

## Terms and Conditions

- 1.1 The Parties hereby agree to be bound by these Terms and Conditions upon the earlier of:
- 1.1.1 the Contract being signed by both Parties; or
  - 1.1.2 payment of any sort by the Client to Challenger; or
  - 1.1.3 the issuance of a purchase order/confirmation in writing/instructions by the Client; or
  - 1.1.4 Challenger undertakes any Services on behalf of the Client.
- 1.2 These Terms and Conditions shall apply to the provision of any Services by Challenger to the Client and to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 Unless the Parties have agreed otherwise in writing, these Terms and Conditions shall also apply to any other services of whatever nature which may be provided by Challenger to the Client.
- 1.4 In the event of any conflict between these Terms and Conditions and any other document relied upon by either Party in relation to the Contract, these Terms and Conditions shall prevail.

## 2 DEFINITIONS

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

**"Business Days"** means days that the Bank of England is open;

**Challenger Lighting Services Ltd "Challenger"** is the Service provider;

**"Contract"** means Schedules 1 and 4. If there is any contradiction(s) between the contractual documentation, the Terms and Conditions shall take priority when interpreting the Contract;

**"Client"** means any partnership, firm, entity or corporate body (which expression shall, where the context so admits, include its successors) which purchases/utilises the Services from Challenger;

**"Goods"** means any goods provided to the Client by Challenger under the Contract;

**"Parties"** means Challenger and the Client;

**"Scope"** means the scope of the Services to be provided by Challenger to the Client, as agreed between the Parties and evidenced in the Scope and/ or Estimate Schedule and documents which accompany these Terms and Conditions;

**"Services"** means the services provided by Challenger to the Client as outlined in the Scope and/or Estimate Schedule agreed between the Parties; and

**"Variation"** is any variation from the initial Scope agreed between the Parties in accordance with clause 11, and which is recorded by way of a Variation Order, a pro-forma copy of which is attached at Schedule 3 to these Terms and Conditions.

- 2.2 Any reference to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended, unless expressly stated otherwise, shall be at the time in force.
- 2.3 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neutral genders, and vice versa. Words importing a person shall include a firm and any entity having legal capacity.
- 2.4 Unless the context otherwise requires:
- 2.4.1 the headings in the Contract are inserted for convenience of reference only and shall not be taken into consideration in the interpretation or construction of the Contract;
  - 2.4.2 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and without limitation and the words following any of those terms shall not limit the sense of the words preceding those terms; and
  - 2.4.3 reference to any document or agreement shall be construed as reference to the same as it may have been, or may from time to time, be amended or modified in accordance with the Contract.
- 2.5 References in these Terms and Conditions to "holding company" and "subsidiary" shall have the same meanings as ascribed to them in section 1159 of the Companies Act 2006.

### **3 THE SERVICES**

- 3.1 In consideration of the fees being paid by Client to Challenger, Challenger shall provide the Services to the Client as outlined in the Scope and/ or Estimate Schedule.
- 3.2 Challenger shall use its reasonable care and skill in the performance of the Services and compliance of all of its contractual obligations. The Services are provided by Challenger exclusively to the Client. Challenger does not accept any responsibility or liability to any third party for the Services which it provides to the Client unless expressly agreed in writing.

### **4 TERMS OF PAYMENT**

- 4.1 Challenger shall issue the Client with invoices for all of the Services undertaken by Challenger.
- 4.2 Unless the invoice specifically states a different date for payment of the invoice, in which case the due date on the invoice shall be the applicable due date, the Client shall pay Challenger's invoice in full and final settlement, without set-off, deduction or withholding within 30 days of receipt of the invoice.
- 4.3 Every invoice shall be paid in the currency stated in the invoice in cleared funds to Challenger's bank account as set out in the invoice.
- 4.4 Time is of the essence in relation to every invoice payment. If the Client fails to make any payment in accordance with the Contract and/or invoice, Challenger shall, without prejudice to any right which

Challenger may have pursuant to any statutory provision in force, have the right to charge the Client interest on a daily basis at an annual rate equal to the base rate of The Bank of England plus three percent (3%) from time to time on any sum due and not paid on the due date. Such interest shall be calculated compounding on a daily basis from the due date until payment of the overdue sum, whether before or after judgment.

