
- co-operate with FACER in all matters relating to the Services;
- provide FACER with such information and materials as FACER may reasonably require in order to supply the Services, and ensure that such information and materials are complete and accurate in all material respects (including compatible with any requirements and in such formats that FACER may communicate to the Customer from time to time). FACER shall have no obligation to verify the completeness or accuracy of such information or materials;
- maintain copies of any electronic files or documents that it provides to FACER;
- 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;
- as applicable:
  - provide FACER, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by FACER to provide the Services;
  - prepare the Customer's premises for the supply of the Services; and
  - keep all materials, equipment, documents and other property of FACER (FACER Materials) at the Customer's premises in safe custody at its own risk, maintain the FACER Materials in good condition until returned to FACER, and not dispose of or use the FACER Materials other than in accordance with FACER's written instructions or authorisation;
- comply with all applicable laws, including health and safety laws; and
- comply with any additional obligations as set out in the Service Specification and the Goods Specification.

10.2 If FACER'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):

- without limiting or affecting any other right or remedy available to it, FACER shall have the right to suspend delivery of the Goods and performance of the Services until the Customer



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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 FACER's performance of any of its obligations;  
(b) FACER shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from FACER's failure or delay to perform any of its obligations as set out in this clause 10.2; and  
(c) the Customer shall reimburse FACER on written demand for any costs or losses sustained or incurred by FACER arising directly or indirectly from the Customer Default.

## 11. CUSTOMER MATERIALS

11.1 Any materials, equipment, tools, drawings, specifications and data supplied by the Customer to FACER (Customer Materials) are provided at the Customer's own risk and FACER shall have no obligation to treat, protect, retain or maintain the Customer Materials other than in accordance with any terms expressly agreed to by FACER in writing.  
11.2 Where Customer Materials are provided to FACER for the production of Goods and/or the delivery of Services, FACER may, in order to protect its Intellectual Property Rights and at its absolute discretion, replace any such Customer Materials with unused materials of a similar or better quality.  
11.3 FACER may reject any Customer Materials if they appear unsuitable for the purpose intended and the same shall amount to a Customer Default by the Customer providing FACER with the rights and reliefs set out under clause 10.2. If the Customer requests FACER to continue with performing its obligations under the Contract despite FACER making the Customer aware that the Customer Materials appear unsuitable for the purposes intended, and FACER agrees or proceeds to do so, as far as the law allows, FACER shall have no liability for the end quality of the Goods and Services produced and the Customer shall indemnify and keep indemnified FACER against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by FACER arising out of or in connection with the Customer Materials being unsuitable for their intended purpose. This clause 11.3 shall survive termination of the Contract.

## 12. CHARGES AND PAYMENT

12.1 The price for Goods and Services:  
(a) shall be the price set out in the Order or, if no price is quoted, the price set out in FACER's published price lists (including FACER's warehouse storage tariffs) or daily fee rates (as applicable) as at the date of the Order; and  
(b) unless expressly stated to the contrary, shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods. To the extent that delivery costs are included in the agreed price, FACER may make additional charges where the Customer requests delivery in instalments.  
12.2 FACER reserves the right to increase the price of the Goods and Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods or Services to FACER that is due to:  
(a) any factor beyond the control of FACER (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);  
(b) any request by the Customer to change the delivery date(s), quantities, types or details of Goods or Services ordered, or the Goods Specification or Services Specification; or  
(c) any delay caused by any instructions of the Customer in respect of the Goods or Services or failure of the Customer to give FACER adequate or accurate information, materials or instructions in respect of the Goods or Services (including materials which are not print-ready or in a format which is not compatible with FACER's systems or software).  
12.3 In respect of Goods, FACER shall invoice the Customer on or at any time after completion of delivery. In respect of Services, FACER shall invoice the Customer on completion of the Services.  
12.4 The Customer shall pay each invoice submitted by FACER:  
(a) within 30 days of the end of the month that the invoice is issued or, subject to clause 12.5, in accordance with any credit terms agreed by FACER and confirmed in writing to the Customer; and  
(b) in full and in cleared funds to a bank account nominated in writing by FACER, and time for payment shall be of the essence of the Contract.  
12.5 Where the Customer has been granted credit terms by FACER which specify that the Customer may make payments to FACER other than within 30 days of the end of the month that the invoice is issued, the Customer agrees that FACER shall be entitled to, at FACER's sole discretion and on written notice to the Customer, immediately withdraw the credit terms specifically granted to the Customer at any time and that, if FACER exercises this right, any payments due to FACER under this Contract will become payable in accordance with these Conditions and as if the credit terms specifically granted to the Customer never existed.  
12.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by FACER to the Customer, the Customer shall, on receipt of a valid VAT invoice from FACER, pay to FACER such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.  
12.7 If the Customer fails to make a payment due to FACER under the Contract by the due date, then, without limiting FACER's remedies under clause 17 (Termination), 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 12.7 will accrue each day at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998.  
12.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 13. INTELLECTUAL PROPERTY RIGHTS

