

## [ THE CONDITIONS ]

1. Definitions and Interpretation
- 1.1 In these Conditions the following words and expressions have the following meanings unless inconsistent with the context:
- “Additional Charges” the costs of carriage, any additional packaging, any taxes, duties or other charges levied by any Government or authority in respect of or by reason of the sale, delivery, export or import of the Goods, courier and messenger costs and any other additional charges payable by the Customer in addition to the Price;
- “Conditions” these terms and conditions;
- “Contract” any agreement for the supply of Goods and/or Services from the Supplier to the Customer in accordance with Condition 2.4;
- “Control” in the context of a company the person or persons acting in concert: (i) controlling or being able to control the composition of a majority of the board of directors of the Customer; or (ii) ultimately or beneficially holding directly or indirectly 50% or more of the equity share capital of the Customer; or (iii) able to vote over 50% of the issued voting share capital or any class thereof or, who otherwise have controlled influence over the Customer by virtue of their shareholding in the Customer or by agreement;
- “Customer” the person which has accepted these Conditions;
- “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); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
- “Delivery Address” the address for delivery of the Goods and/or supply of the Services within the United Kingdom as confirmed in the Order Acknowledgment or where no Order Acknowledgment is issued as provided by the Customer to the Supplier when the order is placed or as otherwise agreed in writing between the parties;
- “Goods” all goods supplied by the Supplier to the Customer pursuant to the Contract;
- “Order Acknowledgment” the specific details of the Contract confirmed by the Supplier in writing;
- “Price” the price due from the Customer for the supply of the Goods and/or Services calculated in accordance with Condition 5;
- “Proposal” any proposal, tender, estimate or quotation submitted to the Customer by the Supplier prior to the Contract being made;
- “Services” the installation of the Goods at the Customer’s premises (or other instructed address) and/or any other services agreed in writing to be provided by the Supplier pursuant to the Contract.
- “Supplier” Wattbike Limited, a company registered in England and Wales with company number 5554245 and whose registered office is at Vermont House, Unit 5, Nottingham South and Wilford Industrial Estate, Ruddington Lane, Nottingham, NG11 7HQ; and
- “Working Day” any day from Monday to Friday other than a statutory holiday or public holiday in England.
- 1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time, and any subordinate legislation made from time to time under the relevant statute or statutory provision.
- 1.3 References to persons include natural persons, firms, partnerships, companies, corporations, associations and organisations, (in each case whether or not having separate legal personality).
- 1.4 Use of any gender includes the other genders.
- 1.5 Words in the singular include the plural and words in the plural include the singular.
- 1.6 Any reference to “writing” or any cognate expression includes communications by post, facsimile and email but excludes text messages.
- 1.7 The headings to Conditions do not affect the interpretation of these Conditions.
- 1.8 Any phrase introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.
- 1.9 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.
2. Basis of Contract
- 2.1 These Conditions shall apply to the sale and supply by the Supplier of all Goods and/or Services purchased by the Customer and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Customer.
- 2.2 No variation of these Conditions shall be binding unless agreed in writing by a director of the Supplier and no collateral or supplemental contract may be made or construed unless confirmed in writing by a director of the Supplier.
- 2.3 Any Proposal submitted to the Customer will not constitute an offer and shall remain valid for the period stated therein, but if no period is specified such Proposal shall be valid for 7 days from the date of issue.
- 2.4 Each order or acceptance of a Proposal for the supply of Goods and/or Services by the Customer shall be deemed to be an offer by the Customer to purchase the Goods and/ or Services subject to these Conditions. The Contract shall be made at the earlier of:
- (a) when the Supplier acknowledges the order placed by the Customer or the acceptance of a Proposal by the Customer by issuing an Order Acknowledgment; or
- (b) delivery of the Goods and/or performance of the Services. and not before.
- 2.5 The Supplier may at any time without notifying the Customer make any changes to the Goods which do not materially affect the nature or quality of the Goods.
- 2.6 The Supplier’s employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed save that nothing in this Condition excludes the Supplier’s liability for fraudulent misrepresentation.
- 2.7 In the event that the Customer wishes to cancel an order, it may only do so with the written consent of the Supplier and on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.