- 4.5 If the Client reasonably believes that an incorrect invoice has been issued by Challenger, they shall notify Challenger promptly in writing, but in any event no later than the due date on the invoice, specifying the reason for disputing the invoice. The Client shall pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed amount. Challenger shall be entitled to charge interest at an annual rate equal to the base rate of The Bank of England plus three percent (3%) on such disputed amounts where resolved in favour of Challenger within (5) Banking Days after the dispute is resolved. Should the Client's claim be valid, Challenger shall issue a corrected invoice accounting for the correct outstanding sum due.
- 4.6 In the event that the Client has made full or part payment of any invoice issued by Challenger and subsequently disputes the paid portion of that invoice, the Client shall notify Challenger in writing, fully explaining the reason that the invoice or portion of the invoice is disputed. Following receipt of the Client's notification, Challenger may, at its sole discretion, issue a credit note to the Client. Challenger may, at its sole discretion, issue a credit note for any other reason.
- 4.7 At any time while any sum due and payable by the Client to Challenger is outstanding, Challenger shall be entitled to suspend the performance of any or all of their obligations under this Contract.

## 5 CLIENT RESPONSIBILITIES

- 5.1 The Client undertakes and shall use its best endeavours to:
- 5.1.1 provide full, accurate and complete information to Challenger in sufficient time to enable the Services to be performed effectively and efficiently by Challenger;
  - 5.1.2 procure all necessary accesses for Challenger's representatives to everything required to carry out the Services, not limited to necessary electricity, security, water, information, permits, goods, premises (including all stores on or offsite during working hours), installation and transport;
  - 5.1.3 ensure the working environment is safe and adequate in relation to facilities and arrangements for Challenger's representatives, where it has control of the relevant working environment;
  - 5.1.4 procure that it shall make its project management team available to Challenger for any purpose deemed necessary by Challenger including, but not limited to, meetings, discussions and taking necessary steps to resolve problems that may delay provision of the Services 24 hours a day, seven days a week, while Services are being undertaken;

- 5.1.5 inform Challenger at the earliest opportunity of any possible delays of any nature including, but not limited to those that occur due to labour relations, production problems, design problems, or financial problems or any other risk of delay whatsoever;
  - 5.1.6 refrain from directly instructing any member of Challenger staff, agents or servants unless such instructions are given in furtherance of health and safety. Should the Client wish to instruct Challenger staff in any matter other than is necessary for the furtherance of health and safety, it must make a request to Challenger's project manager to provide the instructions;
  - 5.1.7 to supply Challenger with water and sufficient electrical power to enable Challenger to provide the Services;
  - 5.1.8 Take out all of the necessary insurance policies, including but not limited to, in respect of the working environment, materials found in and/or around the site, the Goods, business interruption and Challenger's staff; and
  - 5.1.9 comply with each and every obligation it has under the Contract.
- 5.2 Any information provided by the Client which subsequently is confirmed by Challenger as incorrect, incomplete and/or defective, shall be corrected by Challenger at the sole risk and expense of the Client. The Client hereby agrees to indemnify Challenger for any costs incurred dealing with Client's incorrect, incomplete and/or defective information.

## 6 TERM AND TERMINATION

- 6.1 This Contract applies to the Services whenever performed for the Client (including before the date of this Contract).
- 6.2 The Contract or any part of the Services under the Contract may be terminated upon the written agreement by both Parties.
- 6.3 Without affecting any other right or remedy available to it, either Party may terminate the Contract immediately if:
  - 6.3.1 the other Party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five (5) Business Days after being notified in writing to do so; or
  - 6.3.2 the other Party 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
  - 6.3.3 the other Party is a company or limited liability partnership, is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986; or

