

Anthony Best Dynamics Limited – Conditions of Business

1. General

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

1.1 Definitions:

ABD: Anthony Best Dynamics Limited registered in England and Wales at Middleton Drive Bradford on Avon, Wiltshire BA15 1GB with company number 1658222.

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

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Contract: the contract between ABD and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Customer: the person or firm who purchases the Goods and/or Services from ABD as specified Order.

Deliverables: the deliverables set out in the Purchase Order produced by ABD for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 16.

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 prepared by ABD and provided to the Customer, or otherwise agreed in writing by ABD.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or

equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form and ABD's Purchase Order Confirmation, as the case may be.

Purchase Order Confirmation: a confirmation issued by ABD in response to a purchase order for goods and services issued by the Customer.

Services: the services, including the Deliverables, supplied by ABD to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided by ABD to the Customer.

ABD Materials: has the meaning given in clause 8.1(h).

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 [personal representatives,] successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative 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 fax [and email **OR** but not email].

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 ABD issues written acceptance of the Order (the Purchase Order Confirmation) at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3 Any samples, drawings, descriptive matter or advertising issued by ABD and any descriptions of the Goods or illustrations or descriptions of the Services contained in ABD's catalogues or brochures 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 quotation given by ABD shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue, unless specified otherwise, after which time the they may be altered by the Company without giving notice to the Customer.
- 2.6 These Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 No variation to the Contract or these Conditions shall be binding unless agreed in writing by the authorised representative of ABD.
- 2.8 ABD's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by ABD in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.9 Any advice or recommendation given by ABD or its employees or agents to the Customer or its employees or agents as to the application or use of the Goods or the performance of Services which is not confirmed in writing by ABD is followed or acted upon entirely at the Customer's own risk, and accordingly, ABD shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.10 Any typographical error, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by ABD shall be subject to correction without any liability on the part of ABD.
- 2.11 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. Goods

- 3.1 The Goods are described in ABD's Purchase Order Confirmation and any applicable Goods Specification(s) provided by ABD to the Customer.

3.2 To the extent that the Goods are to be manufactured or amended in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify ABD 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 ABD arising out of or in connection with any claim made against ABD for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with ABD's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The ABD reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and ABD shall notify the Customer in any such event.

4. Delivery of Goods

4.1 The ABD shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, and all relevant Customer and ABD reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to ABD. The Customer shall make any such packaging materials available for collection at such times as ABD shall reasonably request. Returns of packaging materials shall be at ABD's expense.

4.2 ABD shall, unless otherwise agreed in the Order, arrange for delivery of the Goods to the destination terminal or place of destination set out in the Order, or such other location as the parties may agree (**Delivery Location**) at any time after ABD notifies the Customer that the Goods are ready to ship.

4.3 Delivery of the Goods shall be completed upon delivery and acceptance of the Goods to ABD's contracted carrier for onward carriage to the terminal or port of destination in accordance with Incoterm Rules 2020 CIP. Performance of the Services shall be undertaken as stated in Purchase Order Confirmation and if not so stated at such location(s) as ABD may determine.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. ABD 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 ABD

with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If ABD fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The ABD 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 ABD with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to take delivery of the Goods or fails to give ABD adequate instructions by the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of ABD's failure to comply with its obligations under the Contract in respect of the Goods) then, without prejudice to any other right or remedy available to ABD, ABD may:
- (a) store the Goods until the Customer takes delivery and charge the Customer for all related costs and expenses (including insurance); and
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract. If the Customer fails to take delivery of the Goods within three Business Days of ABD notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event.
- 4.7 If ten Business Days after the day on which ABD notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, ABD may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The ABD 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.

