

Garrandale Group - Terms and Conditions of Sale

Part A The Customer's attention is particularly drawn to the provisions of clause 12.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

"**Commencement Date**" means has the meaning set out in clause 2.2.

"**Conditions**" means these terms and conditions as amended from time to time in accordance with clause 15.8.

"**Contract**" means the contract between Garrandale and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

"**Customer**" means the person or firm who purchases the Goods and/or Services from Garrandale.

"**Deliverables**" means the deliverables set out in the Order.

"**Delivery**" means the delivery of the Goods or Works by Garrandale to the Customer.

"**Delivery Date**" means the date when the Goods or Works are delivered to the Customer.

"**Force Majeure Event**" means has the meaning given to it in clause 15.1.1.

"**Garrandale**" means the company providing the Goods and or Services whose details are provided in the letter accompanying these terms and conditions.

"**Garrandale Materials**" has the meaning set out in clause 8.1.6.

"**Goods**" means the goods (or any part of them) set out in the Order.

"**Goods Specification**" means any specification for the Goods, including any relevant plans or drawings that are agreed in writing by the Customer and Garrandale.

"**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"**Maintenance**" means the routine maintenance of the Works to be carried out by Garrandale.

"**Maintenance Charge**" means the fee plus VAT (as set out in the Order) and as increased in each year by an amount not to exceed (save where any upgrade or further works have been carried out by Garrandale), the annual rate of inflation to be paid by the Customer to Garrandale for the provision by Garrandale of Maintenance.

"**Order**" means the Customer's order for the supply of Goods in accordance with the Goods Specification and/or Services in accordance with the Service Specification, as set out the Customer's purchase order form.

"**Premises**" means the premises at which the Works are delivered.

"**Services**" means the services, including the Deliverables, supplied by Garrandale to the Customer as set out in the Service Specification.

"**Service Specification**" means in relation to Goods, any specification for the Goods (including any relevant plans or drawings) that is provided by Garrandale to the Customer, and in relation to Services, the description or specification for the Services provided in writing by Garrandale to the Customer.

"**Works**" means the Works as detailed in the Goods and or Service Specifications.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

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

1.2.5 a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted when Garrandale issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Garrandale which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Garrandale and any descriptions of the Goods or illustrations or descriptions of the Services contained in Garrandale'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 or have any contractual force.
- 2.5 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 trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Garrandale shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 2.7 Garrandale only agrees to carry out work set out in the Order and no variation of or addition (including any addition or variation arising by virtue of circumstances or procedures specific to the Protected Premise which were not communicated to Garrandale during the survey of the Premises) to such works can be accepted by Garrandale unless the said variation or addition is accepted in writing by Garrandale in which case it will be charged for separately.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 3. GOODS**
- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Garrandale against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Garrandale in connection with any claim made against Garrandale for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Garrandale's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Garrandale reserves the right to amend the specification of the Goods and OR Goods Specification if required by any applicable statutory or regulatory requirements.
- 3.4 The parts comprising the Works are guaranteed by Garrandale for one year from the Delivery date for free replacement or repair of parts provided that such replacement or repair was not rendered necessary by the negligence or deliberate act or omissions of the Customer its servants or agents.
- 4. DELIVERY OF GOODS**
- 4.1 Garrandale shall bring and deliver the Goods to the Premises.
- 5. QUALITY OF GOODS**
- 5.1 Garrandale warrants that on Delivery and for a period of 12 months from the Delivery Date ("**Warranty Period**"), the Goods shall:
- 5.1.1 conform in all material respects with their description and the Goods Specification;
- 5.1.2 be free from material defects in design, material and workmanship;
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 5.1.4 be fit for any purpose held out by Garrandale.
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing 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;
- 5.2.2 Garrandale is given a reasonable opportunity of examining such Goods; and
- 5.2.3 the Customer (if asked to do so by Garrandale) returns such Goods to Garrandale's place of business at the Customer's cost, Garrandale shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 Garrandale shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow Garrandale's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good industry practice;
- 5.3.3 the defect arises as a result of Garrandale following any drawing, design or Goods Specification supplied by the Customer;
- 5.3.4 the Customer alters or repairs such Goods without the written consent of Garrandale;