13.1 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 including the Customer Materials) shall be owned by FACER.  
13.2 On receipt of payment of the invoice(s) relating to this Contract, FACER grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.  
13.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 13.2.  
13.4 The Customer grants FACER a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to FACER for the term of the Contract for the purpose of providing the Deliverables to the Customer.

## 14. DATA PROTECTION

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 14, Applicable Laws means (for so long as and to the extent that they apply to FACER) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK; and controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures have the meanings given in the Data Protection Legislation.  
14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and FACER is the processor.  
14.3 Without prejudice to the generality of clause 14.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to FACER for the duration and purposes of the Contract.  
14.4 Without prejudice to the generality of clause 14.1, FACER shall, in relation to any personal data processed in connection with the performance by FACER of its obligations under the Contract:  
(a) process that personal data only on the documented written instructions of the Customer unless FACER is required by Applicable Laws to otherwise process that personal data. Where FACER is relying on Applicable Laws as the basis for processing personal data, FACER shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit FACER from so notifying the Customer;  
(b) ensure that it has in place appropriate technical and organisational measures, which may be reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);  
(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and  
(d) may transfer personal data outside of the European Economic Area provided that prior written notice of the intended transfer has been given to the Customer, the Customer has not objected and the following conditions are fulfilled:  
(i) the Customer or FACER has provided appropriate safeguards in relation to the transfer;  
(ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;  
(iii) FACER complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and  
(iv) FACER complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;  
(e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;  
(f) notify the Customer without undue delay on becoming aware of a personal data breach;  
(g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and  
(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and immediately inform the Customer if, in the opinion of FACER, an instruction infringes the Data Protection Legislation.  
14.5 FACER may appoint third-party processors of personal data under the Contract provided that prior written notice of the intended appointment has been given to the Customer and the Customer has not objected (such objections not to be unreasonable). FACER confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 14, and in either case which FACER undertakes to reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and FACER, FACER will remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 14.5.  
14.6 Either party may, at any time on not less than 30 days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).



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## 15. CONFIDENTIALITY

15.1 Each party undertakes that it shall not for a period of two years from the date that the Contract comes into existence disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party that is disclosed under this Contract, except as permitted by clause 15.2 or clause 15.4.

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

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and  
(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

15.4 The provisions of this clause 15 shall not apply to any confidential information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) the parties agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

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

16.1 The restrictions on liability in this clause 16 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

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

- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
  - (d) defective products under the Consumer Protection Act 1987.
- 16.3 Subject to clause 16.2, the following types of loss are wholly excluded by the parties.
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.

16.4 Subject to clause 16.2 and clause 16.3, FACER's total liability to the Customer shall not exceed one hundred and fifty per cent (150%) of all sums paid by the Customer under the Contract and all sums payable under the Contract in respect of goods and services actually supplied by FACER, whether or not invoiced to the Customer.

16.5 FACER has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

16.6 This clause 16.5.1 shall survive termination of the Contract.

## 17. TERMINATION

17.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than three months' written notice.

17.2 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 one month after receipt of notice in writing to do so;
- (b) 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
- (c) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

17.3 Without affecting any other right or remedy available to it, FACER 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.

17.4 Without affecting any other right or remedy available to it, FACER may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and FACER if the Customer fails to pay any amount due under the Contract on the due date for payment, or the Customer becomes subject to any of the events listed in clause 17.2(b) or clause 17.2(c).

## 18. CONSEQUENCES OF TERMINATION

18.1 On termination of the Contract:

(a) the Customer shall immediately pay to FACER all of FACER's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied or produced but for which no invoice has been submitted, FACER shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall return all of the FACER Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then FACER 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 this Contract.

18.2 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.

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

## 19. 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 (a Force Majeure Event). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.

## 20. GENERAL

20.1 Assignment and other dealings

(a) FACER 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 FACER.

20.2 Notices.

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

- (i) 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
- (ii) sent by email to the address specified in the Order.

(b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, on signature of a delivery receipt or 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 at the time recorded by the delivery service; and  
(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 20.2(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 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause 20.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

20.4 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 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.

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

20.6 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.

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

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

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

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