5. Quality of Goods

- 5.1 The ABD warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be fit for any specific purpose detailed in writing by ABD in the Contract.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to ABD during the warranty period 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;
- (b) ABD is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by ABD) returns such Goods to ABD's place of business at the Customer's cost,

ABD shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The ABD shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow ABD's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of ABD following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of ABD;
- (e) the defect arises because of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from their description or the Goods Specification 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, ABD 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 These Conditions shall apply to any repaired or replacement Goods supplied by ABD.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer, in accordance with Incoterm Rules 2020 CIP, upon ABD's delivery of the Goods to its carrier unless an alternative Incoterm is specified in the Purchase Order Confirmation.
- 6.2 Title in the Goods shall pass to the Customer upon the earlier of:
- (a) the transfer of risk in the Goods in accordance with Clause 6.1 ;
 - (b) ABD receives payment in full (in cash or cleared funds) for the Goods or Services in respect of which payment has become due; and
 - (c) the Customer receiving the Goods at the named place of destination.

7. Supply of Services

- 7.1 The ABD shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The ABD shall use all reasonable endeavours to meet any performance dates for the Services specified in Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The ABD 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 ABD shall notify the Customer in any such event.
- 7.4 The ABD warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer's obligations

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
 - (b) co-operate with ABD in all matters relating to the Services;
 - (c) provide ABD, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by ABD to provide the Services;

- (d) provide ABD with such information and materials as ABD may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services or installation of the Goods as appropriate;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of ABD (**ABD Materials**) at the Customer's premises in safe custody at its own risk, maintain ABD Materials in good condition until returned to ABD, and not dispose of or use ABD Materials other than in accordance with ABD's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

8.2 If ABD's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, ABD shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays ABD's performance of any of its obligations;
- (b) ABD shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from ABD's failure or delay to perform any of its obligations as set out in this clause 8.22; and
- (c) the Customer shall reimburse ABD on written demand for any costs or losses sustained or incurred by ABD arising directly or indirectly from the Customer Default.

8.3 The Customer shall during the term of this agreement:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out outside of the UK;
- (c) establish, maintain and enforce its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 8.3 (b);
- (d) notify ABD (in writing) if it becomes aware of any breach of clause 8.3(a) or clause 8.3(b), or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of this Contract; and
- (e) immediately notify ABD (in writing) if a public official becomes an officer or employee of the Customer and the Customer warrants that it has no public officials as direct or indirect owners, officers or employees at the date of the Contract.

Breach of this clause 8.3 shall be deemed a material breach under clause 14.1 (a).

9. Charges and Terms of Payment

- 9.1 The price of the Goods or the Work shall be the ABD's quoted price which reflects the limitations of the ABD's liability contained in these Conditions. 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 ABD to the Customer, the Customer shall, on receipt of a valid VAT invoice from ABD, pay to ABD 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.
- 9.2 ABD reserves the right, on giving notice to the Customer at any time before delivery of the Goods or the performance of the Work, to increase the price of the Goods or the Work to reflect any increase in the cost to ABD which is due to any change in delivery dates, quantities or specifications for the Goods or the Work which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give ABD adequate information or instructions or (where the Contract so provides) materials.
- 9.3 Except as otherwise stated in any Purchase Order Confirmation given by the ABD and unless otherwise agreed in writing between the Customer and ABD, all prices for the Goods shall be inclusive of ABD's obligations under Incoterms Rules 2020: for delivery on a CIP basis.

- 9.4 The price is exclusive of any and of all costs, charges or taxes associated with the importation, customs clearance of the Goods which the Customer shall be additionally liable to pay to the Company.
- 9.5 The charges for all additional Services not otherwise detailed in the Order, shall be calculated on a time and materials basis:
- (a) the charges shall be calculated in accordance with ABD's daily fee rates, can be provided to the Customer on request;
 - (b) ABD's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - (c) ABD shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom ABD engages in connection with any additional Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by ABD for the performance of the Services, and for the cost of any materials.
- 9.6 Subject to any special terms agreed in the Order between ABD and the Customer, ABD shall be entitled to invoice the Customer for the price of the Goods and/or Services on or at any time after delivery of the Goods or the performance of the Services, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event ABD shall be entitled to invoice the Customer for the price at any time after ABD has notified the Customer that the Goods are ready for collection or (as the case may be) ABD has tendered delivery of the Goods.
- 9.7 The Customer shall pay the price for the Goods and/or Services in pounds sterling within 30 days of the date of ABD's invoice notwithstanding that delivery may not have taken place and whether or not the title in the Goods or the subject matter of the Services has passed to the Customer. The time of payment of the price shall be of the essence of the Contract.
- 9.8 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to ABD, ABD shall be entitled to:
- (a) cancel the Contract or suspend any further performance of the Work;
 - (b) appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and ABD or any part of the Work) as ABD may think fit (notwithstanding any purported appropriation by the Customer); and
 - (c) charge the Customer (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above the Bank of England base rate from