- 6.3.4 the other Party is a partnership, has any partner to whom any of the foregoing apply; or
- 6.3.5 the other Party 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 any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 6.3.6 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 other Party; or
- 6.3.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice or intention to appoint an administrator is given or if an administrator is appointed over the other Party; or
- 6.3.8 a floating charge holder of the assets of the other Party has become entitled to appoint or has appointed an administrative receiver; or
- 6.3.9 a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the other Party; or
- 6.3.10 any event occurs or proceeding is taken with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 6.4; or
- 6.4 Without affecting any other right or remedy available to it, Challenger may terminate the Contract immediately if:
- 6.4.1 the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than five (5) Business Days after being notified in writing to make such payment(s);
- 6.4.2 the Client suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 6.4.3 any circumstances whatsoever beyond the reasonable control of Challenger that necessitates the termination for whatever reason for the provision of Services.
- 6.5 In the event of termination, Challenger shall retain any sums already paid to it by the Client without prejudice to any other rights either party may have whether at law or otherwise.
- 6.6 Either party may terminate this Contract by providing the other party with 30 days prior written notice.
- 6.7 The provisions of this Agreement that give either Challenger or the Client rights or obligations beyond its termination shall continue indefinitely following the termination of this Agreement.

## 7 FEES

- 7.1 The Client shall pay Challenger all professional fees and reasonable and necessary additional costs and expenses, in the opinion of Challenger, that it incurs carrying out the Services (for example: travel, accommodation). Challenger shall be responsible for booking all required travel and accommodation unless otherwise agreed in writing between the Parties.
- 7.2 The Client hereby acknowledges that the total costs and expenses incurred during the Contract may exceed Challenger's estimate(s). For example, Challenger's estimate(s) are likely to be incorrect if any of the following circumstances arise:
- 7.2.1 the exact scope is undefined at the time of executing the Scope and/ or Estimate Schedule; or
  - 7.2.2 all of the relevant and required information requested is not supplied by the Client when it is requested/required; or
  - 7.2.3 if anomalies in information provided by the Client or in the Services are discovered during the Contract; or
  - 7.2.4 there is any change to the project as set out in the Scope and/ or Estimate Schedule.
- 7.3 If any of the eventualities listed in clause 7.2 or similar scenarios occur, Challenger may at any time, in its reasonable discretion, suspend Services and issue a new Scope and/ or Estimate Schedule or a Variation Order. All Services provided by Challenger up to the date of the suspension shall be paid in accordance with the Contract.
- 7.4 Challenger may charge additional professional fees if events beyond Challenger's control (including your acts or omissions) affect our ability to perform the Services as originally planned or if you ask us to perform additional tasks.
- 7.5 Unless otherwise set forth in the Contract or agreed in writing between the Parties, payment is due upon presentation of each of Challenger's invoices. If Challenger does not receive payment of its invoice within 30 days of the invoice date or in accordance with the invoice due date, Challenger shall be entitled, without prejudice to any other rights that Challenger may have, to suspend provision of the Services until all sums due are paid in full by the Client.
- 7.6 The risk and legal title to any Goods provided and /or supplied by Challenger to the Client under this Contract shall only transfer to the Client when all invoices issued by Challenger, up to and including the final invoice, have been paid in full by the Client and Challenger has received remittance of such sums into the account specified on the invoices issued to the Client. This includes payment of any sums that are disputed.
- 7.7 Until such time as the title in the Goods transfers from Challenger to the Client, Challenger shall be entitled at any time to require the Client to deliver up the Goods immediately to Challenger. If the Client fails to so deliver up the Goods on Challenger's request within 48 hours from Challenger's notice,

Challenger or Challenger's agent may enter any premises of the Client, or any premises where the Goods are located, and repossess the Goods. The fact that the title to the Goods shall not pass to the Client until complete and final payment has been made of all invoices issued by Challenger to the Client shall not in any way affect the Client's liability to make payment for the Goods.

7.8 Pending transfer in title of the Goods from Challenger to the Client, the Client shall keep the Goods whether installed or not (or procure that that the Goods are kept);

7.8.1 in a suitable environment where they will not be damaged or misused (save for wear and tear);

7.8.2 fully insured against fire, theft and accidental damage; and

7.8.3 clearly identifiable as Challenger's Goods and stored separately.

7.9 If the Goods to which Challenger has title are sold, lost or damaged or indistinguishable from goods to which Challenger does not have title, the Client must fully indemnify Challenger for the cost of the Goods and any costs incurred due to Client's inactions/actions.