- 2.8 Any typographical, clerical or other omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.9 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Goods and/or the Services contained in the Supplier’s catalogues or brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.10 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. Supply of Services
- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Order Acknowledgment in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates and/or response times for the Services specified in the Order Acknowledgment or any other agreed Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 The Supplier 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 Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
4. Customer’s obligations
- 4.1 The Customer shall:
- (a) ensure that the terms of the Order Acknowledgment and any information it provides in relation to the Goods and/or the Services are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods and/or Services;
- (c) provide or procure the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer’s premises, Delivery Address, office accommodation and other facilities as reasonably required by the Supplier to provide the Goods and/or Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and/or Goods, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer’s premises or Delivery Address for the supply of the Goods and/or Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before the date on which the Services and/or Goods are to be supplied;
- (g) comply with all applicable laws, including health and safety laws; and
- (h) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer’s premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier’s written instructions or authorisation.
5. Price
- 5.1 The terms of this Condition 5 shall apply save to the extent that they are inconsistent with any specific terms set out in any Order Acknowledgment or otherwise agreed between the parties in writing.
- 5.2 The price shall be:
- (a) as set out in the Order Acknowledgment;
- (b) if no Order Acknowledgment is issued, as set out in the Proposal;
- (c) if no Proposal is issued, as set out in any price list applicable to the Goods as published by the Supplier from time to time; or
- (d) as otherwise agreed between the parties in writing.
- 5.3 The costs of:
- (a) standard Working Day delivery of Goods (including those Goods which are stationary exercise bicycles) to any Delivery Address in mainland Great Britain;
- (b) delivery of any Goods to any Delivery Address outside mainland Great Britain; and
- (c) delivery of all Goods on non-Working Days to any Delivery Address, are in addition to the Price and shall be payable by the Customer as an Additional Charge, such costs will be set out in the Order Acknowledgment or as otherwise confirmed by the Supplier in writing.
- 5.4 The Supplier reserves the right to increase the Price (including charges for Services) and/or Additional Charges to take account of any increase howsoever arising in the Price (including charges for Services) and/or Additional Charges including but without being limited to any increase in the costs of materials, labour or transportation or to take account of any fluctuations in exchange rates, changes in statutory or regulatory obligations, or alteration of duties as shall be reasonable in the

- circumstances provided that the Customer may cancel the Contract by notice in writing within 5 Working Days of the date of any such notice from the Supplier.
- 5.5 The Supplier reserves the right to charge the Customer, for any additional work undertaken over and above that which would have been otherwise required, (including any expenses or financial penalties incurred by the Company) as a result of any instructions supplied by the Customer being incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or provided to the Supplier too late to enable it to meet a deadline.
- 5.6 All Prices quoted are exclusive of VAT or any other sales tax which will be charged at the rate in force at the time of dispatch.
- 5.7 The charges for Services shall be set out in the Order Acknowledgement or Proposal and:
- (a) the Supplier shall be entitled to charge the Customer for any time worked by individuals whom it engages on the Services outside normal working hours (9am to 5pm Monday to Friday) such time will be quoted for separately by the Supplier; and
- (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
6. Payment Terms
- 6.1 The payment terms in this Condition apply save to the extent that they are inconsistent with any specific payment terms set out in any Order Acknowledgment or otherwise agreed in writing between the parties.
- 6.2 The Supplier shall be entitled to invoice the Customer for the Price and where applicable any Additional Charges on or at any time after order placement. In the event that any Additional Charges arise following the issue by the Supplier of the invoice, the Supplier will invoice the Customer as and when the Additional Charges arise.
- 6.3 The Customer shall make payment for the Price and where applicable any Additional Charges in sterling by cheque, telegraphic transfer, debit or credit card. Unless agreed otherwise in writing any payment received by the Supplier in any other currency or by any other method will not be deemed to be payment for the Goods in question. Payment will not be deemed payment for the Goods and/or Services in question unless and until it is received in full and in cleared funds.
- 6.4 The Customer shall pay each invoice from the Supplier without any set-off or other deduction:
- (a) where a credit facility has been agreed by the Supplier within 30 days of the date of that the invoice was issued; or
- (b) where no credit facility has been agreed by the Supplier prior to dispatch of the Goods or supply of the Services.
- 6.5 The Supplier's invoices shall be payable in accordance with these Conditions, notwithstanding that delivery of the Goods may not have taken place and title in the Goods may not have passed to the Customer. The time of payment of the Supplier's invoices shall be of the essence of the Contract.
