

BACKGROUND

The customer's attention is drawn in particular to the provisions of clause 10.

1. Interpretation

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

"Business Day"	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"CDM Regulations"	means the Construction (Design & Management) 2015.
"Components"	any items <u>not</u> specifically manufactured to Customer requirements (e.g. off shelf stock items) and supplied by the Supplier.
"Conditions"	means the terms and conditions set out in this document as amended from time to time in accordance with clause 13.5.
"Contract"	means the contract between the Supplier and the Customer for the sale and purchase of the Goods and / or services in accordance with these Conditions.
"Customer"	means the person or firm who purchases the Goods and / or services from the Supplier.
"Force Majeure Event"	has the meaning given in clause 12.
"Goods"	means the goods (or any part of them) set out in the Order.
"Good Working Order"	means operating in accordance with the applicable Specification or the specification of the manufacture of the Components.
"Installation Services"	means the installation of any Goods or Components by the Supplier for the Customer.
"Maintenance Services"	means any services provided by the Supplier in respect of any ongoing maintenance and aftercare of any Goods or Components installed by the Supplier.
"Order"	means the order by the Customer for the Goods and/or Services, as set out in the purchase order form of the Customer.
"Rectification Services"	means any services provided by the Supplier in respect of making any required rectifications or modifications to any Goods or Components installed by the Supplier.
"Services"	means the services (if any) described in the Order which may include Installation Services and/or Rectification Services as appropriate.
"Specification"	means any specification for the Goods and / or Services, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.
"Supplier"	means Safehinge Primera Limited (registered in Scotland with company number SC304496).

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 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.
- 1.2.5 A reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the catalogues or brochures of the Supplier are produced for the sole purpose of giving an approximate idea of the Goods and/or services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation (if issued) for the Goods and/or services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 60 Days from its date of issue.

3. Goods

- 3.1 The Goods are described in the Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier 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 the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use of the Specification by the Supplier. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Services

- 4.1 The Supplier shall supply the Services to the Customer in accordance with the Specification or as agreed between the parties in all material respects.
- 4.2 The Supplier shall perform the Services using reasonable skill and care appropriate to the working environment and reserve the right to provide these Services through the Supplier's approved Contractors.
- 4.3 It is the responsibility of the Customer to ensure where agreed there is uninterrupted access to the work area. Liability for any additional costs accrued by the Supplier for Contractor downtime due to restricted access or customer delays will be with the Customer. Any relevant charges to be paid by the Customer in respect of such events shall be notified to the Customer in writing.
- 4.4 In the event that the Supplier provides any Rectification Services, it may in its sole discretion, determine any relevant charges to be paid by the Customer in respect of such services which shall be notified to the Customer.
- 4.5 Upon completion of the Installation Services, the Maintenance Services and/or the Rectification Services the Customer (or its authorised representative) shall sign the Supplier's service sign off sheet (or other form as provided by the Supplier) to accept completion of the relevant services and to accept the responsibility for all charges and expenses which may arise thereafter.
- 4.6 Any dates set out in the sales order acknowledgement or as otherwise stated by the Supplier shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.7 The Supplier 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 the Supplier shall notify the Customer in any such event.
- 4.8 If the Services include Installation Services of the Goods, the Customer, the Supplier and any Contractor appointed by the Supplier each warrant that it shall comply with all the duties and obligations under the CDM Regulations and shall provide the other with such relevant information as required by the CDM Regulations.
- 4.9 If the Services include Maintenance Services of the Goods or Components and the Supplier finds the Goods or Components not to be in Good Working Order, it shall issue a quotation to the Customer for the Rectification Services and any parts required to restore the Good and / or Components to Good Working Order.
- 4.10 The Supplier reserves the right to adopt specific and supplementary terms relating to the Contract to the Customer which will be detailed in the terms of the offer and mutually agreed.
- 4.11 Each Order will be performed, invoiced and paid for in accordance with the provisions of this Contract but independently of any other Order. No cancellation or termination of any one Order will entitle you to repudiate cancel, or have any claim of whatsoever nature in respect of any other Order.
- 4.12 Each invoice raised by us to you will be payable in full, without deduction or set off, in accordance with our standard payment terms. You agree that you will not be entitled to set off any claim against any invoice unless you have notified us in writing within 5 days of the performance of the relevant services of any dissatisfaction with our performance of the services.

5. Delivery

- 5.1 The Supplier shall ensure that:
- 5.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers of the Customer and the Supplier, 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
- 5.1.2 Where applicable under the supply of Components, if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request.

Returns of packaging materials shall be at the expense of the Supplier.