- 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 5.3.6 the Goods differ from 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, Garrandale shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Garrandale under clause 5.2.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of Delivery.
- 6.2 Title to the Goods shall not pass to the Customer until:
 - 6.2.1 Delivery has taken place; and
 - 6.2.2 Garrandale has received payment in full (in cash or cleared funds) for the Goods.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 hold the Goods on a fiduciary basis as Garrandale's bailee;
 - 6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Garrandale's property;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Garrandale's behalf from the date of delivery;
 - 6.3.5 notify Garrandale immediately if it becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.12; and
 - 6.3.6 give Garrandale such information relating to the Goods as Garrandale may require from time to time, but the Customer may not resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.12, or Garrandale reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Garrandale may have, Garrandale may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. SUPPLY OF SERVICES**
- 7.1 Garrandale shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 Garrandale shall use all reasonable endeavours to meet any performance dates for the Services specified in our quotation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Garrandale shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Garrandale shall notify the Customer in any such event.
- 7.4 Garrandale warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. CUSTOMER'S OBLIGATIONS**
- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
 - 8.1.2 co-operate with Garrandale in all matters relating to the Services;
 - 8.1.3 provide Garrandale, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Garrandale to provide, inspect and service the Goods and or Services;
 - 8.1.4 provide Garrandale with such information and materials as Garrandale may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 8.1.5 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;
 - 8.1.6 keep and maintain all materials, equipment, documents and other property of Garrandale (including property belonging to a third party but provided by Garrandale for the operation of the Works) ("**Garrandale Materials**") at the Customer's premises in safe custody at its own risk, maintain Garrandale Materials in good condition until returned to Garrandale, and not dispose of or use Garrandale Materials other than in accordance with Garrandale's written instructions or authorisation; and

- 8.1.7 where an attendance by Garrandale at the Premises is necessary for whatever reason (apart from routine maintenance visits) the Customer shall pay all Garrandale's charges including travelling expenses and materials on receipt of the invoice in respect of the same.
- 8.1.8 at its own expense, obtain any and all necessary consents for the Delivery of the Works and ensure that Garrandale, its servants and/or agents, shall have full and uninterrupted access to the Premises at all reasonable time for the purposes of Delivery, routine maintenance, repairs and removal or renewal of the Works and the Customer acknowledges that it may be necessary for some work to be carried out outside normal working hours.
- 8.1.9 not adjust, reset, repair, alter or in any way interfere with the Works without the written consent of Garrandale.
- 8.1.10 inform Garrandale immediately it becomes aware of any defect in the Works.
- 8.1.11 permit Garrandale to affix on the Works in such a way as not to cause inconvenience or nuisance to the Customer such plates or other marks indicating that the Works has been installed by Garrandale as Garrandale may think fit and the Customer shall allow such plates or marks to remain as affixed and will not obliterate deface or cover up the same.
- 8.1.12 ensure that the Goods and Services Specifications of the Works meets the requirements of its/ his insurers.
- 8.2 If Garrandale's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 8.2.1 Garrandale shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays Garrandale's performance of any of its obligations;
 - 8.2.2 Garrandale shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Garrandale's failure or delay to perform any of its obligations as set out in clause 8.1.6; and
 - 8.2.3 the Customer shall reimburse Garrandale on written demand for any costs or losses sustained or incurred by Garrandale arising directly or indirectly from the Customer Default.
- 9. CHARGES AND PAYMENT**
- 9.1 The Goods are exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 9.2 The charges for Services shall be on a time and materials basis:
 - 9.2.1 the charges shall be calculated in accordance with Garrandale's quotation
 - 9.2.2 Garrandale's standard 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;
 - 9.2.3 Garrandale shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and
 - 9.2.4 Garrandale shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Garrandale engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Garrandale for the performance of the Services, and for the cost of any materials.
- 9.3 Garrandale reserves the right to:
 - 9.3.1 increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. Garrandale will give the Customer written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Garrandale in writing within 2 weeks of the date of Garrandale's notice and Garrandale shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer; and
 - 9.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Garrandale that is due to:
 - 9.3.2.1 any factor beyond the control of Garrandale (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 9.3.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - 9.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Garrandale adequate or accurate information or instructions in respect of the Goods.