## 8 SUBCONTRACTING

8.1 Challenger has the right to sub-contract or assign any of its obligations under the Contract.

## 9 THIRD PARTIES

9.1 No provision of this Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not party to it.

## 10 LIMITATIONS ON LIABILITY

10.1 Challenger is not responsible for and accepts no liability whatsoever for any losses, damage, delay or expense arising from or in connection with any error, inaccuracy, negligence and/or non-compliance with any drawings or technical information prepared for the supply of any object that is a subject of the Contract

10.2 Challenger is not responsible for and accepts no liability whatsoever for any losses, damage, delay or expense arising from or in connection with any error, inaccuracy, negligence and/or non-compliance with any drawings or technical information in the design, performance and/or manufacturing of any object that is not of Challenger's design and that is the subject of this Contract.

10.3 Where Challenger is reliant upon information provided by the Client and/or any third party, Challenger is not responsible for any losses, damage, delay or expense arising from or in connection with errors and inaccuracies in the information provided in relation to the Contract.

10.4 Challenger shall be under no liability whatsoever to the Client for any loss, damage, delay or expense of any nature, whether direct or indirect and howsoever arising unless liability is solely a result of Challenger's negligence or wilful default under the Contract.

- 10.5 Any claims against Challenger in relation to this Contract shall be deemed to be waived and absolutely time barred upon the expiry of three years unless agreed otherwise within a contract from the date on which Challenger issues its final invoice under the Contract.
- 10.6 The Client hereby undertakes to indemnify Challenger and its employees, agents and sub-contractors and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them in connection with providing the Services.
- 10.7 The Client further undertakes to indemnify Challenger against and in respect of all costs, loss, damages and expenses (including legal costs) which Challenger may suffer or incur (either directly or indirectly) in the course of performing the Services under this Contract, unless such costs, loss, damages and expenses (including legal costs) arise solely as a result of Challenger's negligence or breach of the Contract. The loss need not occur before Challenger may rely on this indemnity.
- 10.8 Challenger shall not be liable for any loss of or damage to equipment and any other items placed at its disposal by or on behalf of the Client however such loss or damage occurs. This includes but is not limited to damage caused by fire, partial or total loss of the equipment.
- 10.9 Challenger shall not be liable for any loss or damage to property owned by the Client or put at Challenger's disposal by or on behalf of the Client. This includes but is not limited to damage caused by fire, partial or total loss of the Client's property, or damage to machinery.
- 10.10 The Client undertakes that it shall not hold Challenger liable for late completion of or provision of the Services to the Client or any associated losses, damages or expense arising from or in connection with the late delivery of the Services, where Challenger has varied the deadline for provision of the Services by completion of a Variation in accordance with clause 11 below.
- 10.11 The Client undertakes that it shall not hold Challenger liable for injury to its staff or agents or person related to the Client with whom Challenger interacts in relation to the provision of the Services unless such injury is caused by Challenger's negligence.
- 10.12 Neither Challenger nor the Client shall, except otherwise provided in the Contract, be responsible for any loss, damage, delay or failure in performance hereunder arising or resulting from act of God, act of war, seizure of legal process, quarantine restrictions, national strikes, riots, civil commotions and arrest or restraint of princes, rulers or people of any other usual force majeure type event.
- 10.13 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.
- 10.14 The maximum aggregate overall liability of Challenger (including any costs payable to the Client) in connection with the rectification of defects, default and delay or any termination for default to the Client under or in connection with the Contract shall not exceed the value paid by the Client to Challenger at the date the liability arose for the Services, even where it is alleged or established that such liability arose

from Challenger's default, negligence, non-performance. This limitation shall apply in an absolute manner and shall apply in contract, at law, in tort or in any other legal proceedings or otherwise.