- 6.6 If the Customer either fails to pay in full any undisputed invoice from the Supplier by the due date for payment or exceeds the maximum outstanding credit facility agreed by the Supplier in writing, without prejudice to any other right or remedy the Supplier may have:
- (a) all invoices issued by the Supplier in respect of any Goods sold and/or Services supplied and any Additional Charges pursuant to this Contract and any sums due for goods under any other contract which may exist between the parties shall immediately fall due for payment; and
- (b) the Supplier shall be entitled to:
- (i) cancel or suspend any further deliveries to the Customer under any other order;
- (ii) sell or otherwise dispose of the Goods and/or any goods which are the subject of any order by the Customer, whether or not appropriated thereto, and apply the proceeds of sale to the overdue payment or to a reduction in the excess over the maximum credit facility;
- (iii) charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 5% per annum above the Supplier's bankers rate;
- (iv) appropriate any payment made by the Customer to such of the Goods and/or Services (or goods supplied under any other order) as the Supplier may think fit;
- (v) by notice to the Customer unilaterally vary the Customer's credit available and/or payment terms for future Contracts; and
- (vi) charge the Customer in full for all and any losses, liabilities, compensation, costs, charges and expenses (both before and after the issue of any proceedings and irrespective of whether awarded by the Court) sustained or incurred by the Supplier in connection with the recovery or attempted recovery of any such overdue payments and any interest accruing thereon.
- 6.7 Unless otherwise agreed in writing by the Supplier, all queries from the Customer regarding any invoice must be received prior to the required payment date in Condition 6.4.
7. Packaging
- 7.1 The packaging of Goods shall be entirely at the discretion of the Supplier and the Supplier shall have the right to pack all Goods in such manner and in such quantities as the Supplier thinks fit and shall not be obliged to comply with any packaging requests or instructions from the Customer unless agreed by the Supplier and the Customer in writing.
- 7.2 Where it is agreed that the Supplier shall package the Goods in a manner requested by the Customer and such packaging is in addition to that normally used by the Supplier then the Supplier shall be entitled to charge the Customer for the associated costs and such costs shall be payable by the Customer as an Additional Charge.
8. Risk and Title
- 8.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery to the Delivery Address, save in the following situations:
- (a) if the Supplier is not responsible for delivery, risk shall pass to the Customer at the point when the Customer or a representative of the Customer collects the Goods from the Supplier's registered office; or
- (b) if the Customer wrongfully fails to take delivery, risk shall pass to the Customer at the time when the Supplier has tendered delivery of the Goods.
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of:
- (a) the Price and any Additional Charges; and
- (b) all other sums payable by the Customer to the Supplier for which payment is then due.
- 8.3 Until such time as title in the Goods passes to the Customer:
- (a) the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to resell or use the Goods in the ordinary course of its business;
- (b) if Goods are damaged or destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as trustee for the Supplier;
- (c) the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or third party where the Goods are stored and mark identify and repossess the Goods and the Customer grants the Supplier an irrevocable license to enter any premises of the Customer for such purposes; and
- (d) the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
9. Delivery
- 9.1 Unless otherwise agreed the Supplier shall reasonably endeavour to deliver the Goods to Delivery Addresses.
- 9.2 The Goods shall be delivered:
- (a) when they are delivered to a Delivery Address;
- (b) in the event that the Supplier agrees to deliver Goods for export outside the United Kingdom when they are delivered as stated in the Proposal, Order Acknowledgement or otherwise agreed between the parties in writing;
- (c) where the Supplier is not responsible for delivery when they are collected from the Supplier's principal place of business; or
- (d) as otherwise agreed between the parties in writing.
- 9.3 The Supplier shall reasonably endeavour to deliver the Goods on the date(s) indicated by the Supplier or agreed between the parties in writing from time to time (the "Anticipated Delivery Date"), but the time of delivery shall not be of the essence.
- 9.4 The Supplier shall have the right to deliver Goods ordered in instalments.
- 9.5 In the event that the Supplier is unable for any reason to fulfil any delivery of the Goods on any Anticipated Delivery Date the Supplier shall not be deemed to be in breach of contract or have any liability to the Customer. Failure by the Supplier to deliver any one or more of the instalments on any Anticipated Delivery Date or any claim by the Customer in respect of the Goods delivered in any one or more instalments shall not entitle the Customer either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Goods delivered in any other instalment.
- 9.6 If the Customer fails to take delivery of the Goods (otherwise than by reason of the Supplier's fault), fails to give the Supplier adequate instructions for delivery or fails to collect the Goods within one month of being notified that the Goods are available for collection then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
- (a) store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and redelivery; or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Price and any Additional Charges under the Contract.