- 9.4 Charge the Customer for costs incurred by Garrandale's representatives in attending and/or waiting at the Premises for access to the Works other than if such delay is the result of any act or omission of Garrandale's representatives.
- 9.5 In respect of Goods, Garrandale shall invoice the Customer on or at any time after completion of delivery. Garrandale may deliver the goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the contract. Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the buyer to repudiate or cancel any other contract or instalment. In respect of Services, Garrandale shall invoice the Customer on monthly in arrears.
- 9.6 The Customer shall pay each invoice submitted by Garrandale:
- 9.6.1 within 30 days of the date of the invoice; and
- 9.6.2 in full and in cleared funds to a bank account nominated in writing by Garrandale, and time for payment shall be of the essence of the Contract.
- 9.7 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 Garrandale to the Customer, the Customer shall, on receipt of a valid VAT invoice from Garrandale, pay to Garrandale 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.
- 9.8 Without limiting any other right or remedy of Garrandale, if the Customer fails to make any payment due to Garrandale within 30 days of the date of any invoice ("**Due Date**"), Garrandale shall have the right to charge interest on the overdue amount at the rate of 8 per cent per annum above the then current base rate of The Bank of England accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Garrandale in order to justify withholding payment of any such amount in whole or in part. Garrandale may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Garrandale to the Customer.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Garrandale.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Garrandale obtaining a written licence from the relevant licensor on such terms as will entitle Garrandale to license such rights to the Customer.
- 10.3 All Garrandale Materials are the exclusive property of Garrandale.
- 11. CONFIDENTIALITY**
- A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.
- 12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 12.1 Nothing in these Conditions shall limit or exclude Garrandale's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- 12.1.2 fraud or fraudulent misrepresentation;
- 12.2 Subject to clause 12.1:
- 12.2.1 Garrandale shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 12.2.2 Garrandale has no special knowledge of the nature or value of the contents of the Premises or of the nature or the risks to which the Premises and/or its contents will from time to time be exposed but the

Customer does and therefore Garrandale must limit its liability to the Customer as set out below. Garrandale has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5 million per claim. Therefore the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £ 5 million and the Customer is responsible for making its own arrangements for the insurance of any excess loss

12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 Garrandale accepts no liability in respect of any loss or damage sustained by the Customer arising from the failure of the Works as a result of damage to the Works arising directly or indirectly from any act of god including lightning, criminal damage, , riot or commotion or any other unauthorised entry causing the Works to fail to operate or to operate incorrectly or as a result of any inadequacy in the design, or construction of the Goods.

12.5 (See PART C below)

12.6 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.1.1 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 30 days after receipt of notice in writing of the breach;

13.1.2 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

13.1.3 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 its creditors other than (where 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;

13.1.4 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 (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

13.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

13.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

13.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

13.1.8 a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

13.1.10 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 13.1.2 to clause 13.1.9 (inclusive);

13.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

13.1.12 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, Garrandale may terminate the Contract:

13.2.1 by giving the Customer 3 months' written notice;

13.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

- 13.3 Without limiting its other rights or remedies, Garrandale shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Garrandale if:
- 13.3.1 the Customer fails to make pay any amount due under the Contract on the due date for payment; or
- 13.3.2 the Customer becomes subject to any of the events listed in clause 13.1.2 to clause 13.1.12, or Garrandale reasonably believes that the Customer is about to become subject to any of them.
- 14. CONSEQUENCES OF TERMINATION**
- 14.1 On termination of the Contract for any reason:
- 14.1.1 the Customer shall immediately pay to Garrandale all of Garrandale's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Garrandale shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.1.2 the Customer shall return all of Garrandale Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Garrandale 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 the Contract;
- 14.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- 14.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15. GENERAL**
- 15.1 **Force majeure:**
- 15.1.1 For the purposes of the Contract, "**Force Majeure Event**" means an event beyond the reasonable control of Garrandale including but not limited to strikes, lock-outs or other industrial disputes (not involving the workforce of the party relying on the Force Majeure Event), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.1.2 Garrandale shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- 15.1.3 If the Force Majeure Event prevents Garrandale from providing any of the Services and/or Goods for more than 4 weeks, Garrandale shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.
- 15.2 **Data Protection and Data Processing:**
- 15.2.1 In this clause:
"Personal Data", **"Controller"**, **"Processor"**, **"Data Subject"** and **"Processing"** **"Third Country"** and **"International Organisation"** have the same meaning as in the Data Protection Legislation;
"Data Protection Legislation" shall mean the Data Protection Act 1998, or from the date it comes into force in the UK the General Data Protection Regulation (EU) 2016/679 (as applicable) and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the Information Commissioner from time to time (all as amended, updated or re-enacted from time to time);
"Data Controller" shall mean the party that transfers Personal Data to the other party; and
"Data Processor" shall mean the party that receives Personal Data from the other party
- 15.2.2 Responsibilities:
- 15.2.2.1 The parties undertake to comply with all relevant requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. Either party can be a Data Controller or Data Processor if passing personal data to the other party.
- 15.2.2.2 The Data Controller will ensure that all required consents and notices are in place to legally transfer of the Personal Data to the Data Processor for the duration and purposes of the Contract.
- 15.2.2.3 Without prejudice to the generality of this clause the Data Processor shall perform its Data Processing obligation under the Contract by:
- (a) processing Personal Data on the written instructions of the Data Controller unless otherwise required by the laws of any member of the European Union or by the laws of the European Union applicable to the Data Processor Applicable Data Processing Laws ("ADPL") to process Personal Data. When relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Data Processor shall notify the Data Controller prior to performing the processing as required by the ADPL unless those ADPL prohibit the Data Processor from notifying the Data Controller;