## 11 VARIATIONS

- 11.1 Any Variation that may be required during the Contract shall be processed expeditiously and efficiently by Challenger and the Client. A specimen copy of a Variation Order is included in Schedule 3 hereto.
- 11.2 The Client has the right to request Challenger at any time to do any of the following:
- 11.2.1 make any revision to the Services; or
  - 11.2.2 revise elements of the Services already completed in accordance with the Contract; or
  - 11.2.3 after commencement of the Services, accelerate the Services or any part thereof in order to recover all or part of any delay in respect of which Challenger would otherwise have been entitled to an extension of time; or
  - 11.2.4 Re-programme the Services and reschedule its resources in order to complete the Services or any part thereof in accordance with any deadline the Client may request.
- 11.3 The direct and incidental costs of all Variations shall be for the Client's account, unless otherwise agreed by the Parties.
- 11.4 Unless such instruction by the Client is required as a result of a failure by Challenger to comply with the Contract or any other negligent act or omission of Challenger, an instruction under clause 11 will constitute a Variation.
- 11.5 If Challenger considers that an instruction has been given or other event has taken place for which it is entitled to receive a Variation, Challenger shall (and where practicable before proceeding with any work affected by such instruction) request that the Client accepts a Variation in respect of such instruction.
- 11.6 Any Variation request by Challenger shall include details of the instruction, any relevant dates and the clause(s) of the Contract under which Challenger considers itself to be entitled to a Variation. Challenger shall also provide both estimated cost and schedule impact associated with the Variation request.
- 11.7 All Variation requests by Challenger shall be recorded in a Variation Order and submitted to the Client. The Variation Order should be signed and dated by the Client and returned to Challenger within five (5) Business Days, unless otherwise agreed Challenger. If the Client does not respond to a Variation request within five (5) Business Days, the Variation request is deemed to have been accepted and a Variation Order is deemed to have been issued and/or signed by the Client.
- 11.8 Subject to clause 11.7 above, no Variation shall become effective until the formal issue of a Variation Order is signed by Challenger and authorised by the Client in accordance with clause 11.6 of these Terms and Conditions.

11.9 Subject to clause 11.7 above, the completed Variation Order signed by both Parties, or signed by Challenger and authorised by the Client in accordance with clause 11.7, authorises Challenger to proceed with such Variation.

11.10 Variations shall be paid by the Client as indicated in the Variation Order. Where no payment terms are indicated, Variations shall be paid in accordance with Challenger's standard invoicing procedure.

## 12 APPLICABLE LAW AND JURISDICTION

12.1 This Contract is governed by the laws of England and Wales.

12.2 Any dispute between Challenger and the Client in connection with or arising out of the Contract shall be resolved by means of the following procedure:

12.3 One Party shall serve a notice of dispute in writing on the other Party setting out (i) the background facts to the dispute, (ii) the contractual clauses relied upon by the Party initiating the dispute process and (iii) the value of the dispute with a detailed explanation of how the value of the dispute has been calculated by that Party ("**Notice of Dispute**").

12.4 Within 10 Business Days of the Notice of Dispute being served on the other Party, the dispute shall be referred to the Client's representative and Challenger's representative who shall discuss the matter, either in person or by telephone. The Parties' representatives shall make all reasonable efforts to reach an agreement. Each Party's representative for the purposes of the dispute process shall be an individual with the authority to deal with the dispute.

12.5 If no agreement is reached under clause 12.4 or 10 Business Days have passed since the Notice of Dispute was served on the other Party, the Parties shall, acting in good faith, within 40 days from the date of the Notice of Dispute, attempt to resolve the dispute by attending mediation. The mediation shall be in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. The Parties shall exchange mediation papers (maximum 7 pages long) outlining their position five (5) Business Days in advance of the mediation. The mediation shall be conducted in London, United Kingdom.

12.6 In the absence of any agreement being reached at mediation or 40 days have passed since the Notice of Dispute, the dispute shall be finally settled by arbitration. The arbitration shall be conducted in accordance with London Court of International Arbitration (LCIA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to one arbitrator. If within 14 days of one Party calling for arbitration, the Parties have not agreed upon a sole arbitrator, either Party may apply in writing for the appointment of a sole arbitrator by the President of the LCIA. The sole arbitrator shall be of English nationality even if the two Parties are of different nationalities. The award of the sole arbitrator shall be binding on both Parties as if he had been appointed by agreement. The language of arbitration will be English. The seat of the arbitration shall be London.