- 9.7 The Customer shall accept delivery of the Goods and shall promptly unload the Goods. For the avoidance of doubt, the Supplier or the Supplier's carrier shall not be responsible for unloading the Goods and the Customer shall be charged for wasted time at the Supplier's standard rate and any other expenses incurred by the Supplier for:
- (a) any delay in unloading;
- (b) each repeat delivery where the Supplier or Supplier's carrier leaves the delivery point and subsequently returns to the delivery point with the Goods; and/or
- (c) as a result of the Customer's inability or unwillingness to accept delivery and/or delay in unloading the Goods.
- 9.8 The Customer shall notify the Supplier in writing of any shortfall of Goods delivered or collected within 7 Working Days of delivery or collection, or in the event of non-delivery of a consignment, within 3 Working Days of the Anticipated Delivery Date. The Supplier shall be entitled to make good any shortage or non delivery of a consignment of the Goods.
- 9.9 Upon delivery the Customer will be required to sign the Supplier's or the Supplier's Courier's delivery note as conclusive evidence that delivery was made and of the quantity of Goods received by the Customer.
10. Warranties and Liability
- 10.1 Subject to the Conditions set out below the Supplier provides a non-transferable parts only warranty that the Goods which are stationary exercise bicycles will be free from material defects in materials or workmanship for:
- (a) 6 months from the date of delivery in the case of consumable parts (which include but are not limited to saddles and toe straps amongst other consumable parts identified by the Supplier);
- (b) 12 months from the date of delivery in the case of wearing parts; and
- (c) 24 months from the date of delivery in the case of non-wearing parts.

<p>10.2 (d) 60 months from the date of delivery on the frame In respect of all other Goods the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier.</p> <p>10.3 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. In particular, the Supplier makes no warranty as to the fitness of the Goods for any particular purpose even if the purpose is stated in the Customer's order. This exclusion includes recommendations or advice from the Supplier to the Customer relating to a specific enquiry. The Customer must satisfy itself as to the fitness for the purpose for which the Goods are intended.</p> <p>10.4 The Supplier shall not be liable for a breach of any of the warranties in Condition 10.2 unless: (a) the Customer gives written notice of the defect to the Supplier and if the defect is as a result of damage in transit gives written notice to the Supplier or the Supplier's carrier within 7 Working Days of receipt specifying the serial number, details of the defect and delivery date. In the event of a defect which is not apparent on delivery the Customer shall inform the Supplier of such defect immediately on discovery of the breach; and (b) the Supplier is given a reasonable opportunity after receiving the notice of examining the Goods and the Customer complies with any request from the Supplier at the Supplier's option to either return the Goods to the Supplier at Customer's expense or make the Goods available for collection by the Supplier or the Supplier's courier for inspection to take place at the Supplier's registered office. The reasonable cost of packaging and carriage of returned Goods incurred by the Customer will be reimbursed by the Supplier if the Goods are found to be damaged or defective. The Customer shall be responsible for any costs or expenses incurred by the Supplier in collecting Goods found not to be defective.</p> <p>10.5 The Supplier shall not be liable for breach of warranty under Condition 10.1 if: (a) the Customer makes any further use of the Goods after giving notice under Condition 10.4; or (b) the defect arises because the Customer has failed to follow the Supplier's or manufacturer's instructions (whether oral or in writing) as to the storage, installation, commissioning, proper use and maintenance of the Goods or (if there are none) good trade practice; or (c) the Customer alters or repairs the Goods without the written consent of the Supplier.</p> <p>10.6 Where any valid claim in respect of the Goods is made by the Customer the Supplier shall be entitled at its option to: (a) replace the Goods (or the part in question) found not to conform to warranty at the Supplier's cost save that the Supplier shall not be responsible for installing any replacement Goods or parts; (b) at the Supplier's sole discretion, refund to the Customer the Price (or a proportionate part of the Price) of the relevant Goods (or the part in question) found not to conform to warranty, and subject to Condition 10.8 the Supplier shall have no further liability to the Customer.</p> <p>10.7 Subject to Condition 10.8, the Supplier's liability in connection with the sale and supply of Goods and/or Services shall be as follows: (a) in respect of any loss of profits, loss of business, loss of goodwill, loss of anticipated savings, loss of use or for any type of consequential, special or indirect loss or damage, the Supplier's liability shall be nil; and (b) in respect of all other direct loss (whether in contract, tort or otherwise) the Supplier's total liability under the Contract shall not exceed the Price paid for the Goods and/or Services.</p> <p>10.8 Nothing in these Conditions seeks to limit the Supplier's liability for personal injury or death caused by the Supplier's negligence.</p> <p>10.9 The limitations on liability in this Condition 10 are reflected in the Price. If a Customer requests any increased level of liability, the Supplier shall, where possible, provide a Proposal or, where appropriate a revised Proposal, taking into account any increase on the caps on liability requested by the Customer. In accordance with Condition 2.2 no variation to this Condition 10 shall be binding unless agreed in writing by a director of the Supplier.</p> <p>10.10 Subject to Condition 10.8 the Supplier shall have no liability under these Conditions or otherwise if the Goods and/or Services have not been paid for by the due date for payment in accordance with Condition 6.4.