- 5.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.
- 5.3 Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location.
- 5.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the failure of the Customer to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If the Supplier 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 Supplier 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 failure of the Customer to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6 If the Customer fails to take delivery of or make appropriate provision for the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the failure of the Supplier to comply with its obligations under the Contract:
- 5.6.1 delivery of the Goods shall be deemed to have been completed at 9:00 am on the three Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 5.6.2 the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.7 If three Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier 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.
- 5.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 90% more or less than the quantity of Goods ordered.
- 5.9 The Supplier may deliver an Order by separate instalments. Each instalment delivery shall be deemed to be a separate Order and shall be invoiced and paid for in accordance with the provisions of that Order.
- 5.10 The Customer shall have 45 days from the date on which the Goods are dispatched to return the Goods to the Supplier. The Supplier shall be under no obligation to offer any refund for returns (i) received out with the 45 day period; (ii) which are components which were sold as part of a kit ("**Components**") or (iii) which form part of a Door set offering which is made specifically to customer order.
- 5.11 Any returned Components must be sent to Safehinge Returns c/o iPRO Solutions, Unit 3, Haddenham Business Park, Haddenham, Aylesbury, Buckinghamshire, HP17 8LJ or Unit 8, Bankfield House, 250 Bristol Avenue, Blackpool, FY2 OJF if issued from our Blackpool warehouse accompanied by a completed Stock Return Form with the correct Supplier's order number clearly marked on all packaging.
- 5.12 All Component returns will be inspected upon receipt and, in the event of a refund being issued, subject to clause 5.12.4, the Supplier will reimburse the Customer for the price which the Customer paid for the Goods (as determined in accordance with clause 8) less:
- 5.12.1 an inspection and restocking fee equal to 25% of the original value of the Goods;
- 5.12.2 any outgoing/return carriage charges incurred by the Supplier;
- 5.12.3 any additional re-kitting costs if kits have been unpacked by the Customer;
- 5.12.4 any charge for any lost, damaged or missing components or packaging; and
- 5.12.5 £25 administration charge.
- Where Goods are being exchanged, the value attributable to the exchanged Goods shall be limited to the price paid by the Customer for such Goods less the deductions listed in clauses 5.12.1 – 5.12.5.
- 5.13 For the avoidance of doubt, any request for an exchange of Goods shall be treated as a return and shall be subject to the terms of clauses 5.10 to 5.12.
- 5.14 Notwithstanding clause 5.12, where the Supplier decides to issue a refund or exchange for a Component, the amount refunded (if anything) shall be decided by the Supplier at its sole discretion and shall be subject to the deductions listed in clauses 5.12.1 - 5.12.5.
- 5.15 On any occasion whereby a made to order Door set is returned, the Customer should inform the Supplier in writing of this intention and a return address mutually agreed.

6. Quality

- 6.1 Unless otherwise agreed in writing, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery, (**warranty period**), the Goods shall:
- 6.1.1 conform in all material respects with the Specification;
- 6.1.2 be free from material defects in design, material and workmanship;
- 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 6.1.4 be fit for any purpose held out by the Supplier.
- 6.2 Subject to clause 6.3 if:
- 6.2.1 the Customer gives notice in writing to the Supplier 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 6.1;
- 6.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the place of business of the Supplier at the cost of the Customer, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 6.3 The Supplier shall not be liable for failure of the Goods to comply with the warranty set out in clause 6.1 in any of the

following events:

- 6.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.2; or
 - 6.3.2 the defect arises because the Customer failed to follow the oral or written instructions of the Supplier as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
 - 6.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer; or
 - 6.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier; or
 - 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 6.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6 the Supplier shall have no liability to the Customer in respect of the failure of the Goods to comply with the warranty set out in clause 6.1.
- 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7. Title and risk

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 7.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 7.2.2 The Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the property of the Supplier;
 - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and
 - 7.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1 it does so as principal and not as the agent of the Supplier; and
 - 7.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2 then, without limiting any other right or remedy the Supplier may have:
- 7.5.1 the right to resell the Goods by the Customer or use them in the ordinary course of its business ceases immediately; and
 - 7.5.2 the Supplier may at any time:
 - (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (b) 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.

8. Price and payment

- 8.1 The price of the Goods and/or services shall be the price set out in the Order, or, if no price is quoted, the price set out in the published price list of the Supplier in force as at the date of delivery.
- 8.2 The Supplier may, by giving notice to the Customer at any time up to 10 Business Days before delivery, increase the price of the Goods and/or services to reflect any increase in the cost of the Goods and/or services that is due to:
- 8.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - 8.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods and/or services ordered, or the Specification; or
 - 8.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 8.4 The price of the Goods and/or services is exclusive of amounts in respect of value added tax ("**VAT**") and any other applicable taxes and duties or similar charges which shall be payable by the Customer **at the rate and in the manner from time to time prescribed by law**. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.5 The Supplier may invoice the Customer for the Goods and/or services on or at any time after the completion of delivery. Invoice to be issued upon individual batch shipment (if applicable).
- 8.6 The Customer shall pay the invoice in full and in cleared funds by the date stated on the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 8.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Bank of

England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8.9 The Supplier will not enter into daywork or price-work arrangements for services, or any ad-hoc arrangements without formal instruction and price agreement with the Customer prior to works commencing.

9. Termination and suspension

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

9.2 For the purposes of clause 9.1 the relevant events are:

9.2.1 the Customer 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 or limited liability partnership) 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;

9.2.2 the Customer 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 the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

9.2.3 (being a company) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

9.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

9.2.5 a creditor or encumbrancer of the Customer 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;

9.2.6 (being a company) 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 Customer;

9.2.7 (being a company) the holder of a qualifying charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;

9.2.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

9.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.8 (inclusive);

9.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

9.2.11 the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

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

9.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods and/or services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.2.1 to clause 9.2.9, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the outstanding unpaid invoices and interest of the Supplier.

9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. Intellectual Property

10.1 The Customer acknowledges that all intellectual property rights in any design specifications, data sheets, test results or any other documentation supplied by the Supplier relating the Goods shall remain with the Supplier and the Customer shall indemnify the Supplier against all damages, penalties, costs and expenses in relation to any unauthorised use by

the Customer of such rights.

11. Limitation of liability

- 11.1 Nothing in these Conditions shall limit or exclude the liability of the Supplier for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - 11.1.2 fraud or fraudulent misrepresentation; or
 - 11.1.3 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- 11.2.1 the Supplier 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
 - 11.2.2 the total liability of the Supplier to the Customer in respect of all other 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 50% of the price of the Goods and/or Services.

12. Force Majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13. General

13.1 Assignment and other dealings.

- 13.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.2 Notices.

- 13.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or email.
- 13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; 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; 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 or email, one Business Day after transmission.
- 13.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 Severance.

- 13.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.3.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 13.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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.

- 13.5 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

- 13.6 **Governing law.** 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 the law of Scotland.
- 13.7 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).