## 13 CONFIDENTIALITY

- 13.1 All pricing, drawings, intelligence and/or any information contained within the Scope and technical information supplied by Challenger shall be considered confidential.
- 13.2 All communications between the Parties shall be considered confidential.
- 13.3 Confidential information shall not be disclosed by either Party without prior written permission by the other Party.
- 13.4 All information provided by the Client which the Client wishes to remain confidential shall be clearly marked as confidential.
- 13.5 The provisions of this clause 13 shall not apply to information which:
- 13.5.1 is part of the public domain;
  - 13.5.2 was in the possession of Challenger prior to the Contract and which was not subject to any obligation of confidentiality owed to the Client;
  - 13.5.3 was received from a third party whose possession is lawful and who is under no obligation not to disclose; or
  - 13.5.4 is required to be disclosed in order to comply with the requirements of any law, rule or regulation of any governmental or regulatory body having jurisdiction over the Services or Challenger.

## 14 INTELLECTUAL PROPERTY

- 14.1 All intellectual property used and/or created by virtue of Challenger carrying out the Services under this Contract is owned by Challenger. Unless otherwise expressly stated, the Client receives any intellectual property used and/or created during this Contract on a non-exclusive and royalty free license basis. If a license and/or royalty fee for the use of Challenger's intellectual property is applicable, it shall be agreed between the Parties prior to commencement of each Service undertaken under this Contract.
- 14.2 Subject to clause 14.1, neither the Client nor Challenger shall have the right of use, other than for the purposes of this specific Contract, whether directly or indirectly, of any patent, copyright, proprietary right or confidential know-how or process provided by the other Party and the intellectual property rights in such shall remain with the Party providing such patent, copyright, proprietary right or confidential know-how, or process.
- 14.3 No licence to use, or transfer of ownership of any intellectual property rights is granted in respect of any name, trade name, trade mark, or other designation of a Party hereto including any contraction, abbreviation, or simulation of any of the foregoing, unless the express written permission of the other Party has been obtained.

14.4 The Client shall release, defend, indemnify and hold harmless Challenger from and against all claims, losses, damages, expenses (including without limitation legal costs and expenses and other costs of defence) and liabilities arising out of any alleged infringement of any patent or proprietary or protected right or any other claim relating to information supplied by the Client to Challenger, arising out of or in connection with the performance of the obligations under the Contract.

## 15 RELEVANT REQUIREMENTS

15.1 Nothing contained in this Contract shall be construed to create any partnership, joint venture, or franchise relationship between the Parties hereto. The Parties are independent persons, and neither shall be construed as the agent, employee, nominee, or representative of the other. No party shall have the authority to act for, or to incur obligations on behalf of, any other party except as provide by this Contract.

15.2 Any modification or amendment of this Contract shall be effective only if placed in writing and signed by both Parties.

15.3 Either Party corresponding under this Contract shall ensure such correspondence is effectively given and such correspondence shall be treated as received during Challenger's office hours. If correspondence is sent outside Challenger's office hours it shall be treated as received during Challenger's next working day.

15.4 Each Party will not unreasonably withhold any information requested by the other Party and shall disclose to the other Party any information requested necessary by the other Party.

15.5 The Client's relationship is solely with Challenger. No representative of Challenger has any personal legal obligation and/or liability to the Client whether in contract, tort (including negligence) or otherwise. The fact that any representative of Challenger signs any documentation, electronically or in writing, in his or her name in the course of carrying out the Services does not give rise to any personal legal liability separate to that of Challenger.

## 16 ENTIRE CONTRACT

16.1 This Contract (Schedules 1 & 4) 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. The provision of any other Terms and Conditions by any party and/or Client shall not bind Challenger in any way.

16.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

## 17 WAIVER

17.1 None of the Terms and Conditions of the Contract shall be considered to be waived by Challenger unless a waiver is given in writing by Challenger to the Client. No failure on the part of Challenger to enforce any of the Terms and Conditions of the Contract shall constitute a waiver of such terms.