</p> <p>10.11 Any claim by the Customer under this Condition 10 in respect of any Goods shall not entitle the Customer to withhold or delay payment in respect of any other Goods and/or Services in respect of which no such claim has been made whether or not those Goods form part of the same consignment.</p> <p>10.12 The Supplier has given commitments as to compliance of the Goods and Services. 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.</p> <p>11. Data Protection</p> <p>11.1 The Supplier will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a the Supplier's obligations or rights under the Data Protection Legislation. In this clause 11, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/ or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.</p> <p>11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.</p> <p>11.3 Without prejudice to the generality of clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.</p> <p>11.4 Without prejudice to the generality of clause 11.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:</p>	<p>(a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;</p> <p>(b) ensure that it has in place appropriate technical and organisational measures, 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);</p> <p>(c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and</p> <p>(d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled: (i) the Customer or the Supplier 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) the Supplier 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) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;</p> <p>(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;</p> <p>(f) notify the Customer without undue delay on becoming aware of a personal data breach;</p> <p>(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</p> <p>(h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.</p> <p>11.5 The parties may revise this clause 11 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).</p> <p>12. Termination</p> <p>12.1 Without prejudice to any other remedies or rights whether under the Contract or otherwise, the Supplier may terminate the Contract at any time by written notice to the Customer and the notice taking effect as specified in the notice if: (a) the Customer commits a material breach of any of these Conditions, and (if such a breach is remediable), fails to remedy that breach within 14 days of being notified in writing; or (b) the Customer fails to pay any sum due under the Contract, including any interest accrued, in full cleared funds in accordance with Condition 6; or (c) the Customer suspends, or threatens to suspend, payment of its debts or makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or (d) a creditor or encumbrancer 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 any property or assets of the Customer;</p> <p>(e) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or (f) there is a change in Control of the Customer; or (g) the Supplier reasonably apprehends that any of the events mentioned above is about to occur and notifies the Customer accordingly.</p> <p>12.2 For the purposes of Condition 12.1(a), a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).</p> <p>13. Consequences of termination</p> <p>13.1 Upon termination of the Contract for any reason: (a) the Customer shall immediately pay to the Supplier all outstanding invoices, and in respect of any part of the Price or other sums payable by the Customer but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt; and (b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.</p> <p>14. Force Majeure</p> <p>14.1 The Supplier shall not be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Supplier's reasonable control such as (but without limitation) any strike,</p>
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- lock-out or other form of industrial action, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or inability to procure materials required for performance of the Contract.
- 14.2 The Supplier shall promptly notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 3 months, the Supplier may terminate the Contract without liability by written notice to the Customer.
15. Third party rights
- 15.1 A person who is not a party to the Contract will not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
16. Notice
- 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 that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom. Any notice delivered personally or sent by fax or e-mail shall be deemed served at the time of personal delivery or transmission, provided the same occurs on a Working Day. To prove service it shall be sufficient to show that the fax or email was transmitted to the fax or email address of the other party or that the envelope containing the notice was properly addressed and posted.
17. Entire agreement
- 17.1 Each Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
18. No partnership or agency
- 18.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind another party in any way.
19. Further assurance
- 19.1 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.
20. Assignment
- 20.1 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under the Contract.
21. Severance
- 21.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.
22. Waiver
- 22.1 If either party fails or delays or compromises in exercising a right or remedy under the Contract, the right or remedy is not to be treated as having been waived, restricted or varied and agreement by either party to refrain from exercising a right in one particular instance will not prevent it from exercising it in full in the future.
23. Cumulative remedies
- 23.1 All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Contract or otherwise available to that party.
24. Governing law and jurisdiction
- 24.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter will be governed by and construed in accordance with the law of England and Wales.
- 24.2 The parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.