time to time, until payment in full is made (such interest to accrue each day and shall be compounded and added to the principal at such regular intervals as ABD may determine).

- 9.9 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).

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by ABD.
- 10.2 The ABD grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to receive and use the Services and the Deliverables in its business (excluding materials provided by the Customer).
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 10.4 The Customer grants ABD a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to ABD for the term of the Contract for the purpose of providing the Services to the Customer.

11. Data protection

- 11.1 The following definitions apply in this clause 11:
- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
 - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party].
 - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

- 11.2 Both Parties acknowledge that there is no processing of Personal Data associated with or intrinsic to the performance of the Contract. The incidental exchange of Personal Data for the purpose of communication to give effect to the Contract or the business relationship is not considered to be processing of Personal Data by either Party on behalf of the other.
- 11.3 The Customer shall notify the ABD promptly if it considers that any of the ABD's instructions obligate the Customer to take on the role of Processor under the Data Protection Legislation beyond that which is contemplated in this clause.
- 11.4 Where the Contract is amended to include processing of Personal Data as a Joint Controller, the Parties agree that they shall amend the conditions to include appropriate contractual clauses, including but not limited to clauses dealing with notification in the event of a Personal Data Breach and requests from Data Subjects for access to their Personal Data.
- 11.5 Notwithstanding the contents of this clause 11, both parties 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 party's obligations or rights under the Data Protection Legislation.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts 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 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 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.

13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 13.1 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; or (b) fraud or fraudulent misrepresentation.
- 13.4 Subject to clause 13.3, ABD's total liability to the Customer shall not exceed the total charges. The **total charges** means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by ABD, whether or not invoiced to the Customer.
- 13.5 Subject to clause 13.2 and clause 13.3, the following types of loss are wholly excluded: (i) loss of profits; (ii) loss of sales or business; (ii) loss of agreements or contracts; (iv) loss of anticipated savings;(v) loss of production; (vi) loss of use or corruption of software, data or information; (vii) loss of or damage to goodwill; and (viii) indirect or consequential loss.
- 13.6 The ABD 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.
- 13.7 This clause 13 shall survive termination of the Contract.

14. Termination

- 14.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (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 15 days after receipt of notice in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its

creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) 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
- (d) 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.

14.2 Without affecting any other right or remedy available to it, ABD may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of Control of the Customer.

14.3 Without affecting any other right or remedy available to it, ABD may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and ABD if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(d), or ABD reasonably believes that the Customer is about to become subject to any of them.

15. Consequences of termination

15.1 On termination of the Contract:

- (a) the Customer shall immediately pay to ABD all of ABD's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, ABD shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of ABD Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then ABD 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.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry,

including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination[or expiry.

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

16. 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 26 weeks, the party not affected may terminate the Contract by giving 10 days' written notice to the affected party.

17. General

17.1 Assignment and other dealings

- (a) The ABD 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 ABD which shall not be unreasonably withheld.

17.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (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 contact addresses specified in Purchase Order Confirmation.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

- (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(b)(iii), business hours mean 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.
- 17.3 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 17.3 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.
- 17.4 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 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.
- 17.6 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 [or negligent misrepresentation] based on any statement in the Contract.
 - (c) Nothing in this clause shall limit or exclude any liability for fraud.
- 17.7 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

17.8 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).

17.9 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.

17.10 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.