- (b) having appropriate technical and organisational measures in place, approved by the Data Controller, to protect against unauthorised or unlawful processing of Personal Data together with protection for accidental loss, destruction, or damage, to Personal Data, as is appropriate to the harm that might result from the unauthorised or unlawful processing, accidental loss, destruction, 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 quickly after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensuring that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transferring any Personal Data outside of the European Economic Area to a Third Country or an International Organisation, unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
 - (iv) the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;
 - (v) assist the Data Controller, 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;
 - (vi) notify the Data Controller without undue delay on becoming aware of a Personal Data breach;
 - (vii) at the written direction of the Data Controller, delete or return Personal Data and copies thereof to the Data Controller on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data; and
 - (viii) maintain complete and accurate records and information to demonstrate its compliance with this clause.
- 15.2.3 The Data Controller consents to the Data Processor appointing a third-party processor of Personal Data under the Contract should it be necessary. The Data Processor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business.
- 15.2.4 Either party may, at any time on not less than thirty (30) days' notice, revise this clause 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).
- 15.3 **Assignment and subcontracting:**
- 15.3.1 Garrandale may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 15.3.2 The Customer shall not, without the prior written consent of Garrandale, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.4 **Notices:**
- 15.4.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 15.4.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 15.4.3 This clause 15.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Contract shall not be validly served if sent by email.

15.5 Waiver and cumulative remedies:

15.5.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.5.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

15.6 Severance:

15.6.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.6.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.7 No partnership:

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, the other party in any way.

15.8 Third parties:

A person who is not a party to the Contract shall not have any rights under or in connection with it.

15.9 Variation:

Except as set out in these Clauses, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Garrandale.

15.10 Governing law and jurisdiction:

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

PART B – In addition to the terms and conditions set out in part A above (as varied by the terms and conditions in this part B), the following terms and conditions in this part B shall apply where Garrandale maintains the Works.

16. For a period of three years from the Delivery date and thereafter Garrandale shall carry out the maintenance until determined by three months' written notice given by either party to the other.

17. Garrandale shall carry out maintenance in accordance with the industry standards.

18. Garrandale shall use reasonable endeavours to promptly carry out such necessary repairs and replacements which are deemed necessary by Garrandale after being requested so to do by the Customer.

19. The Customer shall commence payment of the Maintenance Charge, and any appropriate V.A.T., on the Delivery date.

PART C – In addition to the terms and conditions set out in parts A and B above (as varied by the terms and conditions in this part C), the following terms and conditions shall apply where Garrandale has altered and or re installed or maintains works either designed, provided, installed or maintained by a third party at the Premises prior to the Commencement Date. YOUR ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 12.5 BELOW.

20. Clause 5.1 shall only apply to goods supplied, designed and or installed by Garrandale and not to goods supplied, designed and or installed by any other person prior to the Commencement Date at the Premises.

21. The following Clause 12.5 shall also apply.

"12.5 Garrandale shall under no circumstances be liable to the Customer either in contract, tort (including negligence), breach of statutory duty or otherwise for any loss or damage arising out of any act, omission or fault (of any description) in the equipment or service provided by the manufacturer, designer or installer of the system in the Premises in respect of which Garrandale has agreed to take over and provide either Goods and or Services pursuant to the Contract."