## 18 CONSEQUENTIAL LOSS

18.1 Notwithstanding any provisions to the contrary elsewhere in the Contract, the Client shall release, defend, indemnify and hold harmless Challenger from the Client's consequential loss and Challenger shall release, indemnify and hold harmless the Client from Challenger's consequential loss. Consequential loss shall mean any indirect or consequential loss howsoever caused whether by virtue of any fiduciary duty, in tort or delict (including negligence) as a consequence of breach of any duty (whether statutory, contractual or otherwise) or under any other legal doctrine or principle whatsoever whether or not recoverable at common law or in equity, arising from or related to the performance of the Contract and whether or not any such losses were foreseeable at the time of entering into the Contract.

## 19 SUSPENSION OF SERVICES

19.1 Challenger shall have the right, by notice to the Client, to suspend the Services or any part thereof, to the extent detailed in the notice, for any of the following reasons:

19.1.1 if the Client is in breach of its obligations under the Contract or any other agreements between the Client and Challenger;

19.1.2 in the event that suspension is necessary for the proper execution or safety of the Services or persons; or

19.1.3 is deemed appropriate by Challenger; or

19.1.4 any of the circumstances listed in clause 7.2 arise.

19.2 All Services provided by Challenger up to the date of the suspension shall be paid in accordance with the Contract.

19.3 Challenger shall have the right, by notice to the Client, to recommence the Services or any part thereof, to the extent detailed in the notice. Following recommencement of the Services all Services shall be paid in accordance with the Contract.

## 20 WARRANTY

20.1 Challenger warrants that on delivery of Goods, and for a period of 12 months from the date of delivery (the "**Warranty Period**") unless stated otherwise, the Goods shall:

20.1.1 be free from material defects in design, material and workmanship;

20.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

20.1.3 be fit for any purpose held out by Challenger in the Contract.

20.2 Subject to clause 20.1, if the Client:

- 20.2.1 gives notice in writing to Challenger during the Warranty Period within a reasonable time of discovery, not later than 3 Business Days, that some or all of the Goods do not comply with the warranty;
- 20.2.2 Challenger is given a reasonable opportunity of examining such Goods on site in situ within 7 to 10 days;
- 20.2.3 The Client (if asked to do so by Challenger) returns such Goods to Challenger's place of business; and
- 20.2.4 Challenger shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 20.3 Challenger shall not be liable for the Goods' failure to comply with the warranty set out in 20.1 in any of the following events:
- 20.3.1 the Client makes any further use of such Goods after giving notice in accordance with clause 20.2;
- 20.3.2 the defect arises because the Client failed to follow Challenger's oral and/or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 20.3.3 the defect arises as a result of Challenger following any drawing, design or Specification supplied by the Client;
- 20.3.4 the defect arises and/or is impacted in any way by the power to the Good;
- 20.3.5 the Client alters or repairs such Goods without the written consent of Challenger;
- 20.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 20.3.7 the Goods differ from their description or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 20.4 Except as provided in this clause 20, Challenger shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 20.1.
- 20.5 These terms shall apply to any repaired or replacement Goods supplied by Challenger.

## 21 DATA PROTECTION

- 21.1 "Data Protection Legislation" means the EU General Data Protection Regulation 2016/679, together with all other applicable legislation relating to privacy or data protection and including any statute or statutory provision which amends, extends, consolidates or replaces the same. The terms "personal data", "data

subject", "controller", "processor" and "process" (and their derivatives) shall have the meanings given to them in the Data Protection Legislation.

21.2 The Client (including its employees, officers, representatives or other agents) and Challenger shall be considered to be a controller in respect of personal data disclosed to Challenger by or on behalf of the Client or otherwise processed by Challenger in connection with our work for the Client ("Personal Data"). Any controller under these Terms and Conditions or the Contract shall comply with the Data Protection Legislation in connection with such processing.

21.3 Challenger shall process the Personal Data in accordance with our Client Data Protection Policy, a copy of which is available on request and the Client shall (and shall procure that any of your employees, officers, representatives or other agents) collect any necessary permission, provide any necessary notice and do all such other things as are required under the Data Protection Legislation in order for you to disclose Personal Data to us for the purposes described therein.

## 22 PANDEMICS

22.1 In the event of a pandemic, such as the Coronavirus, Challenger reserves the right to increase costs, be late on delivery and/or have the ability to terminate the contract.